

FOOD AND FEED SAFETY CONTROL COORDINATION BILL, 2021
A Bill for

AN ACT of Parliament to provide for effective coordination of competent authorities in the control of food and feed safety; to establish the Office of the Food and Feed Safety Controller; to establish county food and feed safety control coordinating committees; and for connected purposes.

ENACTED by the Parliament as follows: —

PART I—PRELIMINARY

Short title.	1. This Act may be cited as the Food and Feed Safety Control Coordination Act, 2021.
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Interpretation.	<p>2. In this Act, unless the context otherwise requires—</p> <p>“Office of the Controller” means the Office of the Food and Feed Safety Controller established under section (18) of this Act;</p> <p>“Board” means Board of the Office of the Controller established under Section 19 of this Act;</p> <p>“Cabinet Secretary” means the cabinet secretary for the time being responsible for matters relating to food safety;</p> <p>“Competent Authority” means a recognized government institution having the responsibility and competence to implement specific requirements of food or feed safety control. A competent authority is headed by a professional in the relevant field, who is accountable to the public on its behalf;</p> <p>“Controller” means food and feed safety controller appointed under Section 29;</p> <p>“County Executive Committee Member” means the County Executive Committee Member for the time being responsible for matters relating to food and feed safety at the County;</p> <p>“Committee” means a County Food and Feed Safety Control Coordinating Committee established under Section 33 of this Act;</p> <p>“Feed” means any substance or product, including additives, whether processed, partially processed or unprocessed, intended to be used as a feed or drink for a food animal;</p> <p>“Feed additive” means any ingredient which is not normally consumed as feed by itself, intentionally added to animal feed, whether or not it has</p>
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nutritional value or other effect on the animal, which affects the characteristics of feed or of the animal products and excludes veterinary drugs;

"Feed business" means any undertaking whether for profit or not and whether public or private, carrying out any operation of production, manufacture, processing, storage, transport or distribution of feed including any enterprise producing, processing or storing feed, feed ingredient, feed additive or feed supplement;

"Feed business operator" means a person undertaking a feed business;

"Feed ingredient" means a component part or constituent of any combination or mixture making up a feed, whether or not it has a nutritional value in the animal's diet, including feed additives;

"Feed safety" means assurance that feed is free from all those hazards, whether chronic or acute, that may make feed injurious to the health of the animals and also humans.

"Safe feed" means feed that is free from physical, chemical or biological sources of infection or toxicity or environmental and other contaminants which are injurious to health of animals or potentially injurious to human health;

"Food" means any substance whether processed, semi-processed or raw which is intended for human consumption and includes drink, chewing gum and any substance which has been used in the production, manufacture, preparation or treatment of food but does not include cosmetics, tobacco or substances used as drugs;

"Food business" means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of production, processing and distribution of food It shall not apply to primary production for home use or to the domestic preparation, handling or storage of food for home consumption.

"Food business operator" means a person undertaking a food business including farmers, pastoralists, fisherfolk, hoteliers, retailers of farm and fishery produce and street food vendors a food business operator is responsible for ensuring that requirements of the food law are met;

"Food safety" means all measures to ensure that food will not cause harm to the consumer when it is prepared and eaten according to its intended use;

"Food safety audit" means a systematic and functionally independent examination of the food safety measures and systems to determine whether they meet the set objectives of food safety;

“**Hazard**” means any biological, chemical or physical agent in or condition of food with the potential to cause an adverse health effect;

“**Subject Matter Specialist**” means a recognized government institution or a professional in the relevant field who is accountable to the public on its behalf having the responsibility and competence to implement specific requirements of food or feed safety control;

“**Multi Annual National Control Plan**” is an integrated procedure that guides the performance of official controls by National and Subject matter specialists who enforce, monitor and verify compliance with relevant requirements of food and feed laws, by Food and Feed Business Operators, at all stages of production, processing and distribution of food or feed. A Multi-Annual National Control Plan covers food and feed laws, the legislation on animal health and animal welfare as well as phytosanitary legislation. It promotes coherent national strategies and identifies risk-based priorities and the most effective control procedures.

“**Reference food laboratory**” means a laboratory designated by office of the food safety controller as a national food laboratory under section 21 of this Act;

“**Official control**” means any form of control that the competent authority performs for the verification of compliance with food law;

“**Risk**” means The likelihood that an adverse event will occur during a specified period and the likely magnitude of its consequences

“**Risk analysis**”, means a process consisting of three components, i.e., risk assessment, risk management and risk communication;

“**Risk assessment**” means a scientifically based process consisting of the following steps—

- (a) hazard identification,
- (b) hazard characterisation,
- (c) exposure assessment, and
- (d) risk characterisation;

“**Risk communication**” means the interactive exchange of information and opinions throughout the risk analysis process concerning risks, risk-related factors and risk perceptions, among risk assessors, risk managers, consumers, industry, the academic community and other interested parties, including the explanation of risk assessment findings and the basis of risk management decisions;

