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THE UNITED REPUBLIC OF TANZANIA



CHAPTER 1

THE INTERPRETATION OF LAWS ACT

[PRINCIPAL LEGISLATION]

REVISED EDITION 2020

This Edition of the Interpretation of Laws Act, Chapter 1, has been revised up to and including 30th June, 2020 and is printed under the authority of section 4 of the Laws Revision Act, Chapter 4.

Dodoma,
19th September, 2020

ADELARDUS L. KILANGI
Attorney General

CHAPTER 1

THE INTERPRETATION OF LAWS ACT

[PRINCIPAL LEGISLATION]

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CHAPTER 1

THE INTERPRETATION OF LAWS ACT

An Act to consolidate the law relating to the construction, application, interpretation and operation of written laws and to provide for related matters.

[1st SEPTEMBER 2004]
[G.N No 312 of 2004]

Acts Nos.
4 of 1996
17 of 1996
7 of 2018
13 of 2019
3 of 2020
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**PART I
PRELIMINARY PROVISIONS**

- Short title 1.-(1) This Act may be cited as the Interpretation of Laws Act.
- (2) [Omitted].
- (3) In this section “the Revised Edition 2002” means the Laws of Tanzania as revised and Published.
- Application 2.-(1) This Act shall apply to Mainland Tanzania as well as to Tanzania Zanzibar in relation to all laws which apply throughout the United Republic.
- (2) The provisions of this Act shall apply to, and in relation to, every written law, and every public document whether the law or public document was enacted, passed, made or issued before or after the commencement of this Act, unless in relation to a particular written law or document-
- (a) express provision to the contrary is made in an Act;
- (b) in the case of an Act, the intent and object of the Act or something in the subject or context of the Act is

- inconsistent with such application; or
- (c) in the case of subsidiary legislation, the intent and object of the Act under which that subsidiary legislation is made is inconsistent with such application.

(3) The provisions of this Act shall apply to this Act as they apply to an Act passed after this Act commences.

(4) In sections 13, 15, 19, 20, 22, 23, 24, 33, 36(6), 43, 46, or 62 a reference to any Act, written law, enactment or subsidiary legislation passed or made after the commencement of this Act shall be construed so as not to include any enactment which continues or directly amends, but does not repeal entirely, the text of an existing written law.

Act to bind
the Republic

3. This Act binds the United Republic.

PART II

GENERAL PROVISIONS OF INTERPRETATION

Definitions
applicable to
written laws
Act No.
7 of 2018
s.19
Cap. 16

4. In this Act and every other written law-

“abet” with its grammatical variations and cognate expressions, has the same meaning as in the Penal Code;

“act” when used with reference to an offence or civil wrong, includes an omission and extends to a series of acts or omissions or a series of acts and omissions;

“Act” when used with reference to legislation means any Act, Decree or Ordinance passed by the Parliament of the United Republic or, as the case may be, the House of Representatives of Zanzibar, or by any Council previously having authority or power to pass laws in Tanzania or, as the case may be, Zanzibar, such Act, Decree or Ordinance having been assented to by or on behalf of the President or other proper legislative authority but does not include an Act of the Community;

“administrative officer” means an administrative officer of any grade;

“advocate” means a person entitled to practice as an advocate in the High Court or courts subordinate under the provisions of

- the law for the time being applicable to advocates;
- “affidavit” in the case of persons allowed by law to affirm or to declare instead of swearing, includes affirmation and declaration;
- “amend” means replace, substitute, in whole or in part, add to or vary, and the doing of any two or more of such things simultaneously or by the same written law;
- “applied law” means any Indian Act or an Act of the United Kingdom including an Order-in-Council which for the time being extends and applies to Tanzania;
- “by-law” means a by-law made under the Act in which the term is used;
- “calendar month” means the period beginning on the first day of a month and expiring on the last day of that month;
- “calendar year” means the period commencing on 1st day of January in a year and expiring on the 31st day of December in that year;
- “chapter”, “part”, “section” and “Schedule” denote respectively a chapter, part, and section of and Schedule to the Act in which the word occurs;
- “Chief Secretary” means the person who is appointed Permanent Secretary in the Office of the President;
- Cap. 11 “civil magistrate” means a resident magistrate, and includes any other person appointed as a civil magistrate under the Magistrates’ Courts Act;
- “coin” means any coin of any metal, whether precious, semi-precious or non-precious, which is for the time being legal currency in the United Republic;
- “commencement” when used with reference to an enactment, means the time at which the enactment comes or came into operation;
- “common law” means the common law of England;
- “the Commonwealth” means collectively the members of the Commonwealth and any dependency of a member of the Commonwealth; and “member of the Commonwealth” or “Commonwealth country” means the United Republic and any country specified in the Schedule to this Act;
- “the Community” means the East African Community established by the Treaty;

