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**CLIMATE CHANGE ACT**

NO. 11 OF 2016

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## NO. 11 OF 2016

## CLIMATE CHANGE ACT

[Date of assent: 6th May, 2016.]

[Date of commencement: 27th May, 2016.]

**AN ACT of Parliament to provide for a regulatory framework for enhanced response to climate change; to provide for mechanism and measures to achieve low carbon climate development, and for connected purposes**

## PART I — PRELIMINARY

**1. Short title**

This Act may be cited as the Climate Change Act, 2016.

**2. Interpretation**

In this Act, unless the context otherwise requires—

**“adaptation”** means adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects which moderates harm or exploits beneficial opportunities;

**“all levels of government”** means all departments and agencies of the national and county governments;

**“Authority”** means the National Environmental Management Authority established by the Environmental Management and Coordination Act, 1999 or its successor legislation;

**“Cabinet Secretary”** means the Cabinet Secretary of the Ministry for the time being responsible for matters relating to climate change;

**“climate change”** means a change in the climate system which is caused by significant changes in the concentration of greenhouse gases as a consequence of human activities and which is in addition to natural climate change that has been observed during a considerable period;

**“climate change duties”** means the statutory obligations conferred on public and private entities to implement climate change actions consistent with the national goal of low carbon climate resilient development;

**“climate change resilience”** means the capability to maintain competent function and return to some normal range of function even when faced with adverse impact of climate change;

**“climate change secretariat”** means the secretariat established by the Public Service Commission to coordinate climate change mitigation and adaptation actions and interventions;

**“climate finance”** means monies available for or mobilized by government or non-government entities to finance climate change mitigation and adaptation actions and interventions;

**“Council”** means the National Climate Change Council established under section 5;

**“county executive committee member”** means the county executive committee member for the time being responsible for matters relating to climate change;

**“emissions”**, in relation to a greenhouse gas, means emissions of that gas into the atmosphere where the emissions are attributable to human activity;

**“Fund”** means the Climate Change Fund established under section 25;

**“greenhouse gas”** includes but is not limited to—

- (a) carbon dioxide;
- (b) methane;
- (c) nitrous oxide;
- (d) hydrofluorocarbons;
- (e) perfluorocarbons;
- (f) sulphur hexafluoride; and
- (g) indirect greenhouse gases;

**“intergenerational”** means with reference to equity among present and future generations and equity in the present generation;

**“mainstreaming”** means the integration of climate change actions into decision making and implementation of functions by the sector ministries, state corporations and county governments;

**“mitigation”** means efforts that seek to prevent or slow down the increase of atmospheric greenhouse gas concentrations by limiting current or future emissions and enhancing potential sinks for greenhouse gases;

**“public entity”** means body or person with functions of a public nature;

**“private entity”** means a body or person with functions of a private nature, and includes bodies registered under the Public Benefits Organisations Act, 2013 (No. 18 of 2013);

**“recycling”**, in relation to any waste, includes recovery and re-use whether or not the waste is subjected to any process and cognate expressions are to be construed accordingly; and

**“waste”** has the meaning assigned to it in section 2 of the Environmental Management and Co-ordination Act, 1999 (No. 8 of 1999).

### 3. Objects and purposes

(1) This Act shall be applied for the development, management, implementation and regulation of mechanisms to enhance climate change resilience and low carbon development for the sustainable development of Kenya.

(2) Without prejudice to subsection (1), this Act shall be applied in all sectors of the economy by the national and county governments to—

- (a) mainstream climate change responses into development planning, decision making and implementation;
- (b) build resilience and enhance adaptive capacity to the impacts of climate change;
- (c) formulate programmes and plans to enhance the resilience and adaptive capacity of human and ecological systems to the impacts of climate change;

- (d) mainstream and reinforce climate change disaster risk reduction into strategies and actions of public and private entities;
- (e) mainstream intergenerational and gender equity in all aspects of climate change responses;
- (f) provide incentives and obligations for private sector contribution in achieving low carbon climate resilient development;
- (g) promote low carbon technologies, improve efficiency and reduce emissions intensity by facilitating approaches and uptake of technologies that support low carbon, and climate resilient development;
- (h) facilitate capacity development for public participation in climate change responses through awareness creation, consultation, representation and access to information;
- (i) mobilize and transparently manage public and other financial resources for climate change response;
- (j) provide mechanisms for, and facilitate climate change research and development, training and capacity building;
- (k) mainstream the principle of sustainable development into the planning for and decision making on climate change response; and
- (l) integrate climate change into the exercise of power and functions of all levels of governance, and to enhance cooperative climate change governance between the national government and county governments.