“**Risk management**” means the process, distinct from risk assessment, of evaluating policy alternatives, in consultation with all interested parties

	<p>considering risk assessment and other factors relevant for the protection of health of consumers and for the promotion of fair-trade practices, and, if needed, selecting appropriate prevention and control options; and</p> <p>`Person` means an individual, a corporation, partnership, limited liability company, association, trust, unincorporated organization, or other legal entity or organization, or a government body.</p>
Objects.	<p>3. The objects of this Act is—</p> <p>(a) the effective coordination of National and Subject matter specialists involved in the control of food and feed safety; and</p> <p>(b) a mechanism of enhancing accountability in the implementation of food and feed safety control.</p>
Application.	<p>4. This Act shall apply to every Competent Authority or subject matter specialist involved in the control of food or feed safety in Kenya.</p>
Guiding principles.	<p>5. This guiding principles for the implementation of this Act shall be the;</p> <p>(a) protection of human life and health in all the stages of the food chain;</p> <p>(b) protection of consumer interests through fair practices in the food trade;</p> <p>(c) promotion of the use of scientific basis and science-based risk analysis for food measures to ensure that food products and services are safe;</p> <p>(d) promotion of economic growth and development by promoting fair trade practices and sound food regulatory foundation for domestic and international trade. And</p> <p>(e) improved efficiency in food and feed safety control</p>
<p>PART II: COORDINATION OF COMPETENT AUTHORITIES FOR REGULATION OF FOOD AND FEED BUSINESS OPERATORS</p>	
Food and Feed safety Competent authorities.	<p>6. For the purposes of this Act, the Competent Authorities relevant on food and Feed safety includes the agencies listed in the First Schedule.</p>
Multi Annual National Control Plan	<p>7. (1) All Competent Authorities shall, in consultation with the Subject matter specialists, collectively develop and, every year, review a Multi Annual National Control Plan as a basis and mechanism for the control of food and feed business operators in the country.</p> <p>(2) The Multi Annual National Control Plan referred to in subsection (1) shall:</p> <p>(a) Outline competent authorities, subject matter specialist and their tasks, and the policies, strategies, laws, standards and procedures that they apply in the official control of food safety;</p> <p>(b) outline the strategic objectives of each Competent Authority and subject matter specialist and how prioritization of controls and allocation of resources reflect these objectives;</p>

	<ul style="list-style-type: none"> (c) for each Competent authority and subject matter specialist performing official control of food safety, describe a risk-based categorization of the necessary activities; (d) outline the general organization and management of official controls at the national and county levels including official controls in individual establishments; (e) describe the control systems applied in different food and feed sectors and cooperation among the competent authorities responsible for official controls in the sectors; (f) outline a mechanism of continuously training personnel performing official controls; (g) describe a method of documenting procedures for official control and reporting; (h) outline the organization and operation of contingency plans for foodborne or animal disease emergencies, feed and food contamination incidents and other health risks to humans, animals and the environment; and (i) for each Competent authority, describe a procedure for cooperation with international competent authorities for mutual assistance.
<p>Competent Authority and Subject matter specialists to apply policies, laws, standards and procedures.</p>	<p>8. (1) Each Competent Authority or subject matter specialist shall apply duly relevant policies, strategies, laws, standards and procedures in the implementation of its components of the Multi Annual National Control Plan.</p> <p>(2) To effectively implement its components of the Multi Annual National Control Plan, each Competent authority or subject matter specialist shall:</p> <ul style="list-style-type: none"> (a) identify all stages where it is expected to act in its control of food or feed safety; (b) identify Food or Feed Business Operators, by categorization, in the context of its mandate; (c) develop a methodology for registration, and register all relevant Food or Feed Business Operators in its domain; (d) develop or revise procedures and regulations for each category of Food or Feed Business Operators in the context of its mandate; (e) educate Food or Feed Business Operators on-

	<ul style="list-style-type: none"> i. the relevant policies, laws and standards; ii. the need to constantly adhere to procedures in their food or feed businesses by identifying and addressing major risks; and iii. the need to document that procedures are consistently followed; <p>(f) monitor a consumer complaints register kept by food or feed business operators;</p> <p>(g) create awareness among consumers and customers on the need to demand and expect safe food or safe feed from Food or Feed Business Operators at all times; and</p> <p>(h) Risk categorize Food or Feed Business Operators, to establish an effective inspection plan</p> <p>(3) Failure to comply with the provisions of this section shall constitute an offence.</p>
Oversight role of the controller	<p>9. (1) The controller shall verify that each Competent Authority has put in place mechanisms for regulatory activity of enforcement to provide consumer protection and ensure that all food or feed during production, handling, storage, processing and distribution are safe, wholesome and fit for human consumption; conform to food safety and quality requirements;. The activities shall comprise of Official control of safety of food or feed comprising of the following operations—</p> <ul style="list-style-type: none"> (a) inspection; (b) sampling and analysis; (c) staff health and hygiene; (d) examination of the records; (e) issuance of regulatory permits and licenses; and (f) investigation of compliance with the requirements of the relevant Acts, Regulations and guideline; <p>(2) The agencies listed in the First Schedule shall be respectively responsible for the functions as listed in the Second Schedule.</p>
Food and feed safety control measures	<p>10. (1) The Competent Authorities shall put in place measures to ensure that routine food controls performed at the level of Food or Feed Business Operators, imported, exported or re-exported are planned, managed and implemented in a way that ensures safety of the food or feed products placed on the market.</p> <p>(2) In the absence or inadequacy of such measures in (1), food and feed safety controller shall make recommendations for immediate action by the Competent Authority.</p> <p>(3) Such measures in (2) shall be gazetted by the Cabinet Secretary after recommendation by the Controller after consultation with the</p>