- Cap.2 “the Consolidated Fund” means the Consolidated Fund of the United Republic;
- Cap.2 “the Constitution” means the Constitution of the United Republic of Tanzania, 1977, (entitled in Kiswahili “Katiba ya Jamhuri ya Muungano wa Tanzania ya Mwaka, 1977”) enacted by the Constituent Assembly of the United Republic;
- “contravene” in relation to any requirement or condition prescribed in an written law or in any grant, permit, lease, licence, or other authority under a written law, includes a failure to comply with that requirement or condition;
- “court” means any court in the United Republic, of competent jurisdiction;
- Cap.141 “Court of Appeal” means the court to which appeals lie under Part II of the Appellate Jurisdiction Act;
- “Crown Agents” means the persons for the time being acting as Crown Agents for Overseas Governments and Administrations or any of them;
- Cap 358 “Customary Law” means any rule or body of rules whereby rights and duties are acquired or imposed, established by usage in any African Community in Tanzania and accepted by such community in general as having the force of law, including any declaration or modification of customary law made or deemed to have been made under section 12 of the Judicature and Application of Laws Act, and references to “native law” or to “native law and custom” shall be similarly construed;
- “definition” means the interpretation given by any written law to a word or expression;
- Cap.2 “Deputy Minister” means a Deputy Minister appointed under Article 55 of the Constitution;
- “District” means any part of the United Republic proclaimed or deemed to be or to have been proclaimed under Article 2(2) of the Constitution to be a district;
- “document” includes any publication and any matter written, expressed, or described upon any substance by means of letters, figures, or marks, or by more than one of those means, which is intended to be used or may be used for the purpose of recording that matter;
- “East African Authority” means the East African Authority established by the Treaty;
- “enactment” means a written law or any portion of a written law;

- “estate”, in relation to land, includes any legal or equitable estate or interest, easement, right, title, claim, demand, charge, lien, or encumbrance in, over, to, or in respect of the land;
- “financial year” means the period of 12 months ending on 30th June;
- “Foreign Service Officer” means an officer holding or acting in an appointment in the Foreign Service of the United Republic;
- “function” includes powers, duties, responsibilities, authorities, and jurisdictions;
- “*Gazette*” or “*Government Gazette*” means the *Gazette* printed and published by the Government Printer by order of the Government of the United Republic and includes supplements and any special or *Extraordinary Gazette* so published;
- “General Notice” means any announcement not of a legislative character made in the *Gazette* by or with the authority of the President or a Minister;
- “Government” means the Government of the United Republic;
- “Government analyst” includes any assistant or other analyst employed by the Government;
- “Government Notice” means any subsidiary legislation made by the President, a Minister or other public officer or authority pursuant to a power conferred by any Act;
- “Government Printer” means the Government Printer of the United Republic and any other printer purporting to be the printer authorised to print Acts and other documents of the Government;
- “the High Commission” means the High Commission established by the East African (High Commission) Order-in-Council, 1947 to 1961 and reference in any written law to the High Commission shall be construed-
- (a) for the period during which the East African Common Services Organisation Agreement (Implementation) Ordinance was in force, as references to the Common Services Organisation;
 - (b) for the period after the repeal of that Ordinance, as references to the Community;
- “the High Court” means the High Court of the United Republic or the High Court of Zanzibar;
- “Imperial Act” means an Act passed by the Parliament of the United Kingdom;

“individual” means a material person;

“Judge” means a Judge of the High Court, and includes an acting Judge;

“Justice” means a Justice of the Peace;

“land” includes buildings and other structures, and covered with water, and any estate, interest, easement servitude or right in or over land;

