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THE KENYA COAST GUARD SERVICE ACT

CHAPTER 200

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CHAPTER 200

KENYA COAST GUARD SERVICE ACT

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CHAPTER 200

KENYA COAST GUARD SERVICE ACT

[Date of assent: 21st September, 2018.]

[Date of commencement: 9th November, 2018.]

An Act of Parliament to establish the Kenya Coast Guard Service; to provide for its functions, discipline, organisation and administration; and for connected matters.

[Act No. 11 of 2018, Legal Notice 204 of 2018, Act No. 20 of 2020.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Kenya Coast Guard Service Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"baseline" means the baseline set out in the First Schedule of the Maritime Zones (Cap. 371);

"Cabinet Secretary" means the Cabinet Secretary responsible for matters related to internal security;

"Chairperson" means the Chairperson of the Council of the Service appointed under section 10;

"confidential information" means information whose unauthorised disclosure would be prejudicial to national interests;

"contiguous zone" means the waters contiguous to the territorial sea and extending twenty four nautical miles into the ocean from the baseline;

"Council" means the Council of the Service established under section 10;

"Director-General" means the Director-General of the Service appointed under section 15;

"financial year" means the period of twelve months ending on the 30th June;

"inland waters" means all water masses forming part of the territory of the Republic of Kenya including lakes and rivers but excludes the territorial sea and internal waters;

"internal waters" means water on the landward side of the baseline;

"Kenya Defence Forces" means the Kenya Defence Forces established by Article 241 of the Constitution;

"narcotic drugs" means any drugs listed in the First Schedule to the Narcotic Drugs and Psychotropic Substances (Control) Act (Cap. 245);

"national security organ" means a national security organ established by Article 239(1) of the Constitution;

"National Security Council" means the National Security Council established by Article 240 of the Constitution;

"officer" means a member of the Service who holds any of the ranks prescribed in Part I of the First Schedule;

"para-military organizations" includes the Kenya Wildlife Service and the Kenya Forest Service;

"prohibited plants" means any of the plants listed in the Third Schedule to the Narcotic Drugs and Psychotropic Substances (Control) Act (Cap. 245);

"psychotropic substances" means any of the substances listed in the Second Schedule to the Narcotic Drugs and Psychotropic Substances (Control) Act (Cap. 245);

"rating" means a member of the Service holding any of the ranks prescribed in Part II of the First Schedule;

"restricted information" means information which requires security protection other than information that is deemed to be top secret, secret or confidential;

"secret information" means information whose unauthorised disclosure would cause serious injury to national security;

"Service" means the Kenya Coast Guard Service established by section 5;

"Service stores" means—

- (a) any chattels or goods of any description belonging to the Service which have been issued to members of the Service for the purposes of the Service or are held in store for the purpose of being so issued to members of the Service; and
- (b) any chattels or goods which had belonged to the Service, had been issued to members of the Service or had been held for the purposes of the Service at some past time;

"Technical Committee" means the Technical Committee of the Service established under section 13;

"territorial sea" means part of the sea demarcated under the First Schedule of the Maritime Zones Act (Cap. 371);

"territorial waters" means the inland waters, internal waters, territorial sea and contiguous zone of Kenya;

"top secret information" means information whose unauthorised disclosure would cause especially grave damage to national security;

"uniform" includes apparel, kit, badge, decoration, insignia, wound stripe, emblem, brooch, costume or any other distinctive item as the Council may determine; and

"vessel" means any ship, boat, sailing vessel or other description of vessel used in navigation.

[Act No. 20 of 2020, Sch.]

3. Object of the Act

The object of this Act is to establish the Kenya Coast Guard Service.

4. Guiding principles

(1) The Service shall observe and uphold the national values and principles of governance set out in Article 10(2), the Bill of Rights enshrined in Chapter Four, the values and principles of public service set out in Article 232(1) and the principles of national security set out in Article 238(2) of the Constitution and shall—

- (a) strive for the highest standards of professionalism and discipline;
- (b) promote and practice transparency;
- (c) comply with constitutional standards of human rights and fundamental freedoms;
- (d) reflect the diversity of Kenya; and
- (e) in so far as it is practicable, ensure that not more than two-thirds of the members of the Service shall be of the same gender.

(2) The Cabinet Secretary shall be responsible for the implementation of the Act.

PART II – ESTABLISHMENT AND FUNCTIONS OF THE SERVICE**5. Establishment of the Kenya Coast Guard Service**

(1) There is established a service to be known as the Kenya Coast Guard Service.

(2) The composition and command of the Service shall reflect the diversity of Kenya.

6. Composition of the Service

(1) The Service shall be composed of—

- (a) the disciplined and uniformed component; and
- (b) the civilian component.

(2) The disciplined and uniformed component shall comprise of—

- (a) members who shall be seconded to the Service from national security organs, para-military organizations; and
- (b) members who shall be recruited into the Service from among persons who may have retired early from or otherwise honourably left the service of national security organs.

(3) The civilian component shall comprise of—

- (a) members who shall be seconded to the Service from the public service:

Provided that the members seconded to the Service shall not be seconded by national security organs; and

- (b) members who shall be recruited into the Service.

(4) Each member of the Service shall execute all lawful orders of the Director-General or any other member of the Service surpassing such member in rank or qualification.

[Act No. 20 of 2020, Sch.]

7. Determination of the strength of the Service

(1) The National Security Council shall determine and review the maximum number of members of the Service.