	County Governments, Competent Authorities and relevant stakeholders.
Food Control Audits	<p>11. (1.) The Controller shall undertake audits for purposes of ascertaining compliance and enforcement by competent authorities.</p> <p>(2.) Audit reports following audits carried out in subsection (1) shall be presented to the Cabinet Secretary under which the Competent authority falls.</p> <p>(3.) The Controller may organize multi-disciplinary audits where need arise</p> <p>(4) The Controller shall prescribe the manner and procedures under which the persons undertaking the audit shall operate.</p> <p>(5) The Controller may recognize any organization or agency for the purposes of conducting a food safety audit and for checking compliance with food safety management systems required under this Act.</p>
Food and Feed Safety Laboratory Infrastructure	<p>12. (1)The Controller in consultation with competent authorities shall—</p> <p>(a) designate official testing laboratories;</p> <p>(b) designate reference laboratories for confirmatory testing, quality assurance, coordination of proficiency testing, testing program or any other related function; and</p> <p>(c) review performance of laboratories and may revoke designation if found to have contravened this Act and regulations under it.</p> <p>(2) Only designated laboratories shall do official analyses for food and feed safety control.</p>
Reports.	<p>13. (1) A subject matter specialist shall share reports of implementation of its components of the Multi Annual National Control Plan with-</p> <p>(a) the Subject matter specialists it works closely with; and</p> <p>(b) the head of the relevant Competent authority who shall analyze the reports and provide feedback, as appropriate.</p> <p>(2) A Competent authority shall share its reports with –</p> <p>(a) the Competent Authorities it works closely with; and</p> <p>(b) Office of the Food and Feed Safety Controller.</p> <p>(3) The Office of the Food and Feed Safety Controller shall:</p> <p>(a) analyze reports from the Competent Authorities and provide feedback; and</p> <p>(b) prepare an annual report on the State of Food and Feed Safety in Kenya and share with-</p> <p>i. the Cabinet Secretary; and</p> <p>ii. the Competent Authorities.</p>

	<p>(4) The Cabinet Secretary shall present not later than three months after the close of the financial year the annual report on the State of Food and Feed Safety in Kenya to the departmental committees concerned with food and feed safety in the-</p> <ul style="list-style-type: none"> (a) National Assembly; and (b) Senate. <p>.</p> <p>(5) Failure to comply with provisions of this section shall constitute an offense.</p>
Functions of staff of food and feed safety Controller	<p>14. A staff of food and feed safety Controller shall: -</p> <ul style="list-style-type: none"> (a) monitor implementation of food and feed safety provisions by Competent Authority; (b) conduct food and feed safety audits; and (c) Perform such other functions as may be required under this Act.
Powers of staff of food and feed safety Controller	<p>15. (1) A staff of food and feed safety Controller may, in the performance of his duties under this Act or any regulations made thereunder, at all reasonable times and without a warrant –</p> <ul style="list-style-type: none"> (a) enter any land, premises, vessel, motor vehicle or ox-drawn trailer and make examinations and enquiries as necessary; (b) require the production of, inspect, examine and copy licences, registers, records and other relating to Food safety; (c) Take samples of any article and substances to which this Act relates and, as may be prescribed, submit such samples for test and analysis <p>(2) In exercising his powers under this Act, the food safety Compliance officer shall identify himself.</p>
Parameters for verification of compliance by the controller	<p>16. (1) The controller shall verify every Competent Authority has put in place a system capable of providing accurate certification, inspection and validation. Including</p> <ul style="list-style-type: none"> (a) effective monitoring of compliance with set standards; (b) corrective measures including penalties, suspension and withdrawal of licenses; (c) sustainability of the system; (d) investigative powers of the agency; (e) registration provisions; (f) provisions relating to confidentiality; (g) self-assessment provisions for producers, manufacturers, traders, and other food operators;