“Law Officer” means the Attorney General, the Deputy Attorney General, the Director of Public Prosecutions, the Administrator-General, the Solicitor-General, the Deputy Director of Public Prosecutions, the Deputy Administrator-General, the Deputy Solicitor-General, the Chief Parliamentary Draftsman and every legally qualified State Attorney in the public service of the rank of or above Senior State Attorney or Senior Parliamentary Draftsman;

“local government authority” means-

Cap. 287 (a) a village council, a township, a kitongoji, a district council or any other local government authority established under the Local Government (District Authorities) Act; or

Cap. 288 (b) an urban ward, a mtaa, a town council, a municipal council or city council established under the Local Government (Urban Authorities) Act;

Cap. 11 “magistrate” means a resident magistrate, a district magistrate, a primary court magistrate and any other description of magistrate provided for by or under the Magistrates’ Courts Act;

Cap. 29 “marriage” means a marriage contracted in accordance with, or recognized as valid by the Law of Marriage Act, and the terms “husband”, “wife” and “married person” shall be construed accordingly;

“Minister” has the meaning given in section 9 of this Act and in addition, includes the Vice President, the Prime Minister; and “the Minister” means the Minister responsible for the matter in question and includes the Deputy Minister for the time being performing the functions of that Minister or, if there is no minister responsible for the matter in question, means the President;

“minor” means a person who has not attained the apparent age of eighteen years and the terms “infant” and “infant child” shall be construed accordingly;

“month” means a calendar month unless words be added showing a lunar month is intended; where a month is expressed as beginning, or is required to be reckoned as beginning, on a date other than the first day of any month, the month shall be deemed to expire immediately before the commencement of the corresponding date in the next following month, whether the period so encompassed is of a longer or shorter period than thirty days;

“native” means any member of an African race;

“oath” and “affidavit”, in the case of persons required or allowed to affirm or declare instead of swearing, include affirmation and declaration, and “swear”, in the like case, includes “affirm” and “declare”;

“Ordinance” includes any Ordinance or any laws, Proclamations or other Legislative Acts issued, made or done before the date of the Tanganyika Order in Council, 1920, and validated by the said Order in Council, and any subsidiary legislation made and in force under an Ordinance, and (save in the definitions “Act” and “Parliament” in this section) includes an Act of Parliament and subsidiary legislation made under such Act;

“Parliament”-

- (a) in an Ordinance, or a public document made or issued before the ninth day of December, 1961, means the Parliament of the United Kingdom and “Imperial Parliament” has the same meaning;
- (b) in an Act of the Parliament of Tanganyika or of the United Republic, or a public document made or issued after the eighth day of December, 1961, or in an Act of the Constituent Assembly of Tanganyika, means the Parliament of the United Republic and when used in the expression “Act of Parliament” includes a reference to the Constituent Assembly of Tanganyika;

“perform” in relation to functions, includes the exercise of a power, responsibility, authority, or jurisdiction;

“Permanent Secretary” means a person appointed by the President to be a Permanent Secretary, and reference in any Act to Principal Secretary shall be construed as reference to Permanent Secretary;

“person” means any word or expression descriptive of a person and includes a public body, company, or association or body of persons, corporate or unincorporated;

- Cap. 322 “police officer” means any member of the Police Force of and above the rank of constable as defined in the Police Force and Auxiliary Services Act;
- “power” includes any privilege, authority, or discretion;
- “prescribed” means-
- (a) prescribed by or under the written law in which the word occurs; and
 - (b) in a case where reference is made to anything prescribed by a written law other than the law in which the word occurs, includes anything prescribed by subsidiary legislation made under that other written law;
- Cap. 2 “President” means the President of the United Republic, and includes any person performing the functions of the President under Article 137 of the Constitution;
- “proclamation” means proclamation made by the President and published in the *Gazette*;
- “publication” means-
- (a) all written and printed matter;
 - (b) any record, tape, wire, perforated roll, cinematograph film or image or other contrivance by means of which any words or ideas may be mechanically, electronically, or electrically produced, reproduced, represented, or conveyed;
 - (c) anything whether of a similar nature to that described in paragraph (b) of this definition or not, containing any visible representation, or by its form, shape, or in any manner, capable of producing, reproducing, representing, or conveying words or ideas; and
 - (d) every copy and reproduction of a publication as defined in paragraph (a), (b), or (c);
- Cap. 212 “public corporation” means a body corporate established by or under any written law, other than the Companies Act, and includes a corporation sole so established;
- Cap. 35 “public holiday” means a day which is declared to be or proclaimed as a public holiday under the Public Holidays Act;
- “public officer” or “public department” extends to and includes every officer or department invested with or performing duties of a public nature, whether under the immediate

