

**THE WILDLIFE (CONSERVATION AND
MANAGEMENT) (AMENDMENT)
ACT, 1989**

No. 16 of 1989

Date of Assent: 6th December, 1989

Date of Commencement: By Notice

An Act of Parliament to amend the Wildlife (Conservation and Management) Act to establish a Kenya Wildlife Service as a body corporate and for connected purposes

ENACTED by the Parliament of Kenya as follows:—

1. This Act may be cited as the Wildlife (Conservation and Management) (Amendment) Act, 1989 and shall come into operation on a date to be appointed by the Minister by notice in the Gazette.

Short title and commencement.

2. Section 2 of the Wildlife (Conservation and Management) Act, in this Act referred to as the principal Act, is amended—

Amendment to section 2 of Cap. 376.

(a) by deleting the definitions of “appointed day” and “Trustees”;

(b) by deleting the definitions of “Director”, “Service” and “warden” and inserting the following new definitions—

“Director” means the Director of the Service appointed under section 3C;

“Service” means the Kenya Wildlife Service established under section 3;

“warden” means a member of the Service above the rank of ranger;

(c) by inserting the following new definitions in proper alphabetical order—

“Board of Trustees” means the Board of Trustees of the Service constituted under section 3B;

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“ranger” means a member of the Service, not being a warden, designated as such by the Director;

“State Corporations Advisory Committee” means the State Corporations Advisory Committee established under section 26 of the State Corporations Act.

Cap. 446.

Replacement
of section 3 of
Cap. 376.

3. The principal Act is amended by repealing section 3 and inserting the following new sections—

Establish-
ment of the
Service.

3. (1) There is hereby established a uniformed and disciplined service to be known as the Kenya Wildlife Service.

(2) The Kenya Wildlife Service shall be a body corporate with perpetual succession and a common seal and shall have power to sue and be sued in its corporate name and to acquire, hold and dispose of movable and immovable property for the purposes of the Service and this Act.

(3) The headquarters of the Service shall be in Nairobi.

(4) The Service shall be the successor to the Wildlife Fund Trustees established under section 58 (now repealed) and, subject to this Act all rights, duties, obligations, assets and liabilities of the Wildlife Fund Trustees existing at the date of the coming into operation of this Act shall be automatically and duly transferred to the Service and any reference to the Wildlife Fund Trustees in any written law or in any contract or document shall for all purposes be deemed to be a reference to the Service established under subsection (1).

Functions
of the
Service.

3A. The functions of the Service shall be to—

(a) formulate policies regarding the conservation, management and utilization of all types of fauna (not being domestic animals) and flora;

(b) advise the Government on establishment of National Parks, National Reserves and other protected wildlife sanctuaries;

- (c) manage National Parks and National Reserves;
- (d) prepare and implement management plans for National Parks and National Reserves and the display of fauna and flora in their natural state for the promotion of tourism and for the benefit and education of the inhabitants of Kenya;
- (e) provide wildlife conservation education and extension services to create public awareness and support for wildlife policies;
- (f) sustain wildlife to meet conservation and management goals;
- (g) conduct and co-ordinate research activities in the field of wildlife conservation and management;
- (h) identify manpower requirements and recruit manpower at all levels for the Service for wildlife conservation and management;
- (i) provide advice to the Government and local authorities and landowners on the best methods of wildlife conservation and management and be the principal instrument of the Government in pursuit of such ecological appraisals or controls outside urban areas as are necessary for human survival;
- (j) administer and co-ordinate international protocols, conventions and treaties regarding wildlife in all its aspects in consultation with the Minister;
- (k) solicit by public appeal or otherwise, and accept and receive subscriptions, donations, devises and bequests (whether movable or immovable property and whether absolute or conditional) for the general or special purposes of the Service or subject to any trust;

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(l) render services to the farming and ranching communities in Kenya necessary for the protection of agriculture and animal husbandry against destruction by wildlife.

The Board
of Trustees.