	<p>(h) an effective early warning system;</p> <p>(i) an effective complaint receiving and solving system;</p> <p>(j) a compensation mechanism; and</p> <p>(k) any other matter it considers relevant.</p> <p>(2)A Competent Authority in-contravention of subsection (1) shall take corrective measures as recommended by the Controller within such timelines given and upon failure, the controller shall bring the matter to the attention of the Cabinet Secretary responsible for the Competent Authority .</p>
Risk analysis.	<p>17. (1) The controller shall coordinate risk assessment undertaken by Competent Authorities in relation to food hazards</p> <p>(2) The Controller shall undertake risk assessment in relation to food hazards.</p> <p>(3) Controller in consultation with Competent Authority shall map food safety hazards and keep food and feed safety hazard map for the country</p> <p>(4) The Controller shall assign to a relevant Competent Authority the responsibility to conduct risk management of the hazard based on the risk assessment report.</p> <p>(5) Where there is overlap despite the provision of sub section (4), the Controller may appoint a committee or a competent authority to undertake on its behalf the risk management on identified hazard.</p> <p>(6) The Controller in collaboration with relevant Competent Authority shall bear the responsibility risk communication of the hazard based on the risk management report.</p>
Traceability.	<p>18. (1) The controller shall ensure all Competent Authority has traceability as a food and feed safety control point</p> <p>(2) All Competent Authority and Subject matter specialists shall ensure that food or feed business operators shall comply with traceability requirements.</p>
PART 111—ESTABLISHMENT AND ADMINISTRATION	
Establishment of the Office of Food and Feed Safety Controller.	<p>19. There is established a body to be known as the Office of the Food and Feed Safety Controller which shall be a body corporate with perpetual succession and a common seal, and capable, in its corporate name of;</p> <p>(a) suing and being sued;</p> <p>(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property; and</p> <p>(c) doing or performing all other things or acts which may lawfully be done by a body corporate.</p>

Board of the Office of the Controller.

20. (1) The Office of the Controller shall be managed by a Board comprising of –

- (a) A Chairperson appointed by the President;
- (b) the Principal Secretary responsible for Finance or a designated representative;
- (c) one of the Principal Secretaries responsible for crops, livestock, fisheries or cooperatives appointed by the cabinet secretary or a designated representative;
- (d) the Principal Secretary responsible for health or a designated representative;
- (e) the Principal Secretary responsible for trade and industry or a designated representative;
- (f) the principal secretary responsible for water or a designated representative;
- (g) a representative of the Council of Governors;
- (h) two persons nominated by the Kenya Private Sector Alliance representing the Private Sector and appointed by the Cabinet Secretary; and
- (i) the Food and Feed Safety Controller who shall be an *ex-officio* member.

(2) A person shall be qualified to be nominated under subsection (1)(a) and (h) if such a person has –

- (a) a degree in any food or feed -related field from a university recognized in Kenya; and
- (b) a minimum of ten years' experience in matters relating to food or feed.

(3) Any person appointed to the Board shall meet the requirements of Chapter Six and Chapter Ten of the Constitution.

(4) The Board may co-opt other members with the required expertise during any of its meetings.

(5) Members of the Board shall hold office for a term not exceeding three years from the date of appointment and may be eligible for reappointment for a further term of three years.

Conduct of affairs of the Board.	(1) The conduct of business and affairs of the Board shall be as stated in the Third Schedule.
Functions of the Board	<p>21. (1) The principal function of the office of the food safety controller Board shall be to advise the food and Feed safety controller on the exercise of his or her powers and the performance of his or her functions under the Constitution and this Act.</p> <p>(2) Subject to the generality of subsection (1) the Board shall, in addition to any other function that may be conferred by this Act or any other law, advise the food safety controller on—</p> <ul style="list-style-type: none"> (a) the recruitment of senior managers into the Office of the food safety controller; (b) the development and review of organizational development issues; (c) the budget estimates and plans of the office of the food safety controller; (d) the remuneration and other terms of appointment of the staff of the Office of the food safety controller in consultation with the Salaries and Remuneration Commission; and (e) any other matter that the food safety controller may refer to the Board from time to time.
The common seal of the Office of the Controller.	<p>22. (1) The common seal of the Office of the Controller shall be kept in the custody of the Food Safety Controller or of such other person of the Board may direct, and shall not be used except upon the order of the Board.</p> <p>(2) The common seal of the Office of the Controller, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.</p> <p>(3) The common seal of the Office of the Controller shall be authenticated by the signature of the chairperson of the Board and the Food Safety Controller:</p> <p>Provided that the Board shall, in the absence of either the chairperson or the Food Safety Controller, in any particular matter, nominate one member of the Board to authenticate the seal of the Office of the Controller on behalf of either the chairperson or the Food Safety Controller.</p>
Allowances and expenses of the Board members	23. The members of the Board shall be paid such allowances and expenses as are provided by the Salaries and Remuneration Commission.