control of the President or not, and includes an officer or department under the control of a local authority, the Community, or a public corporation;

“public place” includes-

- (a) any public street or way or pier, or any public garden;
- (b) any building, place or conveyance to which, for the time being, the public are entitled or permitted to have access, either unconditionally or upon condition or making payment; and
- (c) any building, place or conveyance which is for the time being used for any public or religious meeting or assembly or as an open court;

“public seal” means the public seal of the United Republic;

Cap. 2

“Region” means any part of the United Republic proclaimed or deemed to be proclaimed by the President under Article 2(2) of the Constitution to be a region;

“Regional Commissioner” means a person appointed by the President to be a regional commissioner, and “the Regional Commissioner” means the regional commissioner of the region concerned;

“regulation” means a regulation made under the Act in which the term is used;

“repeal” includes rescind, revoke, cancel or delete;

“the Republic” means the Republic of Tanganyika and includes the United Republic;

Cap.11

“resident magistrate” means a resident magistrate of any grade appointed as such under the Magistrates’ Courts Act;

“revenue officer” means an officer appointed by the Permanent Secretary to the Treasury to perform duties in connection with the collection of revenue of the United Republic;

“rule” means a rule made under the Act in which the term is used;

“rules of court” when used in relation to any court, means rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of such court;

“sell” includes barter, exchange, offer to sell and expose for sale;

“service” where an act authorises or requires any document to be served on any person, whether the expression “serve”, or the expression “give” or “send”, or any other expression is used, then, unless a contrary intention appears, the service shall be

effected by properly addressing and posting, after payment of appropriate charges, a letter containing the document, and, unless the contrary is proved, service shall be deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post;

“sign” with its grammatical variations and cognate expressions, includes with reference to a person who is unable to write his name, “mark”, with its grammatical variations and cognate expressions;

“sitting days” in relation to the National Assembly, means days on which the National Assembly actually sits;

“statutory declaration”, if made-

Cap.34

- (a) in Tanzania, means a declaration made under the Oaths and Statutory Declarations Act;
- (b) in any other Commonwealth country, means a declaration on oath made before a justice of peace, notary public, or other person having authority under any law in force to take or receive a declaration;
- (c) in any other country, means a declaration on oath made before a Foreign Service Officer having authority under any written law to administer oaths or before any other person who may be specified by the Minister responsible for legal affairs by an Order in the *Gazette*;

“subsidiary legislation” means any order, proclamation, rule, rule of court, regulation, notice, by-law or instrument made under any Act or other lawful authority;

summary conviction” means a conviction by a court of summary jurisdiction;

“swear” in the case of person allowed by law to affirm or declare instead of to swear, includes to affirm and to declare;

“territorial waters” means any territorial or inland waters of the United Republic;

“the Territory” means Tanganyika;

“the Treaty” means the Treaty of East African Co-operation set out in the Schedule to the Treaty of the East African Co-operation (Implementation) Act, 1967, which has been repealed by the East African Community Mediation Agreement Act;

Cap.232

“under” in relation to a written law or a provision of a written law, includes “by” “in accordance with”, “pursuant to” and “by

virtue of”;

“Union Day” means the 26th day of April, 1964;

“the United Kingdom” means Great Britain and Northern Ireland;

“the United Republic” means-

- (a) for the period subsequent to 11th December, 1964, the United Republic of Tanzania;
- (b) for the period commencing on Union Day and expiring on 11th December, 1964, the United Republic of Tanganyika and Zanzibar;

“Vice-President” means a Vice-President of the United Republic;

“will” includes codicil;

“words” includes figures and symbols;

“writing”, and any expression referring to writing include printing, lithography, typewriting, photography and other modes of representing or reproducing words in visible form;

“written law” means all Acts for the time being in force and all subsidiary legislation for the time being in force, and includes the Acts of the Community and all applied laws;

“year” means a period of twelve months.