(3) The rights and duties conferred under this Act are in addition to those conferred by any other law.

#### **4. Guiding values and principles**

(1) The guiding values and principles of low carbon climate change resilient and development in this section shall bind all level of government and all persons when—

- (a) enacting, applying or interpreting any provisions of this Act; and
- (b) making or implementing public policy decisions on climate change.

(2) In discharging their functions and duties under this Act the Council, the Cabinet Secretary, county government, any state officer and state organ shall be guided by the following—

- (a) national values and principles of governance in Article 10 of the Constitution and the values and principles of public service in Article 232 of the Constitution;
- (b) be guided by the provisions of Articles 42 and 69 of the Constitution;
- (c) ensure promotion of sustainable development under changing climatic conditions;
- (d) ensure equity and social inclusion in allocation of effort, costs and benefits to cater for special needs, vulnerabilities, capabilities, disparities and responsibilities;
- (e) ensure integrity and transparency;
- (f) ensure participation and consultation with stakeholders in accordance with the Schedule.

## PART II — POLICY, COORDINATION AND OVERSIGHT

**5. Establishment of the Climate Change Council**

(1) There is established an unincorporated body to be known as the National Climate Change Council.

(2) The Council shall be chaired by the President.

(3) The Deputy President who shall be the vice-chairperson to the Council.

(4) The Cabinet Secretary for the time being responsible for environment and climate change affairs shall be the secretary to the Council.

(5) The Directorate established under this Act shall serve as the Secretariat of the Council.

**6. Functions of the Council**

The Council shall provide an overarching national climate change coordination mechanism and shall—

- (a) ensure the mainstreaming of the climate change function by the national and county governments;
- (b) approve and oversee implementation of the National Climate Change Action Plan;
- (c) advise the national and county governments on legislative, policy and other measures necessary for climate change response and attaining low carbon climate change resilient development;
- (d) approve a national gender and intergenerational responsive public education awareness strategy and implementation programme;
- (e) provide policy direction on research and training on climate change including on the collation and dissemination of information relating to climate change to the national and county governments, the public and other stakeholders;
- (f) provide guidance on review, amendment and harmonization of sectoral laws and policies in order to achieve the objectives of this Act;
- (g) administer the Climate Change Fund established under this Act; and
- (h) set the targets for the regulation of greenhouse gas emissions.

**7. Members of the Council**

(1) The Council shall comprise not more than nine members who shall be appointed by the President.

(2) The Council shall be constituted as follows—

- (a) the Cabinet Secretary responsible for environment and climate change affairs;
- (b) the Cabinet Secretary responsible for the National Treasury;
- (c) the Cabinet Secretary responsible for economic planning;
- (d) the Cabinet Secretary responsible for energy;
- (e) the chairperson of the Council of Governors;
- (f) a representative of the private sector nominated by the body representing the largest number of institutions in the private sector;



- (g) a representative of the Civil Society nominated by the most representative registered national umbrella association of civil societies working on climate change;
- (h) a representative of the marginalised community within the meaning of Article 260 of the Constitution who has knowledge and experience in matters relating to indigenous knowledge; and
- (i) a representative of the academia nominated by the Commission for University Education.

(3) A person shall be appointed under subsection (2)(f), (g),(h) and (i), if the person has expertise and experience in matters of climate change, economy, finance, law, environment and public administration.

(4) The names of persons nominated for appointment under subsection (2) (f), (g), (h) and (i) shall be submitted to Parliament for approval.

(5) Except for members appointed under subsection (2)(a), (b), (c), (d) and (e) each person shall be qualified for appointment as member of the Council if such person—

- (a) is a citizen of Kenya;
- (b) fulfils the requirements of Chapter 6 of the Constitution; and
- (c) has at least ten years' experience in the relevant field.

(6) The President shall in the appointment of members ensure compliance with the two thirds gender principle.

(7) The Council shall at its first sitting, ballot to determine which of the members appointed under subsection (2) (f), (g), (h) and (i) shall serve for a two year term to ensure pro rata succession of membership.

(8) The Council may co-opt members with relevant expertise when needed to advise on specific matters.

(9) The Council may from time to time establish committees for the better carrying out of its functions.

(10) The members of the Council shall be paid such allowances as the Salaries and Remuneration Commission may determine.

(11) The Council shall meet at least four times in a year.

(12) Except as provided in subsection (7) the membership of the Council shall be for a term of three years and renewable once.