Staff of the office food safety controller	24. The office of the Food Safety Controller may recruit such other staff as may be necessary for proper discharge of his or her functions under the Constitution, this Act and any other written law, upon such terms and conditions as he/ she may determine in consultation with the Salaries and Remuneration Commission and subject to Articles 230 and 234(5) of the Constitution.
Authorization of Third Parties.	25. The food safety Controller may authorize Third Parties to undertake its food and feed safety control functions in order to achieve the objects of this Act.
Food and Feed Safety Controller	<p>26. (1) There shall be a Food and Feed Safety Controller who shall be competitively appointed by the Board.</p> <p>(2) The Food and Feed Safety Controller shall be the Chief Executive Officer of the Kenya Food and Feed Safety Office of the Controller.</p> <p>(3) A person shall qualify for appointment as Chief Executive Officer under this section if that person—</p> <ul style="list-style-type: none"> (a) holds a post graduate degree in human or veterinary medicine; public health, food science, animal science, food safety, agricultural sciences or fisheries sciences; Environmental Health sciences (b) has at least fifteen years' experience relating to food safety; (c) has at least five years' experience in a senior management position; and (d) meets the requirements of Chapter Six of the Constitution. <p>(4) The Chief Executive Officer shall—</p> <ul style="list-style-type: none"> (a) be responsible for the day-to-day management of the Office of the Controller; (b) be responsible for the policy decisions and transactions of the Office of the Controller, the exercise, discharge and performance of its objectives, functions and duties; (c) perform such other duties as may be necessary to ensure safety of food from time to time. <p>(5) The Chief Executive Officer shall hold office for a term of three years and shall be eligible for reappointment for a final term of three years.</p>
Functions of the Food and Feed Safety Controller.	<p>27. (1) The Controller shall—</p> <ul style="list-style-type: none"> (a) coordinate the Competent Authorities who regulate and enforce requirements of the food and feed law; (b) ensure that the Competent Authorities prepare and implement a Multi Annual National Control Plan;

	<ul style="list-style-type: none"> (c) develop reporting formats to be used by Competent Authorities; (d) monitor and evaluate implementation of the Multi Annual National Control Plan at the national level; (e) liaise with the Competent Authorities to address policy gaps and inadequate regulation of the food and feed safety control system to enhance synergy and efficiency; (f) identify food or feed business operators that are not regulated by any competent authority and recommend to the relevant Cabinet Secretary to assign responsibility; (g) assess and make recommendations on the adequacy of food or feed safety emergency preparedness; (h) put in place a system for data and information management for food and feed safety in the country; (i) verify that Competent Authorities have procedures for traceability, as a control point by food or feed business operators; (j) prepare an annual report on the State of Food Safety in Kenya; (k) put in place a mechanism for resolving conflicts between National Competent Authorities under this Act; (l) lead and facilitate the annual review of the Multi Annual National Control Plan; and (m) perform such other functions, relevant to coordination of Competent Authorities, as the Board may, from time to time, assign; <p>(2) Despite subsection (1c), the Controller may receive reports from Subject matter specialists.</p> <p>(3) It shall be an offense under this Act, not to comply with any provisions of this section.</p> <p>(4) The Controller may constitute an <i>ad-hoc</i> scientific committee to provide advice for decision making on a matter under this section.</p> <p>(5) The scientific committee in subsection (4) shall consist of not more than five experts with relevant qualifications and experience.</p> <p>(6) Members of the scientific committee shall be paid such allowances as the Board may determine in consultation with the Salaries and Remuneration Commission.</p> <p>(7) The Controller may consult a relevant institution on any matter under this Act.</p>
Role of County Government	<p>28. The County Governments shall implement and enforce food safety control measures within their counties including; -</p> <ul style="list-style-type: none"> a. Registration and licencing of food business operators within the counties

	<ul style="list-style-type: none"> b. Undertake capacity building on food safety within the Counties; c. Mainstream food safety control measures in their legislation and plans d. Undertake public awareness on matters food safety e. Prepare and publish county food safety reports f. Undertake surveillance and inspections on food safety within the county
<p>County Food and Feed Safety Control Coordinating Committee.</p>	<p>29. (1) There shall be established, in each county, a County Food and Feed Safety Control Coordinating Committee comprising of County- of representatives of departments responsible for food or feed safety in a county</p> <p>(2) Members of a County Food and Feed Safety Control Coordinating Committee shall be appointed by a County Executive Committee Member;</p> <p>(3) A County Executive Committee Member shall convene the first meeting of a County Food and feed Safety Control Coordinating Committee.</p> <p>(4) The Chairperson of a County Food and Feed Safety Control Coordinating Committee shall be elected from among County the members appointed under section (1).</p> <p>(5) The chairperson elected in subsection (4) shall hold office for a non-renewable term of three years.</p>
<p>Functions of a County Food and Feed Safety Control Coordinating Committee.</p>	<p>30. (1) A County Food and Feed Safety Control Coordinating Committee shall:</p> <ul style="list-style-type: none"> (a) be the platform for consultation and cooperation among Subject matter specialists in the implementation of the Multi Annual National Control Plan; and (b) assist the chairperson in the preparation of the annual county food safety report.
<p>Functions of the chairperson of a County Food Safety Control Coordinating Committee.</p>	<p>31. (1) The Chairperson of a County Food and Feed Safety Control Coordination Committee shall:</p> <ul style="list-style-type: none"> (a) in consultation and cooperation with the Food Safety Controller, coordinate the Subject matter specialists involved in the implementation of the Multi Annual National Control Plan at the county level; (b) receive and analyze reports by the Subject matter specialists and provide feedback;