Application
of definitions

5. Definitions or rules of interpretation contained in a written law apply to the construction of the provisions of the written law that contain those definitions or rules of interpretation as well as, to other provisions of that written law.

Laws
always
speaking

6. A written law shall be considered as always speaking and when a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to every part of the law according to its true spirit, intent and meaning.

Parts of
speech and
grammatical
forms

7. Where a word or phrase is defined in a written law, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

Gender and
number

8. In any written law-

- (a) words importing the masculine gender include the feminine;
- (b) words importing the feminine gender include the masculine;
- (c) words in the singular number include the plural and

words in the plural number include the singular.

Reference in
written law
to the
Minister

9. A reference in a written law to the Minister shall be construed-

- (a) in the case of a reference in an Act, as a reference to the Minister to whom the administration of the Act, or the provisions of the Act, in which or in respect of which the term is used, is for the time being committed by the President;
- (b) in the case of a reference in subsidiary legislation, as a reference to the Minister to whom the administration of the Act, or provision of the Act, under which the subsidiary legislation is made, is for the time being committed by the President; and
- (c) to include a Minister acting for or on behalf of the Minister referred to in paragraph (a) or (b), as the case may require.

References
by number to
be inclusive

10. A reference in a written law by number, letter or by number and letter to two or more portions of a written law shall be construed as including the portion described by the reference first mentioned and the portion described by the reference last mentioned.

Construction
of
Internal
references to
section, etc.

11.-(1) Where in an Act reference is made to a Chapter, Part, section, Schedule, appendix or form without anything in the context to indicate that a reference to Chapter, Part, section, Schedule, appendix, or form of or to some other Act is intended, the reference shall be construed as a reference to a Part, Chapter, section, Schedule, appendix, or form of or to the Act in which the reference is made.

(2) Where in a provision of an Act reference is made to a subsection, paragraph, subparagraph or other division without anything in the context to indicate that a reference to a subsection, paragraph, subparagraph or other division of some other provision is intended, the reference shall be construed as a reference to a subsection, paragraph, subparagraph, or other division of the provision in which the reference is made.

(3) Where in a Schedule to an Act reference is made to a clause, sub-clause, paragraph or other divisions without anything in the context to indicate that a reference to a clause, sub-clause, paragraph or other division of some other provision is intended, the reference shall be construed as a reference to a clause, sub-

clause, paragraph or other division of the Schedule or provision of the Schedule in which the reference is made.

(4) The provisions of subsections (1), (2), and (3) shall apply, subject to the necessary modifications, to the construction of subsidiary legislation.

Reference to
written law
as amended

12.-(1) A reference in a written law to a written law shall be deemed to include a reference to such written law as it may be amended.

(2) A reference in a written law to a provision of a written law shall be construed as a reference to such provision as it may be amended.

(3) A reference in a written law to an Imperial Act, or to a provision of an Imperial Act, shall be construed so as to include a reference to such Act or provision as it may be amended.

Disjunctive
construction
of “or”

13. In relation to a written law passed or made after the commencement of this Act, but subject to section 2(4), “or”, “other” and “otherwise” shall be construed disjunctively and not as implying similarity unless the word “similar” or some other word of like meaning is added.

PART III COMMENCEMENT AND CITATION OF LAWS

Date of
commencem
ent of Act

14. Every Act shall come into operation on the date of its publication in the *Gazette* or, if it is provided either in that Act or in any other written law, that it shall come into operation on some other date, on that date.

Time of
commencem
ent of written
laws

15. Where any written law, or portion of a written law, comes into operation on a particular day, it shall come into operation at the beginning of that day.

Effective
date of
commencem
ent
provisions
where notice
of
commencem
ent required

16. Notwithstanding section 14, where an Act provides that the Act, or portion of the Act, is to come into operation on a day to be fixed by notice, that provision and the provision providing for the short title of the Act, unless it is otherwise expressly provided, shall come into operation on the day on which the Act receives the Presidential Assent.