## **8. Powers and duties of the Cabinet Secretary**

(1) Subject to the provisions of this Act, the Cabinet Secretary shall exercise control and provide guidance over climate change governance and implementation of this Act.

(2) The Cabinet Secretary shall—

- (a) formulate and periodically review the climate change policy, strategy and the National Climate Change Action Plan and submit to the Council for approval;
- (b) coordinate negotiations on climate change related issues in consultation with the Cabinet Secretary responsible for foreign affairs;
- (c) formulate a national gender and intergenerational responsive public education and awareness strategy on climate change and implementation programme;

- (d) provide through the Directorate, technical assistance on climate change actions and responses to county governments, based on mutual agreement and needs cited by the county governments; and
- (e) report biannually to Parliament on the status of implementation of international and national obligations to respond to climate change, and progress towards attainment of low carbon climate resilient development.

(3) The Cabinet Secretary in discharge of the duties and functions under this Act shall be assisted by the Climate Change Directorate established under this Act.

### **9. Climate Change Directorate**

(1) There is established the Climate Change Directorate, as a Directorate in the state Department for the time being responsible for climate change.

(2) The Directorate shall be the lead agency of the government on national climate change plans and actions to deliver operational coordination and shall report to the Cabinet Secretary.

(3) The Directorate shall be headed by a Director of Climate Change who shall be recruited competitively and appointed by the Public Service Commission.

(4) A person shall be qualified for appointment as a Director of Climate Change if the person—

- (a) is a citizen of Kenya;
- (b) has a postgraduate degree, knowledge and experience in any of the following fields—
  - (i) environmental studies;
  - (ii) engineering;
  - (iii) meteorology;
  - (iv) climatology;
  - (v) law;
  - (vi) economics; or
  - (vii) such other relevant field as may be determined by the Cabinet Secretary in consultation with the Public Service Commission;
- (c) has at least ten years' experience at senior management level in the relevant field; and
- (d) meets the requirements of Chapter Six of the Constitution.

(5) The Director appointed under subsection (4) shall be responsible for the performance of specific duties and functions of the Directorate as set out in this Act.

(6) The Director shall advise the Cabinet Secretary on matters relating to legislation, policy, coordination, regulation and monitoring of climate change governance.

(7) The Directorate shall, on behalf of the Council, perform functions as may be specifically set out in this Act and in regulations.

(8) Without prejudice to the generality of the foregoing subsection, the Directorate shall perform the following duties and functions—

- (a) provide analytical support on climate change to the various sector ministries, agencies and county governments;

- (b) establish and manage a national registry for appropriate mitigation actions by public and private entities;
- (c) serve as the national knowledge and information management centre for collating, verifying, refining, and disseminating knowledge and information on climate change;
- (d) in collaboration with other agencies at the national and county government levels—
  - (i) identify low carbon development strategies and coordinate related measurement, reporting and verification;
  - (ii) develop strategies and coordinate actions for building resilience to climate change and enhancing adaptive capacity;
  - (iii) optimize the country's opportunities to mobilize climate finance;
- (e) coordinate adherence to the county's international obligations including associated reporting requirements;
- (f) coordinate implementation of the gender and intergenerational climate change education, consultation and learning at the national and county governments levels;
- (g) provide, on instruction of the Cabinet Secretary, technical assistance based on needs identified by county governments.

(9) The Cabinet Secretary shall, in consultation with the Public Service Commission determine the staff establishment required for the Directorate to effectively perform its functions under this Act, including mechanisms to transition staff from the climate change secretariat to the Directorate, based on performance evaluation.

#### **10. Seal of the Council**

(1) The seal of the Council shall be such device as may be determined by the Council and shall be kept by the Director of Climate Change.

(2) The affixing of the seal shall be authenticated by the chairperson of the Council and the Director of Climate Change.

(3) Any document purporting to be under the seal of the Council or issued on behalf of the Council shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

#### **11. Delegation of powers by the Council**

Subject to the provisions of this Act, the Council may, either generally or in a particular case, delegate to any committee or to any member of the Council or officer or agent of the Council, the exercise of any of the functions of the Council under this Act.

#### **12. Code of conduct**

The Council shall, by Regulations, prescribe a Code of Conduct for members of the Council and staff of the Council.

## PART III — CLIMATE CHANGE RESPONSE MEASURES AND ACTIONS

**13. Cabinet Secretary to coordinate the preparation of climate change action plans, strategies and policies**

(1) The Cabinet Secretary shall, in accordance with Article 10 of the Constitution and section 3 of this Act, and through public consultation, formulate a National Climate Change Action Plan.

(2) The National Climate Change Action Plan shall be presented for approval by the Council.