	<p>(c) in collaboration with the Subject matter specialists, monitor and evaluate implementation of the Multi Annual National Control Plan at the county level;</p> <p>(d) liaise with the Subject matter specialists to address policy gaps and inadequate regulation of the food safety control system in the county to enhance synergy and efficiency; and</p> <p>(e) prepare an annual county food safety report.</p> <p>(2) The chairperson of a County Food Safety Control Coordination Committee shall share the annual county food safety report with –</p> <p>(a) the County Executive Committee Member;</p> <p>(b) the National Competent Authorities; and</p> <p>(c) Subject matter specialists in the County.</p> <p>(3) The County Executive Committee Member shall share the annual county food safety report with the county assembly.</p> <p>(4) Failure to comply with any provision under this section shall constitute an offense.</p>
<p>Meetings of a County Food Safety Control Coordination Committee.</p>	<p>32. The conduct of business and affairs of a County Food Safety Control Coordination Committee shall be as provided for in the Fourth Schedule, although it may regulate its own procedure.</p>
<p>Financing of the functions of a County Food Safety Control Committee.</p>	<p>33. Each County Competent authority in a county shall in their annual budgetary allocations, set aside adequate funds for financing of the operations and activities of the County Food and Feed Safety Control Coordination Committee.</p>
<p>County Food and Feed Safety Control Coordinating Committee.</p>	<p>34. (1) There shall be established, in each county, a County Food and Feed Safety Control Coordinating Committee comprising of County- of representatives of departments responsible for food or feed safety in a county</p> <p>(2) Members of a County Food and Feed Safety Control Coordinating Committee shall be appointed by a County Executive Committee Member;</p> <p>(3) A County Executive Committee Member shall convene the first meeting of a County Food and feed Safety Control Coordinating Committee.</p>

	<p>(4) The Chairperson of a County Food and Feed Safety Control Coordinating Committee shall be elected from among County the members appointed under section (1).</p> <p>(4) The chairperson elected in subsection (4) shall hold office for a non-renewable term of three years.</p>
	PART IV: FINANCIAL PROVISIONS
Funds of the Office of the Controller.	<p>35. The funds and assets of the Office of the Controller shall consist of—</p> <ul style="list-style-type: none"> (a) such moneys as may be appropriated by Parliament for the purposes of the of the Office of the Controller; (b) such moneys or assets as may accrue to or vest in the Office of the Controller in the course of the exercise of its powers or the performance of its functions under this Act; (c) such moneys as may be payable to the Office of the Controller pursuant to this Act or any other written law; (d) such gifts as may be given to the Office of the Controller; <ul style="list-style-type: none"> (a) investment income of the the Office of the Controller subject to approval by Parliament; and (b) all monies from any other source donated or lent to the Office of the Controller, provided that such monies shall be disclosed to the National Treasury and Controller of Budget.
Annual estimates.	<p>36. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Office of the Controller for that financial year.</p> <p>(2) The annual estimates shall make provision for all estimated expenditure of the Office of the Controller for the financial year concerned, and in particular shall provide for-</p> <ul style="list-style-type: none"> (a) the payment of the salaries, allowances and other charges in respect of the officers, members of staff, or agents of the Office of the Controller; (b) the payment of pensions, gratuities and other charges in respect of retirement benefits payable to the members of staff of the Office of the Controller; (c) the proper maintenance of the buildings and grounds of the Office of the Controller; (d) the proper maintenance, repair and replacement of the equipment and other movable property of the Office of the Controller; and

	<p>(e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance, replacement of buildings or equipment, or in respect of such other matters as the Board may deem fit.</p> <p>(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the Cabinet Secretary for approval.</p> <p>(4) No expenditure shall be incurred for the purposes of the Office of the Controller except in accordance with the annual estimates approved under subsection (3), or in pursuit of an authorisation of the Board given with prior written approval of the Cabinet Secretary, and the Principal Secretary of the National Treasury.</p>
Accounts and audit.	<p>37. (1) The Board shall cause to be kept proper books and other records of accounts of the income, expenditure, assets and liabilities of the Office of the Controller.</p> <p>(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General the accounts of the Office of the Controller, in respect of that year, together with –</p> <p>(a) a statement of income and expenditure during that financial year; and</p> <p>(b) a statement of the assets and liabilities of the Office of the Controller on the last day of that financial year.</p> <p>(3) The accounts of the Office of the Controller shall be examined, audited and reported upon annually by the Auditor-General in accordance with the provisions of the Public Audit Act.</p>
Investment of funds.	<p>38. The Board may-</p> <p>(a) invest any of the funds of the Office of the Controller in securities in which the Board may by law invest trust funds, or in any other securities which the National Treasury may, from time to time, approve;</p> <p>(b) place on deposit, with such bank or banks as it may determine, any moneys not immediately required for the purposes of the Office of the Controller.</p>
PART IV—GENERAL PROVISIONS	