Construction
of power to
fix date of
commencem
ent

- 17.** A power to fix a day on which an Act shall come into operation does not include power to fix-
- (a) a day prior to the day on which the proclamation fixing the day is published in the *Gazette*; or
 - (b) different days for different provisions of that Act, unless express provision is made in that behalf.

Evidence of
date of
assent

18. Where a date appearing on a copy of an Act printed, or purporting to be printed, by the Government Printer, purports to be the date on which the President assented to such Act or to a portion of it, that date as so appearing shall be evidence that such date was the date on which the President so assented, and shall be judicially noticed accordingly.

Exercise of
powers
before
commencem
ent

19.-(1) Where a provision of an Act does not commence on the passing of the Act and that provision would, if it had commenced, confer power to-

- (a) make an instrument of a legislative or administrative character;
- (b) give or serve a notice or other document;
- (c) appoint a person to a specified office;
- (d) establish a specified body of persons, whether incorporated or not; or
- (e) do any other thing for the purposes of the Act,

then the power may, notwithstanding that provision has not commenced, but subject to subsections (3) and (4), be exercised at any time after the passing of the Act to the extent that it is necessary or expedient for the purpose of bringing the Act, or provisions of the Act, into operation, or giving full effect to the Act, or provisions of the Act, when or after that provision commences.

(2) Where-

- (a) a provision of an Act does not commence on the passing of the Act and the provision would, if it had commenced, amend another Act; and
- (b) a provision of that other Act would, if the first-mentioned provision had commenced, confer power to:
 - (i) make an instrument of a legislative or administrative character;
 - (ii) give or serve a notice or other document;
 - (iii) appoint a person to a specified office;
 - (iv) establish a specified body of persons whether incorporate or not; or

(v) do any other thing for the purposes of that other Act,
then the power may, notwithstanding that the first-mentioned provisions has not commenced, but subject to subsections (3) and (4), be exercised at any time after the passing of the Act in which the first-mentioned provision is contained to the extent that it is necessary or expedient for the purpose of giving full effect to that other Act, or provisions of that other Act, when or after the first-mentioned provision commences.

(3) Where a power to make an instrument of a legislative or administrative character, or to give or serve a notice or other document, is exercised as provided in subsection (1) or in subsection (2), that instrument, notice, or document shall take effect-

- (a) on the day on which the provision referred to in subsection (1) or, as the case may be, the provision first mentioned in subsection (2) commences; or
- (b) on the day on which it would have taken effect, if at the time when the instrument was made or the notice or document was given or served, the provision so mentioned or first mentioned had commenced,
whichever is the later.

(4) Where a power to appoint a person to a specified office, or to establish a specified body of persons, is exercised as provided in subsection (1) or subsection (2), the person so appointed may act in that office, or, as the case may be, the body so established may meet and perform and exercise its functions, duties, and powers, but only for purposes referred to in subsection (1) or (2) (whichever of those subsection is applicable); and for the purposes of any provision as to the duration of the term is deemed not to begin until the relevant provision referred to in subsection (1) or (2), as the case may be, commences.

(5) Subject to subsection (4) of section 2, this section applies to Acts passed after the commencement of this Act.

Citation of
written laws

20.-(1) Where a written law is referred to, it shall be sufficient for all purposes to cite or refer to that written law by-

- (a) the short title or the citation (if any) by which it was made citable;
- (b) in the case of an Act, the year in which it was passed and its number among the Acts of that year; or

(c) in the case of an Act, the Chapter number given to the Act in any revised edition of the laws.

(2) A provision of a written law may be cited by reference to the Part, section, regulation, rule, clause or other division of the written law in which the provision is contained.

(3) The citation of or reference to any written law shall in all cases be made according to the copy of such written law printed, or purporting to be printed, by the Government Printer.

References
in written
law to day of
commencem
ent

21. A reference in a written law to the day of coming into operation or to the commencement of a written law shall, where different provisions of the written law come or came into operation on different days, be construed as a reference to the day of coming into operation of the appropriate provisions of that written law.

PART IV PROVISIONS AS TO ENACTMENT AND OPERATION OF WRITTEN LAW

Acts to be
public Acts

22. Every Act shall be deemed to be a public Act unless the contrary is expressly provided in the Act and shall be judicially noticed as such.