(2) The disciplined and uniformed component of the Service shall consist of officers and ratings of the ranks specified in the First Schedule.

(3) The officers and ratings of the disciplined and uniformed component shall have seniority according to the ranks specified in the First Schedule.

(3A) The Cabinet Secretary may by notice in the *Gazette* and with the approval of the Council, amend the ranks specified in the First Schedule.

(4) The Service shall establish such operational units, support units and formations as the Council may determine.

[Act No. 20 of 2020, Sch.]

8. Functions of the Service

(1) The Service shall, subject to this Act or any other written law, be deployed in the territorial waters—

- (a) to enforce maritime security and safety;
- (b) to enforce pollution control;
- (c) to enforce prevention of trafficking of the narcotic drugs, prohibited plants and psychotropic substances;
- (d) to enforce prevention of trafficking of illegal goods;
- (e) to enforce prevention of trafficking of illegal firearms and ammunitions;
- (f) to enforce sanitation measures;
- (g) to prosecute maritime offenders;
- (h) for port and coastal security;
- (i) for search and rescue;
- (j) for the protection of maritime resources including fisheries;
- (k) for the protection of archaeological or historical objects or sites; and
- (l) to perform any other function that may be conferred by this Act or any other written law.

(2) The Service shall co-operate with and assist other public authorities during emergencies or disasters or in the execution of those public authorities' mandates in the territorial waters.

(3) The National Security Council may deploy the disciplined and uniformed component of the Service to support the Kenya Defence Forces in times of war.

9. Powers of the Service

(1) The Service shall have the power to do all the things necessary for the performance of its functions under this Act or any other written law.

(2) Despite the generality of subsection (1), the Service shall have the power, within the territorial waters, to—

- (a) receive and consider any report of the commission of an offence;
- (b) stop, enter, board, inspect or search any structure, place, vessel or aircraft engaged in or suspected to be engaged in any unlawful activity;
- (c) seize or detain any vessel or aircraft engaged in or suspected to be engaged in any unlawful activity;
- (d) demand the production of any licence, permit, record or any other relevant document and to examine such licence, permit, record or

document or make copies or take extracts from such licence, permit, record or document;

- (e) investigate any offence which it has reason to believe is being committed, is about to be committed or has been committed;
- (f) exercise the right of hot pursuit;
- (g) examine and seize any fish, article, device, goods, vessel, aircraft or any other item it has reason to believe is connected to the commission of an offence;
- (h) subject to the provisions of this Act or any other written law, dispose of any fish, article, device, goods, vessel, aircraft or any other item that is connected to the commission of an offence;
- (i) arrest any person who it has reason to believe has committed an offence:

Provided that the arrested person shall be handed over to a member of the National Police Service as soon as is practicable;

- (j) conduct research or any study necessary for the performance of its functions;
- (k) record statements or make inquiries, inspections or examinations as may be necessary under this Act or any other written law;
- (l) assist in environmental protection; and
- (m) expel any vessel or aircraft whose presence in the territorial waters is detrimental to the national interests of Kenya or is likely to endanger order and safety in the territorial waters.

(3) The Service shall not stop, enter, board, search, inspect or detain a vessel or aircraft in the territorial waters if the passage of the vessel or aircraft in the territorial waters is innocent passage.

(4) For the purposes of this section, "innocent passage" means passage in the territorial waters that is not prejudicial to the peace, good order or security of Kenya.

(5) For the purposes of subsection (4), an act is prejudicial to the peace, good order or security of Kenya if it is—

- (a) a threat or the use of force against the sovereignty, territorial integrity or independence of Kenya;
- (b) any act which is in any way a violation of the principles of international law;
- (c) any unlawful exercise or practice with weapons of any kind;
- (d) any act aimed at collecting information whose collection is prejudicial to the defence or security of Kenya;
- (e) propaganda aimed at affecting the peace, defence or security of Kenya;
- (f) the unlawful launching, landing or taking on board of any military device;
- (g) the loading or offloading of any commodity, currency or person contrary to the provisions of this Act or any other written law;
- (h) any act of pollution of the marine environment;
- (i) the conducting of unauthorised research or survey activities;
- (j) illegal fishing activities;

- (k) the trafficking of arms, persons, narcotic drugs, psychotropic substances or prohibited plants;
- (l) any act aimed at interfering with any systems of communication or any other facilities or installations of Kenya; or
- (m) any activity not having a direct bearing on the passage by any vessel or aircraft in the territorial waters.

10. Establishment of the Council of the Kenya Coast Guard Service

- (1) There is established the Council of the Kenya Coast Guard Service.
- (2) The Council shall consist of—
 - (a) the Cabinet Secretary responsible for matters related to internal security, who shall be its Chairperson;
 - (b) the Cabinet Secretary responsible for matters relating to finance;
 - (c) the Cabinet Secretary responsible for matters relating to defence;
 - (d) the Cabinet Secretary responsible for matters relating to transport;
 - (e) the Cabinet Secretary responsible for matters relating to fisheries; the Cabinet Secretary responsible for matters relating to environment;
 - (f) the Attorney-General;
 - (g) the Chief of the Kenya Defence Forces;
 - (h) the Inspector-General of the National Police Service; and
 - (i) the Director-General of the National Intelligence Service.
- (3) The Director-General shall be the secretary to the Council and shall be responsible for—
 - (a) communicating the decisions of the Council; and
 - (b) performing any other functions that may be assigned by the Council.
- (4) The decisions or directions of the Council shall be signified under the hand of the Chairperson and the Director-General.