Conduct of business	<p>39. (1) Notwithstanding the enactment of this Act, National Competent Authorities shall continue performing their regulatory mandates and functions under their respective legislation.</p> <p>(2) For the purpose of implementing this Act, the Controller shall in consultation with the National Competent Authorities responsible, provide direction on where there are overlaps or conflict in mandates.</p>
Protection from personal liability	<p>40. (1) Subject to the generality of these provisions, the food safety Controller shall not in any matter or thing done bonafide in exercise of functions of the service render any member or officer or employee or agent or person acting on his directions, personally or liable to any action, claim or demand whatsoever.</p> <p>(2) The provision of the above subsection (1) shall not relieve the Controller's office of the liabilities to pay compensation or damages to any person for any injury.</p>
Dispute resolution	<p>41. (1) Any dispute that may arise in respect of the National Competent Authorities, shall in the first instance be referred to the Controller for resolution in line with existing Government guidelines.</p> <p>(2) The Controller shall refer any dispute by food business operators in his attention to existing legislation.</p>
Supersession	<p>42. Where there is conflict between the provisions of this Act and the provisions of any Written law with regard to powers or functions of the Controller under this Act, the provisions of this Act shall prevail</p>
Addressing regulatory gap	<p>43. (1) Where the Controller identifies a regulatory gap not assigned to a National Competent Authority, the Controller shall in the first instance take up that role until such time that the relevant National Competent Authority has made relevant provisions to remedy the gap.</p> <p>(2) At the advice of the Food safety controller the relevant Cabinet Secretary may make regulations under the relevant Act</p>
General penalty.	<p>44. A person who commits an offence under this Act for which no penalty is prescribed, shall on conviction, and in the case of a –</p> <p>(a) first offence, be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months; and</p> <p>(b) second or subsequent offence, be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.</p>
Regulations.	<p>45. (1) The Cabinet Secretary shall in consultations with the Controller make regulations generally for the better carrying into effect the provisions of this Act.</p>

	<p>(2) Despite subsection (1), the Cabinet Secretary in consultation with the Controller and National Competent Authorities may make Regulations on the—</p> <ul style="list-style-type: none"> (a) on Risk Analysis. (b) on Food Traceability. (c) On for Third Party Authorization. (d) designation of laboratories <p>(3) Any other regulation necessary for better realization of the objects of this Act.</p>
Consequential amendments and repeal.	46.

FOOD SAFETY BILL DRAFT ONE

FISRT SCHEDULE
AGENCIES IN FOOD SAFETY IN KENYA

S/No.	Food Safety Agency	Role in Food Safety	Enabling Legislation
1	Ministry of Health;	Food Safety Control and Risk Management in foods from the market to areas of consumption, export and imports	Food Drugs and Chemical Substances Act Cap 254 242 356 Breast Milk Substitutes Act
2	Kenya Bureau of Standards;	Standardization in Food Quality and safety, metrology, conformity assessment	The Standards Act Cap 496
3	The Directorate of Veterinary Services;	Inspection and Certification of Foods of Animal Origin	Meat Control Act, 356, Animal Diseases Act 364, Fertilizers and animal foodstuffs act CAP 345
4	The Kenya Fisheries Services;	Ensure that the fish, fisheries products and fish feeds that are placed in the market are safe and of good quality	The Fisheries Management and Development Act 2016
5	Agriculture and Food Authority;	regulation of food Safety of foods of plant origin in production. Transportation, storage, marketing, processing, imported and exported	Agriculture and Food Authority Act and the Crops Act
6	Kenya Plant Health Inspectorate Service (KEPHIS)	Safety of food of plant origin in the Country, imported or exported	KEPHIS Act; Plant Protection Act 324
7	Pest Control Products Board	Regulate registration of pest control products on foods of plant origin and monitor residues	Pest Control Products Act 346
8	The Veterinary Medicines Directorate	Regulate safe use of veterinary medicines including pest control products on animals	Veterinary Surgeons and Veterinary Paraprofessionals Act, Veterinary Medicines Regulations
9	Kenya Dairy Board	Regulate production and safety of dairy products	Dairy Industry Act CAP 336

10	County Governments	implement and Enforce food safety control measures	Various Acts of Parliament and County Legislations
11	National Biosafety Authority		
12	Kenya Nuclear Regulatory Authority		
13	Any other food control agency established by law	Regulate all the unregulated aspects along the food safety continuum	Several laws under development (the Livestock Bill, Trade Bill)