(3) The National Climate Change Action Plan shall prescribe measures and mechanisms—

- (a) to guide the county toward the achievement of low carbon climate resilient sustainable development;
- (b) to set out actions for mainstreaming climate change responses into sector functions;
- (c) for adaptation to climate change;
- (d) for mitigation against climate change;
- (e) to specifically identify all actions required as enablers to climate change response;
- (f) to mainstream climate change disaster risk reduction actions in development programmes;
- (g) to set out a structure for public awareness and engagement in climate change response and disaster reduction;
- (h) to identify strategic areas of national infrastructure requiring climate proofing;
- (i) to review and determine mechanisms for climate change knowledge management and access to information;
- (j) to enhance energy conservation, efficiency and use of renewable energy in industrial, commercial, transport, domestic and other uses;
- (k) to strengthen approaches to climate change research and development training and technology transfer;
- (l) to review and recommend duties of public and private bodies on climate change;
- (m) to review levels and trends of greenhouse gas emissions; and
- (n) to identify outputs, overall budget estimates and timeframes to realize expected results.

(4) Without prejudice to the foregoing, the National Climate Change Action Plan shall address all sectors of the economy, and provide mechanisms for mainstreaming of the National Climate Change Action Plan into those sectors.

(5) In formulating the National Climate Change Action Plan, the Cabinet Secretary shall be informed by—

- (a) scientific knowledge about climate change;
- (b) technology and technological innovations relevant to climate change;
- (c) economic circumstances, in particular the likely impact of the action plan on the following—

- (i) the economy;
  - (ii) the competitiveness of particular sectors of the economy;
  - (iii) small and medium-size enterprises;
  - (iv) employment opportunities; and
  - (v) the socio-economic well-being of any segment or part of the population;
- (d) fiscal circumstances, in particular, the likely impact of the action plans, strategies and policies on the marginalised and disadvantaged communities;
- (e) social circumstances in particular, the likely impact of the action plans, strategies and policies on biodiversity and ecosystem services;
- (f) international law and policy relating to climate change; and
- (g) indigenous knowledge related to climate change adaptation and mitigation.

(6) A notice shall be published in the Kenya Gazette and national newspapers to notify the public on approval of the National Climate Change Action Plan by the Council.

(7) The Directorate shall undertake a biennial review of the implementation of the National Climate Change Action Plan and report to the Council.

(8) The Cabinet Secretary shall, in every five year period, review and update the National Climate Change Action Plan.

(9) The Cabinet Secretary, all public bodies, and any person or entity engaged in climate change governance and administration shall, when exercising any power or discharging any statutory duty or function, be bound by the contents of the National Climate Change Action Plan.

#### **14. Policies formulated by the Government**

(1) Without prejudice to section 13, where the Government formulates a policy or an action plan on climate change, the Council, in consultation with the Cabinet Secretary, shall, as soon as reasonably practicable, prepare and cause to be tabled before Parliament a programme setting out—

- (a) the objectives of the policy in relation to adaptation to and mitigation against climate change;
- (b) the proposals for meeting those objectives;
- (c) the arrangements for involving stakeholders and engaging the public in the course of meeting the objectives;
- (d) the period within which the proposals and policies will be implemented; and
- (e) measures for addressing the risks identified in the policies.

(2) Subsection (1) shall, with necessary modifications, apply to reports on policies or action plans formulated by the government under this section.

## PART IV — DUTIES RELATING TO CLIMATE CHANGE

**15. Climate change duties of public sector**

(1) The Council may, on recommendation of the Cabinet Secretary and in consultation with relevant Cabinet Secretaries and county government, impose duties relating to climate change on any public entity at all levels of government.

(2) Any public entity on which a climate change duty has been imposed shall, in exercising functions under this Act or any other law, act in a manner best suited to achieve the successful implementation of this Act and the National Climate Change Action Plan.

(3) The duties shall be imposed and may be varied or revoked through regulations made by the Council.

(4) The imposition of climate change duties shall be preceded by public awareness and consultations.

(5) Each state department and national government public entity shall have the following duties—

- (a) integrate the climate change action plan into sectoral strategies, action plans and other implementation projections for the assigned legislative and policy functions;
- (b) report on sectoral greenhouse gas emissions for the national inventory;
- (c) designate a unit with adequate staff and financial resources and appoint a senior officer as head of the unit to coordinate the mainstreaming of the climate change action plan and other climate change statutory functions and mandates into sectoral strategies for implementation;
- (d) regularly monitor and review the performance of the integrated climate change functions through sectoral mandates;
- (e) put in place and implement mechanisms for sustainability in performance of sectoral mandates; and
- (f) report annually to the Council on the status and progress of performance and implementation of all assigned climate change duties and functions.