11. Functions of the Council

- (1) The Council shall—
 - (a) be responsible for the overall policy, control and supervision of the Service;
 - (b) receive and act on reports submitted to the Council by the Cabinet Secretary, the Director-General and the Technical Committee;
 - (c) upon application, review penalties imposed on members of the Service after undergoing disciplinary proceedings in accordance with this Act;
 - (d) receive and consider the budget estimates of the Service;
 - (e) recruit, transfer or promote members of the Service;
 - (f) approve the appointments, posting or promotions of senior officers of the Service;
 - (g) commission research related to the protection of territorial waters;
 - (h) commission research related to the better functioning of the Service;
 - (i) advise the President on any matter relating to and affecting the Service; and

- (j) perform any other functions conferred by this Act or any other written law.

(2) The Council may, in writing, delegate to the Director-General the power to promote, transfer or retire ratings.

(3) A delegation by the Council under subsection (2)—

- (a) shall be subject to any conditions the Council may impose;
- (b) shall not divest the Council of its responsibility concerning the exercise of the delegated power; and
- (c) may be withdrawn at any time and, if a delegated power is withdrawn, any decision made by the Director-General in relation to the delegated power may be withdrawn or varied by the Council.

12. Conduct of the business and affairs of the Council

(1) The business and affairs of the Council shall be conducted in accordance with the Second Schedule.

(2) Except as provided in this Act, the Council shall regulate its own procedure.

(3) The Council may permit any other person to attend its meetings and participate in its deliberations but that person shall not participate in the making of any of its decisions.

13. Establishment of the Technical Committee of the Kenya Coast Guard Service

(1) There is established the Technical Committee of the Service.

(2) The Technical Committee shall consist of—

- (a) the Principal Secretary in the Ministry responsible for matters relating to internal security who shall be its Chairperson;
- (b) the Principal Secretary in the Ministry responsible for matters relating to finance;
- (c) the Principal Secretary in the Ministry responsible for matters relating to defence;
- (d) the Principal Secretary in the Ministry responsible for matters relating to transport;
- (e) the Principal Secretary in the Ministry responsible for matters relating to fisheries;
- (f) the Principal Secretary in the Ministry responsible for matters relating to the environment;
- (fa) the Principal Secretary in the Ministry responsible for matters relating to immigration and citizenship;
- (fb) the Principal Secretary in the Ministry responsible for matters relating to shipping and maritime affairs;
- (fc) the Director-General of the Kenya Fisheries Services;
- (fd) the Director-General of the Kenya Wildlife Service;
- (g) the Chief of the Kenya Defence Forces;
- (h) the Inspector-General of the National Police Service;
- (i) the Director-General of the National Intelligence Service;
- (j) the Solicitor-General;

- (k) the Director-General of the Kenya Maritime Authority;
- (l) the Managing Director of the Kenya Ports Authority;
- (m) the Director-General of the Kenya Wildlife Service; and
- (n) the Director-General, who shall be the secretary to the Technical Committee.

[Act No. 20 of 2020, Sch.]

14. Functions of the Technical Committee

(1) The Technical Committee shall—

- (a) advise the Council on policy and financial matters relating to the Service;
- (b) oversee the management and administration of the Service;
- (c) receive and act on the reports of the Director-General;
- (d) on reference to it by the Director-General, advise the Director-General on any matter;
- (e) make recommendations to the Council on any matter relating to the functions the Service; and
- (f) perform any other function conferred on it by this Act or any other written law.

(2) Subject to the provisions of this Act, the Technical Committee shall report to the Council and regulate its own procedure.

[Act No. 20 of 2020, Sch.]

15. Director-General of the Service

(1) There shall be a Director-General of the Service who shall be a State officer within the meaning contemplated in Article 260 of the Constitution.

(2) The Director-General shall—

- (a) subject to the general directions of the Council, be responsible for the day to day administration, control and management of the Service;
- (b) command the disciplined and uniformed component of the Service;
- (c) be responsible for the effective utilisation of the resources of the Service;
- (d) be responsible for the training, education and deployment of the members of the Service;
- (e) at least once in each year, prepare and submit to the Council a report on the activities of the Service;
- (f) oversee the implementation of the policies of the Service;
- (g) at least three months before the end of the financial year, prepare and submit to the Council the budget estimates of the Service for its consideration; and
- (h) perform any other functions conferred by this Act or any other written law.

16. Director-General may delegate powers or functions

(1) The Director-General may, in writing, delegate the performance of any function or exercise of a power conferred on him or her by this Act or any other written law to a member of the service.

(2) A delegation under this section—

- (a) shall be subject to any conditions the Director-General may impose;
- (b) shall not relieve the Director-General of responsibility concerning the exercise of the delegated function or performance of the delegated power; and
- (c) may be withdrawn at any time and, if the delegated power is withdrawn, any decision made by the member of the service to whom the performance of the function or exercise of the power has been delegated may be withdrawn or varied by the Director-General.

(3) The Director-General shall not assign the performance of a function or exercise of a power that is exercisable by an officer of a specific rank, seniority or qualification to an officer who does not hold a rank, seniority or qualification that is not contemplated by this Act or any other written law.

17. Appointment of Director-General

(1) The President shall appoint a qualified person to be the Director-General.