3B. (1) The Service shall be managed by a Board of Trustees of the Service which shall, subject to section 3C, consist of—

- (a) a chairman appointed by the President;
- (b) the Permanent Secretary in the Ministry for the time being responsible for matters relating to wildlife;
- (c) the Permanent Secretary in the Ministry for the time being responsible for finance;
- (d) the Permanent Secretary in the Ministry for the time being responsible for local government;
- (e) the Commissioner of Police;
- (f) the Director of Forests;
- (g) a representative of the Permanent Secretary in the Office of the President responsible for internal security;
- (h) the Director of Veterinary Services;
- (i) not more than six other trustees to be appointed by the Minister from amongst persons who are conversant with nature conservation in all its aspects.

(2) The chairman and the trustees appointed under subsection (1) (a) and (i) shall hold office for three years and shall be eligible for reappointment.

(3) The Board shall elect a vice-chairman from among its members.

(4) The Board shall meet at least four times in every year.

(5) The chairman shall convene an extraordinary meeting of the Board within fourteen days after receipt by him of a written requisition to that effect signed by at least three trustees.

(6) Not less than seven days' previous notice of a meeting of the Board shall be given in writing

to every trustee; but accidental failure to give or to receive such notice shall not invalidate the proceedings of a meeting.

(7) The quorum necessary for the transaction of the business of the Board shall be seven trustees inclusive of the person presiding; and all acts, matters or things authorized or required to be done by the Board shall be effected by a resolution passed by a majority of the members present and voting at a meeting at which there is a quorum.

(8) The chairman, or in his absence the vice-chairman, shall preside at meetings of the Board; but in case of the absence of both the chairman and vice-chairman at any meeting of the Board the trustees present at the meeting shall elect one of their number to preside at that particular meeting.

(9) At every meeting of the Board the chairman, or in his absence the vice-chairman or the trustee presiding, shall have a casting as well as a deliberative vote.

(10) Subject to this section and to Part III of the State Corporations Act, the Board of Trustees shall determine its procedure.

3c. (1) There shall be a Director of the Service who shall be a member of the Board of Trustees, the chief executive and head of the Service.

(2) The Director shall be appointed by the President.

(3) The Director or his nominee shall be the secretary to the Board of Trustees.

(4) The Director shall, on behalf of the Board of Trustees and subject to this Act, have the general superintendence of all matters within the scope of this Act.

Cap. 446.

Appoint-
ment of
Director.

Terms and conditions of appointment, enlistment and secondment to the service.

3D. (1) The Board of Trustees, in consultation with the State Corporations Advisory Committee, shall establish the terms and conditions for the appointment and enlistment of the members of the Service and the secondment of any other persons to serve with the Service.

(2) The Board of Trustees may appoint and may employ such members, agents or servants of the Service as may be necessary for the discharge of the functions of the Service under this Act upon the terms and conditions of service established under subsection (1).

(3) The Board of Trustees shall within a reasonable time provide for a staff superannuation scheme of a type that will enable the President to determine service with the Kenya Wildlife Service to be public service for the purposes of the Pensions Act.

Cap. 189.

Ranks of, and direction of, the members of the Service.

3E. (1) Members of the Service shall be of the ranks specified in the Fourth Schedule and the Minister may, by notice in the Gazette, amend that Schedule.

(2) All members of the Service shall, in exercise of the powers and in performance of the duties conferred or imposed upon them under this Act, conform with any lawful instructions, directions or orders, whether general or specific, which may be given to them by the Director.

(3) The Director may, with the approval of the Board of Trustees, from time to time make administrative orders, to be called "Service Standing Orders", for the general control, direction and information of the members of the Service.

(4) The Board of Trustees may give such general or special directions to the Director as may be necessary for the more efficient carrying into effect of the provisions of this Act.

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Disciplinary
code and
regulations.

3F. (1) The Board of Trustees may issue a disciplinary code for the Service and the disciplinary code may provide for the following matters—

- (a) the investigation of disciplinary offences and the hearing and determination of disciplinary proceedings; and
- (b) disciplinary penalties and awards.