(6) Where an evaluation report from a statutory public body discloses unsatisfactory performance, the State Department shall undertake investigations and report the findings to the Council.

(7) An investigation under this section shall be undertaken by the head of unit and be processed within thirty days after receipt by the State Department.

(8) Upon receiving the reports from the State Department, the Council shall undertake an evaluation on performance of climate change duties and functions.

(9) The Council shall, within three months after the end of every financial year, publish publicly and submit the evaluation report on performance of climate change duties by public entities to the National Assembly for review, discussion and debate.

(10) The National Assembly shall, within six months of receiving the evaluation report, provide recommendations and proposed actions to the Council, the Cabinet Secretary, the Directorate, a State Department or statutory public entity.

**16. Climate change duties of private entities**

(1) The Council may, in consultation with the Cabinet Secretary and relevant State Departments, impose climate change obligations on private entities, including entities constituted under the Public Benefits Organizations Act, 2013 (No. 18 of 2013).

(2) The Council shall make regulations governing the nature and procedure for reporting on performance by private entities, including the authority to monitor and evaluate compliance.

(3) Notwithstanding other provisions in this Act, the Council may—

- (a) by notice in the Gazette, require a private entity that is subject to climate change obligations to, at any time, prepare reports on the status of its performance of the climate change duties and prescribe the period for reporting; and
- (b) require any private entity that fails to comply with its climate change obligations to prepare a report within a specified time, on the actions it has taken, is taking or intends to take to secure future performance with those duties.

**17. Monitoring compliance**

(1) The National Environmental Management Authority shall on behalf of the Council—

- (a) monitor, investigate and report on whether public and private entities are in compliance with the assigned climate change duties;
- (b) ascertain that private entities are in conformity with instructions prescribed under section 16 of this Act; and
- (c) regulate, enforce and monitor compliance on levels of greenhouse gas emissions as set by the Council under this Act.

(2) In the performance of this function, the Authority shall—

- (a) have all powers necessary for purposes of monitoring and investigation including the power to enter premises of any private entity and make an enquiry; and
- (b) at a reasonable hour, for the purposes of monitoring and investigation, enter any private land or premises to make an inspection or other task related to this function.

(3) A person commits an offence if the person—

- (a) fails to give or refuses to give access to the Authority or its authorised staff who has requested access to any land;
- (b) hinders the execution by the Authority of the duties under this Act or any other law;
- (c) fails or refuses to give information that the person may lawfully be required to give to the Authority; or
- (d) gives false or misleading information to the Authority.

(4) A person who commits an offence under subsection (3) is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a period not exceeding five years, or to both.

(5) The Authority shall, annually, report to the Council on the performance of functions under this Act, and such report shall form part of the report by the Council to the National Assembly.

#### **18. Mainstreaming climate change actions into strategic areas**

The Council, on the recommendation of the Cabinet Secretary shall each year identify priority strategies and actions of disaster risk reduction related to climate change and—

- (a) advise the President to require incorporation of this priority strategies and actions into functions and budgets of each State Department, state corporation and other national government entities;
- (b) advise a county government on priority strategies and actions that should be integrated into functions and budgets of departments and entities of the county governments; and
- (c) develop a specific public safety component for disaster risk reduction for incorporation by all levels of government to prevent climate change induced disasters, and manage emergency responses.

#### **19. Mainstreaming climate change actions into County Government function**

(1) A county government shall, in performance of its functions, integrate and mainstream climate change actions, interventions and duties set out in this Act, and the National Climate Change Action Plan into various sectors.

(2) A county government shall, in development, updating and approval of the County Integrated Development Plan, and the County Sectoral Plans mainstream the implementation of the National Climate Change Action Plan, taking into account national and county priorities.

(3) The Governor of a county shall designate a County Executive Committee Member to coordinate climate change affairs.

(4) Subject to this Act and the Constitution, a county government may enact legislation that further defines implementation of its obligations under this Act, or other climate change functions relevant to the county or such other related purposes.

(5) A county government shall at the end of every financial year, through the designated County Executive Committee Member, submit a report on progress of implementation of climate change actions to the County Assembly for review and debate, and a copy of this report shall be forwarded to the Directorate for information purposes.

#### **20. Integration of climate change risk**

The Authority shall integrate climate risk and vulnerability assessment into all forms of assessment, and for that purpose liaise with relevant lead agencies for their technical advice.