(2) A person is qualified to be appointed as the Director-General if that person—

- (a) is a Kenyan citizen;
- (b) is or has been a member of, or an officer serving in, a national security organ;
- (c) is not a member of the National Assembly or Senate;
- (d) is not a member of a county assembly;
- (e) is not a Governor or Deputy Governor;
- (f) has not served as a member of the National Assembly, Senate, a county assembly, trade union or an office in a political party in the preceding ten years;
- (g) has not been convicted of any criminal offence;
- (h) has not been dishonourably discharged from a national security organ;
- (i) has not been otherwise dismissed from any office in the public service; and
- (j) is not an undischarged bankrupt.

18. Term of office of Director-General

A person appointed as the Director-General shall serve for a term of four years and the term shall be non-renewable.

19. Retirement or redeployment of Director-General

The President may remove, retire or redeploy the Director-General at any time before the expiry of his or her tenure.

20. Vacancy in the office of Director-General

(1) The office of Director-General shall become vacant if the holder—

- (a) dies;
- (b) resigns from office in writing to the President; or
- (c) is removed or retired from office by the President.

(2) Where a vacancy occurs in the office of Director-General, the President shall fill the vacancy in accordance with the provisions of section 17.

21. Oath of office by Director-General

A person appointed as Director-General shall, on his or her appointment, take and subscribe to the oath of office set out in the Third Schedule.

22. Recruitment, transfer, promotion or retirement of members of the Service

(1) The Council shall, in consultation with the Public Service Commission, develop the criteria for the recruitment, promotion, transfer and retirement of members of the Service.

(2) The Council shall comply with the provisions of the Constitution in the development of the criteria for the recruitment, promotion, transfer and retirement of members of the Service.

(3) The Council may appoint a suitable public officer, public institution or public agency for the purposes of the recruitment of the members of the Service.

(4) Every person recruited to and appointed as a member of the Service shall, on his or her appointment, take and subscribe to the oath of office set out in the Third Schedule.

(5) The oath of office taken or subscribed to by a member of the Service shall be taken and subscribed to before an officer of a rank not lower than that of a Sub-Lieutenant.

23. Terms and conditions of service for members of the Service

(1) The Salaries and Remuneration Commission shall, in accordance with the provisions of Article 230(4) of the Constitution, set and regularly review the remuneration and benefits of the Director-General.

(2) The Council shall, on the advice of the Salaries and Remuneration Commission, determine the remuneration and benefits of the members of the Service other than those of the Director-General.

(3) The Council shall, in consultation with the Public Service Commission, determine any other terms and conditions of service for the members of the Service.

PART III – DISCIPLINE

24. Disciplinary offences

(1) Every member of the disciplined and uniformed component of the Service shall be subject to the provisions of this Part.

(2) A member of the disciplined and uniformed component of the Service who commits any of the acts set out in the Fourth Schedule commits an offence against discipline.

(3) A member of the disciplined and uniformed component of the Service who commits an offence under any other written law shall be liable to proceedings in a court of law in accordance with the provisions of the law under which the offence was committed.

(4) Despite the provisions of subsection (3), the Director-General or an officer authorised in writing by the Director-General may take such disciplinary action as may be appropriate in the circumstances against a member of the disciplined and

uniformed component of the Service who has been accused of having committed an offence under this Act or any other written law.

25. Penalties for disciplinary offences

(1) A member of the disciplined and uniformed component of the Service who commits an offence against discipline and shall, on conviction, be liable to—

- (a) a reprimand;
- (b) suspension from duty;
- (c) an order to pay restitution;
- (d) stoppage of salary increments by the Director-General or officer authorised in writing by the Director-General for a period that shall not exceed one year;
- (e) reduction in rank;
- (f) dismissal from service; or
- (g) any combination of the penalties set out in this subsection.

(2) The Director-General shall confirm the penalty of reduction in rank or dismissal from service if the penalty was imposed by an officer authorised by the Director-General in accordance with this Act.

(3) Where the Director-General or an officer authorised by the Director-General imposes a penalty on a member of the Service, the Director-General or that officer shall record the penalty in a register maintained for the purpose stating—

- (a) the name of the member of the Service against whom the penalty has been imposed;
- (b) the nature of the offence;
- (c) the date or dates, if known, when the offence was committed;
- (d) the penalty imposed; and
- (e) the date the penalty was imposed.

(4) The Director-General shall submit to the Council for approval rules for the procedures to be followed during disciplinary proceedings against a member of the disciplined and uniformed component of the Service accused of committing an offence against discipline.

(5) A member of the disciplined and uniformed component of the Service accused of committing an offence against discipline may, during disciplinary proceedings, be accompanied by an officer of the member's choice for assistance and support:

Provided that the officer accompanying the accused member shall not be of a rank superior to or of greater qualifications than the officer in charge of the disciplinary proceedings.

(6) A member of the disciplined and uniformed component of the Service accused of committing an offence against discipline may, in accordance with rules made by the Director-General and approved by the Council for the purpose, apply for a review of the penalty imposed against him or her—

- (a) to the Council if the penalty was imposed by the Director-General; or
- (b) to the Director-General if the penalty was imposed by an officer authorised by the Director-General.

26. Power to summon witnesses

(1) The Director-General or an officer authorised by the Director-General for the purposes of disciplinary proceedings under this Act may, in relation to any matter connected with the proceedings—

- (a) summon and examine any member of the Service on oath or affirmation; or
- (b) require the production of relevant documents by any member of the Service.