(2) The following disciplinary penalties and awards, or any combination thereof, may be included in the disciplinary code for infringements of such code—

- (a) dismissal from the Service;
- (b) reduction in rank;
- (c) confinement in a guard room or restriction to the confines of any camp or other area where a part of the Service is stationed, for not more than fourteen days;
- (d) fines;
- (e) where the offence has occasioned any expense, loss or damage, stoppages of pay or allowances;
- (f) extra drills, parades or fatigues;
- (g) severe reprimand;
- (h) reprimand;
- (i) admonition.

(3) A disciplinary code issued under this section may provide that a member of the Service committing a disciplinary offence may be arrested without warrant by or on the order of a member senior to himself or placed in command over him, who may, if the circumstances so warrant, confine that member or cause that member to be confined in a building suitable for the purpose, pending the determination of disciplinary proceedings.

Prohibition
against
members
of the Ser-
vice join-
ing trade
unions.

3G. (1) No member of the Service shall be or become a member of—

- (a) a trade union or any body or association affiliated to a union;
- (b) a body or association the objects, or one of the objects, of which is to control or

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influence conditions of employment in a trade or profession;

- (c) a body or association the objects, or one of the objects, of which is to control or influence pay, pension or conditions of service of the Service other than a staff association established and regulated by rules or regulations made under this Act.

(2) A member of the Service who contravenes subsection (1) shall be liable to be dismissed from the Service and forfeit all rights to pension or gratuity.

(3) If a question arises as to whether a body is a trade union or an association to which this section applies, the question shall be referred to the Minister whose decision thereon shall be final.

Insubor-
dinate
behaviour.

3H. (1) A member of the Service who—

- (a) strikes or otherwise uses violence to, or offers violence to or incites any other person to use violence to a member senior to or placed in command over him or to that other person; or

- (b) uses threatening or insubordinate language to a member senior to or placed in command over him,

shall be guilty of an offence and liable to imprisonment for a term not exceeding one year.

(2) The Director or an officer of or above the rank of senior warden to whom the power so to do has been delegated by the Director may direct that an offence committed under subsection (1) be tried summarily and not prosecuted in court.

Desertion.

3I. (1) A member of the Service who absents himself from duty without leave or just cause for a period of twenty-one days or more shall, unless he proves the contrary, be deemed to have deserted from the Service.

(2) A member who deserts the Service shall forfeit any pay or allowances due to him, and all rights in respect of any pension, provident or other scheme operated by the Service.

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(3) No pay or allowance shall be paid to a member in respect of any day during which he is absent from duty without leave, unless the Director otherwise directs.

Liability
under
other
law.

3J. Nothing in this Act or any subsidiary legislation made thereunder shall exempt a member of the Service from being proceeded against for an offence under any other law.

Members
of Service
not to
engage in
trade, etc.

3K. No member of the Service shall, without, in the case of a gazetted officer, the prior written approval of the Board of Trustees and, in the case of any other member, the prior written approval of the Director, engage himself in any trade, business or employment or take part in any commercial undertaking outside the scope of his duties as a member of the Service.

4. The principal Act is amended by inserting the following new title and Part IIA immediately after section 5—

Insertion
of a new
Part IIA
in Cap. 376.

PART IIA—THE KENYA WILDLIFE SERVICE FUND

The Kenya
Wildlife
Service
Fund.

5A. (1) There is established a fund to be known as the Kenya Wildlife Service Fund which shall be vested in, and be operated and managed by the Board of Trustees for the purpose of the Service and this Act.

(2) There shall be paid into the Fund—

- (a) all sums vested in the former Wildlife Fund Trustees under section 59 (now repealed);
- (b) donations, loans or other moneys received from any source for the purpose of wildlife conservation or management;
- (c) any sums from time to time provided by Parliament for the purposes of the Fund.

(3) There shall be paid out of the Fund—

- (a) sums required to launch, operate or expand projects of wildlife conservation and management;
- (b) any other payments either generally or specifically approved by the Board of Trustees.

Insertion
of new
section 5B in
Cap. 376.