#### **21. Integration of climate change into curricula**

(1) The Kenya Institute of Curriculum Development shall, on advice of the Council, integrate climate change into various disciplines and subjects of the national education curricula at all levels.



(2) The Council shall advise the public agencies responsible for regulating universities and tertiary institutions curricula on integration of climate change into their curricula.

## **22. Reporting on climate change actions**

The Cabinet Secretary shall make regulations to guide the reporting and verification of climate change actions.

## **23. Enforcement of rights relating to climate change**

(1) A person may, pursuant to Article 70 of the Constitution, apply to the Environment and Land Court alleging that a person has acted in a manner that has or is likely to adversely affect efforts towards mitigation and adaptation to the effects of climate change.

(2) Where an application is made under sub-section (1), the Court may make an order or give directions that it considers appropriate to—

- (a) prevent, stop or discontinue an act or omission that is harmful to the environment;
- (b) compel a public officer to take measures to prevent or discontinue an act or omission that is harmful to the environment; or
- (c) provide compensation to a victim of a violation relating to climate change duties.

(3) For the purposes of this section, an applicant does not have to demonstrate that a person has incurred loss or suffered injury.

## **PART V — PUBLIC PARTICIPATION AND ACCESS TO INFORMATION**

### **24. Public participation**

(1) Public entities at each level of government shall, at all times when developing strategies, laws and policies relating to climate change, undertake public awareness and conduct public consultations.

(2) Public consultations shall be undertaken in a manner that ensures the public contribution makes an impact on the threshold of decision making.

(3) The Council shall, on recommendation of the Cabinet Secretary publish regulations on design and procedure to ensure efficacy of public consultations to ensure that they make an impact on the threshold of decision making on climate change at all levels of government.

(4) The Council and the Directorate shall publish and publicize all important information within their mandate.

(5) Any person may request for information from the Council and the Directorate, and such request for information—

- (a) shall be addressed to the Secretary of the Council or the Director or such other designated person;
- (b) may be subject to the payment of the prescribed fee in instances where the Council or Directorate incurs an expense in providing information; and
- (c) may be subject to confidentiality requirements of the Council or Directorate.

(6) Subject to Article 35 of the Constitution, the Council or the Directorate may decline to give information to an applicant where—

- (a) the request is considered unreasonable in the circumstances;
- (b) the information requested is at a deliberative stage within the Council or Directorate;
- (c) the prescribed fee is not paid; or
- (d) the applicant fails to satisfy any confidentiality requirements of the Council or Directorate.

PART VI — FINANCIAL PROVISIONS

**25. Climate Change Fund**

(1) There is hereby established the Climate Change Fund which shall be a financing mechanism for priority climate change actions and interventions approved by the Council.

(2) The Fund shall be vested in the National Treasury.

(3) There shall be paid into the Fund—

- (a) monies appropriated from the Consolidated Fund by an Act of Parliament;
- (b) monies received by the Fund in the form of donations, endowments, grants and gifts; and
- (c) monies under an Act payable to the Fund.

(4) The Fund shall be administered by the Council and managed by the Principal Secretary for the time being responsible for climate change affairs.

(5) In administering the Fund, the Council shall—

- (a) determine the composition of the Fund;
- (b) set strategic directions for applications of the Fund;
- (c) define eligibility criteria for the Fund to finance climate change actions and enhance achievement of low carbon climate resilient development;
- (d) set out procedures for disbursement, recovery and repayment of loans including interest;
- (e) set out procedures to ensure gender and intergenerational equity in access to monies from the Fund;
- (f) set out procedures, criteria and eligibility for funding research institutions, private, public, civil society research, development and investment ventures that enhance low carbon climate resilient development; and
- (g) set out other procedures and requirements for effective and transparent administration of the Fund, including tracking and accounting for climate change finance and monitoring and evaluation procedures through regulations which shall be subjected to public participation and approval by the National Assembly.

(6) The Council shall approve request for funding and make funding allocation decisions.

(7) The Principal Secretary in managing the Fund shall—

- (a) provide mechanisms for daily operations of the Fund;

- (b) process financing applications from eligible applicants for approval by the Council;
  - (c) ensure quality assurance in execution of the mandate of the Fund;
  - (d) undertake resource mobilization for various sources;
  - (e) provide technical assistance to the private sector, civil society and public entities.
- (8) The Fund shall be applied to—
- (a) provide grants for climate change research and innovation, in the following fields—
    - (i) industrial research;
    - (ii) technological research;
    - (iii) policy formulation;
    - (iv) scientific research; and
    - (v) academic research;
  - (b) provide grants and loans to business, industry, civil society, academia and other stakeholders for development of innovative actions that benefit climate change responses in Kenya;
  - (c) finance, through grants and loans the implantation of climate change adaptation and mitigation actions; and
  - (d) provide technical assistance to county governments.