FOOD SAFETY BILL DRAFT ONE

SECOND SCHEDULE

S/No.	Food Safety Agency							
1	Ministry of Health;							
2	Kenya Bureau of Standards;							
3	The Directorate of Veterinary Services;							
4	The Kenya Fisheries Services;							
5	Agriculture and Food Authority;							
6	Kenya Plant Health Inspectorate Service (KEPHIS)							
7	Pest Control Products Board							
8	The Veterinary Medicines Directorate							
9	Kenya Dairy Board							
10	National Biosafety Authority							
11	Kenya Nuclear Regulatory Authority							
12	County Governments							
13	Any other food control agency established by law							

THIRD SCHEDULE

CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

Meetings.	<p>1. (a) The Board of the Office of the Food and Feed Safety Controller shall, at the request of the Chairperson, meet at least twice in each financial year and not more than four months shall lapse between the date of one meeting and the date of the next meeting.</p> <p>(b) Notwithstanding paragraph (1), the Chairperson may on his own motion or on requisition in writing by at least one third of the members, convene a special meeting of the Board at any time for the transaction of the business of the Board.</p> <p>(c) Unless one third of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.</p> <p>(d) The Chairperson shall preside at every meeting of the Board at which the Chairperson is present but in the Chairperson's absence, any other member designated by the chairperson in writing shall preside.</p> <p>(e) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the Chairperson or a person presiding shall have a casting vote.</p>
Quorum.	<p>2. The quorum at a meeting of the Board shall be one third of the members or a greater number determined by the Board, in respect of an important matter.</p>
Disclosure of interest.	<p>3. If a member of the Board has any direct or indirect interest in any matter which is the subject of consideration at a meeting of the Board, the member shall, at the meeting, disclose the fact to the Board and shall take no part in the consideration or discussion of or vote on any question with respect to the matter.</p>
Vacation of office.	<p>4. (a) A member of the Board, other than an ex-officio member, shall vacate office on any of the following grounds-</p> <ul style="list-style-type: none">(a) upon the expiry of his appointment;(b) upon his death;(c) if he is adjudged bankrupt;(d) if he is sentenced for any offence against any written law to a term of imprisonment of six months or more;(e) if he is convicted of an offence involving fraud, dishonesty or moral improbity;(f) if he is absent, without permission of the chairperson of the Board, from three successive meetings of the Board of which he has received notice;(g) upon notice in writing of his intention to resign from his office;

	<p>(h) if in the opinion of the Board, he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member of the Board; or</p> <p>(i) upon the commission of an offence under this Act.</p>
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FOURTH SCHEDULE

CONDUCT OF BUSINESS AND AFFAIRS OF A COUNTY FOOD SAFETY CONTROL COORDINATION COMMITTEE

Meetings.	<p>1. (a) A County Food Safety Control Coordination Committee shall, at the request of the Chairperson, meet at least twice in each financial year and not more than four months shall lapse between the date of one meeting and the date of the next meeting.</p> <p>(b) Notwithstanding paragraph (1), the Chairperson may on his own motion or on requisition in writing by at least one third of the members, convene a special meeting of the Committee at any time for the transaction of the business of the Committee.</p> <p>(c) Unless one third of the total members of the Committee otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Committee.</p> <p>(d) The Chairperson shall preside at every meeting of the Committee at which the Chairperson is present but in the Chairperson's absence, any other member designated by the chairperson in writing shall preside.</p> <p>(e) Unless a unanimous decision is reached, a decision on any matter before the Committee shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the Chairperson or a person presiding shall have a casting vote.</p>
Quorum.	<p>2. The quorum at a meeting of the Committee shall be one third of the members or a greater number determined by the Committee, in respect of an important matter.</p>
Disclosure of interest.	<p>3. If a member of the Committee has any direct or indirect interest in any matter which is the subject of consideration at a meeting of the Committee, the member shall, at the meeting, disclose the fact to the Board and shall take no part in the consideration or discussion of or vote on any question with respect to the matter.</p>
Vacation of office.	<p>4. (a) A member of the Committee, other than an ex-officio member, shall vacate office on any of the following grounds-</p> <p>(a) upon the expiry of his appointment;</p> <p>(b) upon his death;</p> <p>(c) if he is adjudged bankrupt;</p> <p>(d) if he is sentenced for any offence against any written law to a term of imprisonment of six months or more;</p> <p>(e) if he is convicted of an offence involving fraud, dishonesty or moral improbity;</p>

	<p>(f) if he is absent, without permission of the chairperson of the Board, from three successive meetings of the Board of which he has received notice;</p> <p>(g) upon notice in writing of his intention to resign from his office;</p> <p>(h) if in the opinion of the Board, he becomes, by reason of mental or physical infirmity, incapable of performing his duties as a member of the Board; or</p> <p>(i) upon the commission of an offence under this Act.</p>
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FOOD SAFETY BILL DRAFT ONE