5. The principal Act is amended by inserting in proper numerical sequence the following new section 5B—

Wildlife
Advisory
Councils.

5B. (1) For the better carrying out of the powers, duties and functions of the Service the Board of Trustees may by notice in the Gazette establish such wildlife advisory councils in respect of any area in which any National Park or National Reserve is situated as may be necessary from time to time.

(2) An advisory council established under subsection (1) shall consist of such persons not exceeding seven including the representative of the local authority concerned, as the Board of Trustees shall determine.

(3) An advisory council shall not take part in the day-to-day business of wildlife conservation and management but shall bring to the notice of the Board of Trustees for appropriate action all problems and other matters relative to wildlife conservation and management affecting the area for which the advisory council is established.

(4) The Board of Trustees shall determine the tenure and vacation of office of members of an advisory council, its meetings and procedure and its staff.

Amendment
of section
49 of Cap.
376.

6. Section 49 of the principal Act is amended by deleting subsection (1) and inserting the following new subsection—

(1) An authorized officer may stop and detain any person whom he finds doing any act for which a licence or permit is required under this Act or the rules for the purpose of requiring that person to produce his licence or permit, and if that person fails to produce the appropriate licence or permit he may be arrested by the officer without a warrant.

Amendment
of section
50 of
Cap. 376.

7. Section 50 of the principal Act is amended—

(a) by deleting subsection (2) and inserting the following—

(2) Where anything other than a trophy is seized and detained under section 49 of this Act it shall be forfeited to the Government after a period

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of three months unless within that period some person is charged with a forfeiture offence under the Act and it is alleged that—

- (a) the offence was committed in relation to or in connection with that thing; or
- (b) the thing was used in, or for the purpose of, the commission of such an offence.

(b) by deleting paragraph (c) of subsection (3).

8. Section 52 of the principal Act is amended—

(a) by deleting subsection (2) and inserting the following—

(2) Where anything other than a Government trophy has been seized and detained under section 49 of this Act and a person charged with a forfeiture offence in relation thereto within three months of the seizure has not appeared to answer the charge that thing shall be forfeited to the Government.

(b) by deleting subsection (3).

Amendment of
section 52
of Cap. 376.

9. The principal Act is amended by inserting immediately after section 57 the following new section—

Insertion of new
section 57A in
Cap. 376.

Use of
firearms.

57A. (1) The President may, through the Commissioner of Police, make available to the Service such firearms as may be necessary for the Service to effectively carry out its functions under this Act.

(2) A member of the Service may use firearms to the extent necessary for the efficient management and conservation of wildlife including but without prejudice to the generality of the foregoing—

- (a) in the course of law enforcement, against—
 - (i) any person in lawful custody charged with an offence punishable under section 56 (1) (a), (b) or (c) when that person is escaping or attempting to escape;
 - (ii) any person who by force rescues or attempts to rescue any other person from lawful custody;

- (iii) any person who by force rescues or attempts to prevent the lawful arrest of himself or any other person; and
- (iv) any person unlawfully hunting any game animal or protected animal in any place or hunting any animal, bird or reptile within a National Park, National Reserve or local sanctuary;

(b) in the course of animal population control and management and also for the protection of persons and property against any animal, bird or reptile causing destruction to human life or property or crops:

Provided that resort to the use of firearms shall not be had—

- (i) under paragraph (a) (i) of this subsection unless the member of the Service concerned has reasonable grounds to believe that he cannot otherwise prevent the escape and unless he has given warning to the person that he is about to use firearms against him and the warning is unheeded;
- (ii) under paragraph (a) (ii) or paragraph (a) (iii) of this subsection unless the member of the Service concerned believes on reasonable grounds that he or any other person is in danger of grievous bodily harm or that he cannot otherwise prevent the rescue, or, as the case may be, effect the arrest.

Repeal of
Part VII
of Cap. 376.

10. Part VII of the principal Act relating to the Wildlife Fund and comprising sections 58, 59 and 60 of the principal Act is repealed.

Amendment
of section
62 of Cap.
376.