(2) A member of the disciplined and uniformed component of the Service who has been summoned as a witness or is required to produce relevant documents under subsection (1) commits an offence against discipline if—

- (a) he or she fails or refuses to attend at the time and place specified in the summons or, having attended, refuses to answer any questions that are lawfully put to him or her; or
- (b) he or she fails without reasonable cause to produce any relevant document:

Provided that a member of the disciplined and uniformed component of the Service who has been summoned as a witness or is required to produce relevant documents under subsection (1) shall not answer questions or produce documents that may incriminate him or her in the commission of an offence.

27. Recovery of fines by deduction from salary

(1) A fine imposed on a member of the disciplined and uniformed component of the Service in accordance with the provisions of section 25 shall be recoverable from the monthly salary payable to that member.

(2) Despite the provisions of subsection (1), a deduction or the aggregate of deductions if there is more than one fine outstanding at the same time from the monthly salary of a member of the Service shall not exceed more than one-fourth of the monthly salary payable to the member.

28. Loss or damage to property to be made good by recovery from salary

(1) Despite the provisions of any other written law, where a member of the disciplined and uniformed component of the service pawns, sells, loses through negligence, makes away with, or wilfully or negligently damages any article or property—

- (a) entrusted to him or her;
- (b) is in the lawful custody of the Service and supplied to him or her; or
- (c) seized or taken charge of by him or her;

he or she may, in addition to any other penalty that may be imposed under that other written law, be ordered to make good, either wholly or partially, the value of such article or property or the amount of such loss or damage and such value or such amount may be recovered by deduction from his or her monthly salary including from allowances other than his or her rent allowance and trade pay.

(2) Despite the provisions of subsection (1), any member of the disciplined and uniformed component of the Service who pawns, sells, loses by negligence, makes away with, or wilfully or negligently damages any firearm, ammunition, accoutrement or uniform commits an offence against discipline and shall be liable to any penalty or combination of penalties set out in section 25(1).

29. Desertion or absence without leave by members of the Service

(1) A police officer may, on the reasonable suspicion that a person has deserted the Service or is absent without leave from the Service, arrest that person and take him or her before a magistrate having jurisdiction in the area in which the person was arrested.

(2) If a person arrested under subsection (1) admits to have deserted the Service or is absent without leave from the Service and the magistrate is satisfied of the truth of the admission, the magistrate shall cause the person to be delivered to the Service for disciplinary action.

(3) If a person arrested under subsection (1) refuses to admit to having deserted the Service or to being absent without leave from the Service or if the magistrate is not satisfied with the admission made in accordance with subsection (2), the magistrate shall consider any evidence and any statement of the accused and may discharge the accused:

Provided that the magistrate shall not discharge the accused if the accused is in custody for any other lawful reason.

30. Prohibition against torture or other cruel, inhuman or degrading treatment

(1) A member of the Service shall not subject any person to torture or other cruel, inhuman or degrading treatment.

(2) A member of the Service who subjects another person to torture commits an offence and shall be liable, on conviction, to imprisonment for a term not exceeding twenty-five years.

(3) A member of the Service who subjects another person to cruel, inhuman or degrading treatment commits an offence and shall be liable, on conviction, to imprisonment for a term not exceeding fifteen years.

PART IV – OFFENCES GENERALLY**31. Application of this Part**

(1) This Part shall apply to any person who is not a member of the Service.

(2) A person accused of an offence under this Part shall be tried by a subordinate court.

32. Obstructing an officer

(1) A person commits an offence under this section if that person—

- (a) assaults, resists or wilfully obstructs a member of the Service in the performance of his or her duties or any person acting in aid of the member of the Service;
- (b) induces or does any act calculated to induce a member of the Service to neglect or act contrary to duty as a member of the Service; or
- (c) induces or does any act calculated to induce a member of the Service to commit a breach of discipline or an act whereby a lawful order given to the member of the Service or any law with which it is the duty of the member of the Service to comply with may be evaded or infringed, as the case may be.

(2) A person convicted of an offence under subsection (1) shall be liable, on conviction, to imprisonment for a term not exceeding three years.

33. Procuring or assisting in the desertion of a member of the Service

- (1) A person commits an offence under this section if that person—
- (a) procures or persuades a member of the Service to desert or be absent without leave from the Service;
 - (b) knowing that a member of the Service is about to desert or be absent without leave from the Service, assists that member of the Service; or
 - (c) knowing that a person has deserted or is absent without leave from the Service, conceals the member of the service, assists in the concealment of the member, rescues that member from custody or assists in the rescue of that member from custody.

(2) A person convicted of an offence under subsection (1) shall be liable, on conviction, to imprisonment for a term not exceeding one year.

34. Unlawful purchase of Service store

(1) Any person who acquires any Service stores, solicits or procures any person to dispose of Service stores or acts for any person in the disposing of Service stores commits an offence and shall be liable, on conviction, to imprisonment for a term not exceeding two years.

(2) A person shall not be liable under subsection (1) if that person proves that the chattels in his or her possession were acquired lawfully after they had been disposed of by the order or the consent of the Service or of some other authorised person or authority who had or he or she had reasonable cause to believe had authority to give such order or consent.