(9) The Cabinet Secretary for the National Treasury shall, within one year of the Act coming into force, develop a strategy and make regulations setting out procedures and powers to identify sources of climate finance to monitor uses by various state, non-state and private sector actors, to enhance integrity and to eliminate corrupt practices.

(10) The functions of the Directorate shall be financed through a vote in the estimates of revenue and expenditure of the relevant State Department, taking into account the functions vested in the Directorate in this Act.

(11) The functions of the Council shall be financed through a vote in the estimates or revenue and expenditure of the relevant State Department.

## **26. Incentives for the promotion of climate change initiatives**

(1) The Cabinet Secretary shall, in accordance with the appropriate law, and in consultation with the Cabinet Secretary responsible for finance, grant to persons who—

- (a) encourage and put in place measures for the elimination of climate change including reduction of greenhouse emissions and use of renewable energy;
- (b) put in place measures to mitigate against the adverse effects of climate change;
- (c) are involved in the conduct of accredited training in programmes that are aimed at eliminating climate change;

such incentives as may be necessary for the advancement of the elimination of and mitigation against climate change and the effects of climate change.

(2) The Cabinet Secretary shall, for the purpose of subsection (1), in regulations set out the nature of the incentives, the conditions for the grant or withdrawal of such incentives and such other matter as may be necessary for the exercise of the power conferred under subsection (1).

(3) In granting incentives under subsection (1), the Cabinet Secretary shall take into account international standards and best practice.

(4) The Cabinet Secretary shall make the regulations specified under subsection (2) within a period of twelve months from the commencement of this Act.

### **27. Annual estimates**

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

### **28. Financial year of the Council**

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

### **29. Accounts and audit**

(1) The Council shall cause to be kept all proper books and records of account of the income, expenditure and assets of the Council and shall cause the accounts of the Council to be audited within a period of three months after the end of each financial year.

(2) The Council may apply to the Cabinet Secretary responsible for finance for exemption from payment of duty payable under the Stamp Duty Act (Cap. 480) in respect of an instrument executed by or on behalf, or in favour of the Council which, but for this section, the Council would be liable to pay.

(3) The Council may establish, control, manage, maintain and contribute to pension and provident funds for the benefit of the members of the Council and staff of the Council and may grant pensions and gratuities from any such fund to the said officers upon their resignation, retirement or separation from the service of the Council or, as the case may be, to the dependants of any such officer upon such officer's death.

(4) The Council may invest any of the funds of the Council in securities in which for the time being, trustees may by law invest funds or in any securities which Treasury may from time to time, approve for that purpose.

(5) The Council may place on deposit, with such bank or banks as it may determine, any monies not immediately required for the purpose of the Council.

## **PART VII — MISCELLANEOUS PROVISIONS**

### **30. Public engagement strategy**

(1) The Council shall, every twelve months, prepare and publish a public engagement strategy setting out the steps that it intends to take to—

- (a) inform the public about climate change action plans specified under this Act; and
- (b) encourage the public to contribute to the achievement of the objectives of those action plans.

(2) The public engagement strategy shall, in particular, identify actions which the public may take to contribute to the achievement of the objects and purposes set out in section 3.

(3) The Council shall, from time to time, review the public engagement strategy and where the Council varies the strategy, it shall, as soon as reasonably practicable, publish the strategy as so reviewed.

### **31. Conflict of interest**

(1) If a person is present at a meeting of the Council or a committee of the Council at which a particular matter is the subject of consideration and in which matter that person or that persons spouse is directly or indirectly interested in a private capacity, that person shall, as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Council or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(4) No member of the Council or staff of the Council shall transact any business or trade with the Council.

### **32. Protection from personal liability**

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

(2) The provisions of subsection (1) shall not relieve the Council of the liability to pay compensation or damages to any person for any injury to him, his property or any of his 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.

### **33. Offences and penalties**

(1) A person who—

- (a) without lawful excuse ignores or fails to obey any instruction issued by any member of the Council or officer or agent of the Council in exercise of the powers or the performance of the functions of the Council under this Act; or
- (b) wilfully obstructs any member of the Council or officer or agent of the Council in the discharge of their lawful duties; or
- (c) misrepresents, knowingly submits false or misleading information to any member of the Council or officer or agent of the Council in exercise of the powers or the performance of the functions of the Council under this Act,

commits an offence and is liable, on conviction, to a fine not exceeding ten million shillings or to imprisonment for a period not exceeding five years, or to both.