11. Section 62 of the principal Act is amended by repealing subsection (1) and inserting the following new subsection—

Compensation
for personal
injury or
death.

62. (1) Where any person suffers any bodily injury from or is killed by any animal, the person injured or in the case of a deceased person, any other person who was dependent upon him at the

date of his death, may make application to a district committee established by this section, for the award of compensation for the injury or death:

Provided that no compensation shall be claimable where the injury or death occurred—

- (a) in the course of any conduct on the part of the person concerned which would constitute an offence under this Act; or
- (b) in the course of normal wildlife utilization activities.

12. The principal Act is amended by inserting the following new Fourth Schedule—

Addition of new
Fourth Schedule
to Cap. 376.

FOURTH SCHEDULE

Ranks of members of the Service in order of seniority

Gazetted Officers

(a) Officers of Field Rank—

Director
Deputy Director
Assistant Director
Senior Warden

(b) Senior Officers—

Warden I
Warden II

Junior Officers

Assistant Warden I
Assistant Warden II
Assistant Warden III
Field Assistant

Rangers

Ranger Sergeant Major
Senior Sergeant
Sergeant
Corporal
Ranger

Additional
amendments
to Cap. 376.

13. The several sections of the principal Act set out in the first column of the Schedule are amended in the manner specified in the second column.

Amendment
of Cap.
114.

14. Section 26A of the Firearms Act is amended by adding thereto the following new subsection—

(6) For the purposes of this section the expression “public officer” shall include any member of the Kenya Wildlife Service established under the Wildlife (Conservation and Management) Act, for the time being in possession of any Government firearm or ammunition and using it under section 57A of that Act.

Transitional
provisions.

15. (1) In this section, “former Department” means the the Government Department known as the Wildlife Conservation and Management Service established under section 3 of the principal Act (now repealed).

(2) All the funds, assets and other property, movable and immovable, which immediately before the coming into operation of this Act, were held by the Government for the former Department shall, under this subsection and without further assurance vest in the Service.

(3) Every public officer having the power or duty to effect or amend any entry in a register relating to property, or to issue or amend any certificate or other document effecting or evidencing title to property, shall, without payment of fee or other charge and upon request by or on behalf of the Service, do all such things as are by law necessary to give final effect to the transfer of the property mentioned in subsection (2).

(4) All rights, powers, liabilities and duties, whether arising under any written law or otherwise, which immediately before the coming into operation of this Act were vested in, imposed on or enforceable by or against the Government for the former Department other than the powers of forfeiture of trophies, shall under this subsection, be transferred to, vested in, imposed on or be enforceable by or against the Service.

(5) On and after the coming into operation of this Act, all actions, suits or legal proceedings pending by or against the Government in respect of the former Department shall

be carried on or prosecuted by or against the Service and no such suit action or legal proceeding shall abate or be prejudicially affected by the enactment of this Act.

(6) The Director and other officers, members and servants of the former Department and of the Wildlife Fund Trustees in office on the day of the coming into operation of this Act shall, until they have been recruited into the Service or otherwise deployed by the Government, be deemed to be the duly appointed Director, officers, members and servants of the Service and shall accordingly be subject to the disciplinary provisions relating to the Service from time to time in force.

(7) The terms of office of the Wildlife Fund Trustees in office at the date of coming into operation of this Act shall terminate on that date.

(8) The annual estimates of the former Department for the financial year in which this Act comes into operation shall be deemed to be the annual estimates of the Service for the remainder of the financial year but those estimates may be varied by the Board of Trustees in such manner as the accounting officer of the Treasury may approve.

SCHEDULE

<i>Section</i>	<i>Amendment</i>
9 (1), 16 (1) (d)	Delete "officers" and insert "members".
5 (1) (a), 13 (1), 39 (1) (a), 56, 61 (1), 61 (2) (a), 61 (2) (b), 61 (2) (c)	Delete "officer" and insert "member".
28 (2)	Delete "officer" and insert "licensing officer".
4, 21	Delete "game" wherever it occurs.
5 (1) (d)	Delete "officer of the Community".