35. Unauthorised use of or dealing in uniform, decorations, etc, of the Service

- (1) A person commits an offence under this section if that person—
- (a) without lawful authority, uses or wears any Service uniform, decoration, badge or insignia of rank, wound stripe or emblem supplied or authorised by the President or the Council;
 - (b) uses or wears a uniform, decoration, badge or insignia of rank, wound stripe or emblem so nearly resembling any Service uniform, decoration, badge or insignia of rank, wound stripe or emblem as to be calculated to deceive;
 - (c) falsely presents himself or herself as a person who is or has been entitled to use or wear any Service uniform, decoration, badge or insignia of rank, wound stripe or emblem; or
 - (d) purchases or takes in pawn, solicits or procures any person to sell or pledge or acts for any person in the selling or pledging of any Service uniform, decoration, badge or insignia of rank, wound stripe or emblem awarded to a member of the disciplined and uniformed component of the Service.

(2) A person convicted of an offence under subsection (1) shall be liable to imprisonment for a term not exceeding one year.

(3) Despite the provisions of subsections (1)(a), (b) or (c), a person shall not be prohibited from wearing medals, brooches or ornaments representing Service badges.

36. Interference with aids to navigation, etc.

- (1) A person commits an offence under this section if that person—

- (a) interferes with an aid to navigation established, managed or maintained by the Service; or
- (b) sets up an aid to navigation without the prior written approval or in breach of any term or condition specified by the Service in the erection of an aid to navigation for the Service.

(2) A person convicted of an offence under subsection (1) shall be liable to imprisonment for a term not exceeding one year.

37. Prohibition on use of "Kenya Coast Guard Service"

A person who is not a member of the service but uses the words "Kenya Coast Guard Service" or any combination thereof for the purposes of any trade or by way of any advertisement in a manner that is likely to induce any person or the general public to believe that he or she has any connection with or the patronage of the Service commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding one year.

PART V – LIMITATION OF RIGHTS OR FUNDAMENTAL FREEDOMS

38. Application of this Part

This Part shall apply to all members of the Service.

39. Conditions for the limitation of rights or fundamental freedoms

(1) The limitation of rights or fundamental freedoms under this Part, based on human dignity, is necessary for the purposes of employment in the Service in order to ensure—

- (a) the protection of classified information;
- (b) the maintenance and preservation of national security;
- (c) the maintenance of the security and safety of members of the Service;
- (d) that the enjoyment of a right or a fundamental freedom by a member of the Service does not prejudice the enjoyment of a right or fundamental freedom by another member;
- (e) good order and discipline in the Service; and
- (f) public health and safety.

(2) A limitation of a right or fundamental freedom under this Part shall be in compliance with Article 24 of the Constitution and shall—

- (a) ensure the protection of national security, public safety, public order, public health or morals;
- (b) the protection of the rights and fundamental freedoms of others;
- (c) be necessary to achieve the purposes and objectives of the Service;
- (d) be applied without discrimination; and
- (e) not impair the essence of the right or fundamental freedom being limited.

40. Limitation of right to privacy

(1) The right to privacy set out in Article 31 of the Constitution shall be limited in respect of a member of the Service where—

- (a) the member's home or property within any Service base or Service establishment is to be searched;
- (b) the member's possessions are to be seized;

- (c) information relating to the member's family or private affairs is required to be revealed; or
- (d) the member's communications are to be investigated or interfered with.

(2) A limitation of the right of a member of the Service to privacy under subsection (1)(c) shall be made where the member commits or is reasonably suspected of having committed an offence under this Act or any other written law.

41. Limitation of the right to access information

(1) The right of access to information as provided for in Article 35(1) of the Constitution may be limited in respect of classified information or information in the custody of the Service.

(2) A limitation of the right of access to information under subsection (1) shall be in respect of information, including classified information, held by the Service to the extent necessary for the protection of the Service from—

- (a) any demand to furnish an unauthorised person with classified information;
- (b) any disclosure or publishing of information the disclosure or publishing of which would be prejudicial to national security; or
- (c) any disclosure or publishing of information relating to the operational plans of the Service.

(3) For the purposes of this section, "classified information" includes any information whose disclosure or publishing would prejudice national security and includes information on Service strategy, doctrine, capability, capacity or deployment.

(4) For the purposes of this section, the categories of classified information include—

- (a) top secret information;
- (b) secret information;
- (c) confidential information; and
- (d) restricted information.

42. Limitation of the freedom of association

(1) Despite the provisions of Article 36 of the Constitution in relation to the freedom of association, a member of the Service shall not join or participate in the activities of an association as may be prescribed in regulations made under this Act.

(2) Subsection (1) shall not apply to the membership of a member of the service in, or the participation of that member in the activities of, professional associations.

43. Limitation of the right to assembly, demonstration, picketing and petition

Despite the provisions of Article 37 of the Constitution in relation to the right of members of the Service to assemble, demonstrate, picket or petition public authorities, a member of the service shall not assemble, demonstrate, picket or petition public authorities.

44. Limitation of the right to labour relations

Despite the provisions of Article 41 in relation to the right to fair labour relations, a member of the Service shall not form, join, agitate for or participate in the activities of a trade union or go on strike.

45. Limitation of economic and social rights

The economic and social rights set out in Article 43 of the Constitution may, in respect of a member of the Service, be limited, as prescribed by regulations made under this Act, to the extent necessary for the training of members of the Service or for the operations of the Service.

PART VI – FINANCIAL PROVISIONS**46. Funds of the Service**

The funds of the Service shall consist of—

- (a) monies appropriated by Parliament for the purposes of the Service;
- (b) monies or assets that may accrue to the Service in the performance of its functions or the exercise of its powers under this Act or any other written law; and
- (c) monies lawfully provided or donated to the Service.