(2) Where an offence under subsection (1) is committed by a body corporate, every director or officer of the body corporate who had knowledge of the commission of the offence and who did not exercise due diligence, efficiency and economy to ensure compliance with this Act, shall be guilty of an offence under subsection (1).

(3) Where an offence under subsection (1) is committed by a partnership, every partner or officer of the partnership who had knowledge of the commission of the offence and who did not exercise due diligence, efficiency and economy to ensure compliance with this Act, shall be guilty of an offence under subsection (1).

#### **34. Reports**

(1) The Council shall, at least three months before the end of each financial year, prepare an annual report setting out—

- (a) the financial statements of the Council;
- (b) a description of the activities of the Council;
- (c) the progress made towards implementation of the climate change action plans;
- (d) whether the objectives of the action plans for the year under review were met and the manner in which those objectives were or were not met;
- (e) the action taken by the national and county governments to address the impacts of climate change during that year;
- (f) any further efforts which may be necessary to achieve the objectives of the action plans;
- (g) recommendations on legal and administrative measures necessary for mitigating and adapting to the effects of climate change; and
- (h) any further information relating to the functions of the Council.

(2) The Council shall submit a report prepared under sub-section (1) to the President, Parliament and the county assemblies and shall publish the Report in the *Gazette* and in such other manner as it considers appropriate.

(3) The President, Parliament or a county assembly may at any time require the Council to submit a report on a particular issue.

#### **35. Transitional provision**

The members of the Council shall be appointed within three months of the coming into force of this Act.

### **PART VIII — DELEGATED LEGISLATION**

#### **36. Regulations**

(1) The Cabinet Secretary shall, in consultation with the Council, make Regulations for the better carrying into effect of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations under this Act may provide for—

- (a) anything required by this Act to be prescribed;
- (b) the conduct of the business of the Council;
- (c) the delegation of the Council's functions or powers; and

- (d) any other matter required under the Constitution, this Act or any other written law.
- (3) For the purposes of Article 94(6) of the Constitution—
- (a) the purpose and objective of the delegation under this section is to enable the Council to make regulations and give directions for the orderly conduct of business of the Council;
  - (b) the regulations made and directions given under this section shall be of such nature, scope and within the limits as specified under this section;
  - (c) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act (Cap. 2) and the Statutory Instruments Act, 2013 (No. 23 of 2013).

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## SCHEDULE

[Section 4(2)(f).]

### PROVISIONS ON PUBLIC CONSULTATION

1. (1) Where this Act imposes a requirement for public consultation in matters relating to climate change policy, strategy, programme, plan or action, the Council or respective public or private entity shall publish a notice—
- (a) in the Gazette;
  - (b) in at least two newspapers with national circulation;
  - (c) in at least one newspaper circulating in the locality to which the climate change policy, strategy, programme, plan or action relates; and
  - (d) in at least one Kenyan radio station broadcasting in that locality.
- (2) The notice shall in each case—
- (a) set out a summary of the policy, strategy, programme, plan or activity;
  - (b) state the premises at which the details of the policy, strategy, programme, plan or action may be inspected;
  - (c) invite written comments on or objections to the policy, strategy, programme, plan or action;
  - (d) specify the person or body to which the comments are to be submitted; and
  - (e) specify a date by which the comments or objections are required to be received, not being a date earlier than sixty days after publication of the notice.
2. The Council or public or private entity shall make arrangements for the public to obtain copies, at a reasonable cost, of documents relating to the policy, strategy, programme, plan or action which are in the possession of the respective entities.
3. The Council or the respective public or private entity shall consider the—
- (a) written comments or objections received on or before the date specified under paragraph 1(2)(e); and

- (b) comments, whether in writing or not, received at a public meeting held in relation to the policy, strategy, programme, plan or action at which the Council or respective public or private entity was represented, or by any other invitation, to comment.

**4.** The Council or the respective public or private entity shall publish, in accordance with paragraph 1 of this Schedule, notice of the fact that a copy of the written decision of the Council or the respective public or private entity relating to the policy, strategy, programme, plan or action, and the reasons thereof, is available for public inspection at the same premises as were notified under paragraph 1(2)(b).

**5.** Where regulations made under this Act so require, the Council or respective public or private entity shall cause a public meeting relating to a policy, strategy, programme, plan or action to be held before the Council or the respective public or private entity makes its decision on the policy, strategy, programme, plan or action.

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