47. Accounts and audit

(1) The books and records of account of the income, expenditure, assets and liabilities of the Service shall be kept and maintained in accordance with the Public Finance Management Act (Cap. 412A).

(2) Within three months after the end of the financial year, the accounting officer in the ministry shall submit to the Auditor-General the accounts of the Service in respect of that financial year to be audited and reported on.

(3) The accounts of the Service shall be audited and reported on in accordance with the provisions of Articles 226 and 229 of the Constitution and the Public Audit Act (Cap. 412B).

PART VII – MISCELLANEOUS PROVISIONS**48. Uniforms of the Service**

The Council shall, by notice in the Gazette, specify and designate uniforms for the members of the Service.

49. Exemption from execution against public property

A judgment, decree or order given or made against a member of the Service shall not be enforced by the levying of execution on any property of the Service or for which the Service is responsible in the possession of the member against whom the judgement, decree or order was made.

50. Next of kin, etc. of members of Service

(1) Every member of the disciplined and uniformed component of the Service shall, on being recruited and appointed by the Service, give the particulars of the place, district and county in which the member ordinarily resides and the name and address of the member's next of kin and those particulars shall be recorded in a register kept and maintained by the Service for that purpose.

(2) Where there is a change in the particulars recorded under subsection (1), the member shall notify the Service of the change and the Service shall make the necessary changes in the register.

51. Uniforms and decorations not part of estate of members of Service

The uniforms and decorations issued or authorised to a member of the Service shall not, on the death of that member, form part of the estate of the member in relation to any claim by a creditor or for any of the purposes of the administration of the estate of the member and shall be delivered to the Director-General and thereafter disposed of in the manner prescribed by regulations made under this Act.

52. Convening of Boards of Inquiry

(1) The Director-General or any officer authorised by the Director-General in accordance with the provisions of regulations made under this Act may convene a board of inquiry to investigate and report on the facts relating to—

- (a) the absence without leave of a member of the disciplined and uniformed component of the Service;
- (b) the capture of any member of the Service by an enemy of Kenya;
- (c) the death of any member of the Service if an inquiry into the member's death is not required to be held by a civilian authority; or
- (d) any other matter that may be prescribed by regulations made under this Act.

(2) A board of inquiry convened under subsection (1) shall, if directed to do so by its convening authority, express an opinion on any question that may arise out of any of the matters referred to the board.

(3) The Director-General or any officer authorised by the Director-General in writing may convene a board of inquiry to investigate and report in any other matter.

(4) A board of inquiry shall consist of a number of members as prescribed by regulations made under this Act and be chaired by an officer of the rank of Lieutenant or of a corresponding rank.

(5) The proceedings and findings of a board of inquiry shall not be admissible against any person in any disciplinary proceedings.

53. Redress

(1) If any member of the Service thinks he or she has been wronged in any way by member of a superior rank, he or she may complain in writing to the Director-General and seek redress for the wrong.

(2) The Director-General shall, on receiving a complaint under subsection (1), investigate the complaint and if the complaint is proven to be true, may grant any redress which appears to the Director-General to be necessary.

54. Secondment from national security organs, the public service, etc.

(1) A national security organ or the public service or any other public body may second persons to the Service.

(2) A person seconded to the Service shall remain a member or employee of the national security organ, public service or other public body, as the case may be, and shall retain all the privileges and liabilities such membership or employment he or she is entitled or subject to.

55. Temporary holding areas

The Cabinet Secretary responsible for matters relating to internal security may, by notice in the Gazette and through the Director-General, designate temporary holding areas including vessels for the detention of persons suspected to have committed offences under this Act.

56. Regulations

(1) The Cabinet Secretary may make such regulations as are necessary or expedient to give full effect to or for the carrying out of the provisions of this Act including—

- (a) the establishment of a disciplinary mechanism for the members of the civilian component of the Service;
- (b) the harmonization of the entry level and rank for the personnel of the Service;
- (c) the associations whose membership or activities a member of the Service may not join or participate in;
- (d) the economic and social rights of members of the Service that may be limited for the purposes of the training of the members of the Service or the operations of the Service;
- (e) the disposal of the uniforms and decorations issued or authorised to deceased members of the Service; and
- (f) the convening, procedure and membership of boards of inquiry.

(2) The Cabinet Secretary shall submit to the Public Service Commission for approval any regulations made for the establishment of a disciplinary mechanism for the members of the civilian component of the Service.

57. Service Standing Orders

(1) The Director-General may make general, special or routine standing orders with respect to any matter relating to the Service.

(2) Any standing orders made under subsection (1) shall be consistent with the provisions of this Act or any other written law.

(3) Any standing orders made under subsection (1) shall not be published in the *Gazette*.

58. Savings provision

Nothing contained in this Act shall be deemed to negate or diminish any function, duty or power assigned to any other body or organ under any written law.

FIRST SCHEDULE

[s. 7(2)]

Ranking Structure in the Service

[Act No. 20 of 2020, Sch.]

PART I – Officers

- (1) Director-General
- (2) Commodore
- (3) Captain

- (4) Commander
- (5) Lieutenant Commander
- (6) Lieutenant
- (7) Sub-Lieutenant
- (8) Cadet

PART II – Ratings

- (1) Warrant Officer I
- (2) Warrant Officer II
- (3) Senior Sergeant
- (4) Leading Seaman
- (5) Able Seaman—
 - (a) Able Seaman I
 - (b) Able Seaman II
 - (c) Ordinary Seaman
- (6) Seaman Recruit

SECOND SCHEDULE

[s. 12(1)]

Conduct of the business and affairs of the Council

1. The Council shall meet at least once in every four months in any financial year for the dispatch of its business.
2. A meeting of the Council shall be held on a date and at a time as the Council may determine.
3. The Chairperson shall, on the written application of at least one-third of the members of the Council, convene a special meeting of the Council.
4. Unless a majority of the members of the Council otherwise agree, at least fourteen days' notice shall be given to each member of the Council in relation to the convening of a meeting of the Council.
5. The quorum for the conduct of business at a meeting of the Council shall be five members.
6. Despite the provisions of paragraph 5, a meeting of the Council shall not be invalid merely because of a vacancy among the members of the Council.
7. The decisions of the Council shall be by concurrence of the members present but where concurrence is not achieved, decisions shall be by a majority of the members present and voting.
8. All instruments made by, and decisions of, the Council shall be signified in writing under the hand of the Chairperson and secretary save as may be provided for in any other written law.
9. The Council may co-opt any person to attend and deliberate at its meetings if that person's knowledge or skills are necessary for the purposes of this Act.

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10. A person who has been co-opted to attend and deliberate at a meeting of the Council shall not have a right to vote at the meeting.

11. The Council shall cause the minutes of its meetings to be entered in books kept and maintained for that purpose.

12. If a person is present at a meeting of the Council or any committee of the Council at which any matter is the subject of consideration and in which matter the person, the person's spouse or the person's immediate relative or associate is directly or indirectly interested in a private capacity, the person shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not take part in any consideration or discussion, or vote on any question touching on such matter unless the Council determines otherwise.

13. A disclosure of interest made under paragraph 12 shall be recorded in the minutes of the meeting at which it is made.

THIRD SCHEDULE

[ss. 21, 22(4)]

Oath of Office

I, do hereby swear by almighty God/do hereby solemnly and sincerely affirm that—

- 1. I will faithfully bear true allegiance to the President as the Commander-in-Chief of the Kenya Defence Forces and to the Republic of Kenya;
2. I will faithfully serve the President and the Republic as an Officer/Rating of the Kenya Coast Guard Service;
3. I will obey all laws and lawful orders, regulations, directions and instructions concerning the Kenya Coast Guard Service; and
4. I will discharge all the duties of an Officer/Rating of the Kenya Coast Guard Service according to the law without fear, favour, affection or ill-will.

(Signature or thumb-print of person making oath)
Sworn/Affirmed by the said

after the oath has been read over and explained to him/her in the language, which he/she has acknowledged to understand at..... on this day of, 20.....

(Name and signature of witness)

FOURTH SCHEDULE

[s. 24(2)]

Offences against discipline

- 1. It shall be an offence against discipline for any officer of the Service to—

- (a) unlawfully strike, or use or threaten to use violence against another officer or any other person;
- (b) use any obscene, abusive or insulting language in any form against any officer of the Service;
- (c) use threatening, insubordinate or disrespectful language, word, act or demeanour to an officer senior in rank to him or her;
- (d) cause a disturbance at any Service premises;
- (e) be intoxicated while on duty;
- (f) consume any intoxicating liquor, psychotropic substance or narcotic drug, or smoke while in uniform or actively engaged in duty at a public place;
- (g) wilfully disobey a lawful command or order;
- (h) be absent without leave;
- (i) be asleep while on duty;
- (j) leave his or her post or place of duty before being relieved except when in fresh pursuit of an offender who it is his or her duty to apprehend;
- (k) while under arrest or detention, leave or escape from such arrest or detention before he or she is set at liberty by the relevant authority;
- (l) neglect or refuse to assist in the apprehension of any officer of the Service who has been charged with any offence when lawfully ordered to do so;
- (m) resist any lawful arrest;
- (n) negligently allow any prisoner or detainee who is committed to his or her charge or who it is his or her duty to guard, to escape;
- (o) discharge any weapon without authorisation or without reasonable lawful cause;
- (p) without reasonable cause, fail to attend at any parade, instruction class or court or any other duty which he or she is required to attend;
- (q) sell, pawn, negligently lose, make away with, wilfully or negligently damage, or fail to report any loss or damage to, any arm, ammunition, accoutrement, uniform or other article of personal issue or any vehicle or other property committed to his or her charge that belongs to the Service or for which the Service is responsible for;
- (r) be in improper possession of any public or private property;
- (s) commit any act of plunder or wanton destruction of property;
- (t) be negligent in the performance of his or her duties;
- (u) appear on duty untidy in his or her person, arms, uniform or equipment;
- (v) make or sign any false statement in any document or official record;
- (w) without proper authority, disclose or convey any information concerning any investigation or Service matter;
- (x) malingering or feign any disease or infirmity;
- (y) without proper authority, demand or exact from any person any carriage, portage or provisions;
- (z) commit an act of corruption as defined by any written law;

- (aa) make any false statement on joining the Service;
- (bb) refuse or neglect to make or send any report which it is his or her duty to make or send; or
- (cc) knowingly falsely accuse or make a complaint against any officer of the Service or any other person affecting the character of that other officer or that other person, or wilfully suppress any material fact.

2. A member of the Service who is absent from duty without leave for a period exceeding twenty-one days shall, unless the contrary is proven, be considered to have deserted from the Service which shall be an offence against discipline.