Section to be
substantive
enactment

23. Every section of an Act shall take effect as a substantive enactment without introductory words.

Act may be
altered or
repealed in
same session

24. An Act may be amended or repealed in the same session of Parliament as that in which it was passed.

Preambles
and
Schedules

25.-(1) The preamble to a written law forms part of the written law and shall be construed as a part thereof intended to assist in explaining its purport and object.

(2) An Appendix or Schedule to or a table in a written law, together with any notes thereto, forms part of the written law.

Headings,
marginal
notes,
footnotes

26.-(1) The headings of the Parts, divisions and subdivisions into which a written law is divided form part of the written law.

and
rectification
of errors
Act No.
17 of 1996
Sch.

(2) A marginal note or footnote to a written law and, notwithstanding subsection (1), a heading to a section, regulation, rule, by-law, or clause of a written law shall be taken not to be part of the written law.

(3) Where there is any clerical or printing error in any Bill or Act published in the *Gazette*, the Chief Parliamentary Draftsman or any member of the Attorney-General's Chambers authorised in writing in that behalf by the Chief Parliamentary Draftsman, may, by order published in the *Gazette*, give directions as to the rectification of such error and every such direction shall be read as one with the Bill or Act to which it relates and such Bill or Act shall, with effect from the date of its first publication, take effect as so rectified.

PART V AMENDMENT AND REPEAL OF WRITTEN LAW

Construction
of amending
Act with
amended Act

27. Where one Act amends another Act, the amending Act shall, so far as it is consistent with the tenor thereof, and unless the contrary intention appears, be construed as one with the amended Act.

Repeal of
written law
as amended

28. Where a written law which has been amended by any other written law is repealed, such repeal shall include the repeal of all those provisions of such other written law by which the first-mentioned written law was amended.

Repeal of
repeal

29. Where a written law repeals a repealing enactment, the repeal does not revive any enactment previously repealed unless words are added reviving it.

Repeal and
substitution

30. Where a written law repeals an enactment and substitutes provisions for the repealed enactment the repealed enactment remains in operation until the substituted provisions come into operation.

Effect of
substituting
provisions

31. Where a written law repeals and re-enacts, with or without modification, any enactment-

- (a) all districts or other local divisions or areas;
- (b) all councils, corporations, boards, tribunals, commissions, trusts, or other bodies constituted, and all elections and appointments of members made;

- (c) all offices constituted and appointments of officers made;
- (d) all subsidiary legislation, warrants, certificates, and documents made; and
- (e) all other acts, matters, and things,

which, at the commencement of the repealing law, are respectively in existence, or in force or operation, under or for the purposes of such provision, shall, in so far as is consistent with the repealing law, subsist and ensure for the purposes of such law and shall continue as if the repealing law had been in operation when they respectively originated or were constituted, made or done and they had originated or been constituted, made or done under that law.

General
savings on
repeal

32.-(1) Where a written law repeals an enactment, the repeal does not, unless the contrary intention appears-

- (a) revive anything not in force or existing at the time at which the repeal takes effect;
- (b) affect the previous operation of the enactment repealed or anything duly done or suffered under that enactment;
- (c) affect any right, interest, title, power or privilege created, acquired, accrued, established or exercisable or any status or capacity existing prior to the repeal;
- (d) affect any duty, obligation, liability, or burden of proof imposed, created, or incurred prior to the repeal;
- (e) affect any penalty or forfeiture incurred or liable to be incurred in respect of an offence committed against that enactment;
- (f) affect any investigation, legal proceeding or remedy in respect of any such right, interest, title, power, privilege, status, capacity, duty, obligation, liability, burden of proof, penalty or forfeiture,

and any such investigation, legal proceeding or remedy may be instituted, continued, or enforced, and any such penalty or forfeiture may be imposed and enforced as if the repealing written law had not been passed or made.

(2) The inclusion in the repealing provisions of an enactment of any express saving with respect to the repeals effected shall not be taken to prejudice the operation of this section with respect to the effect of those and substitution repeals.

Effect of
repeal of Act
on subsidiary
legislation

33.-(1) Where an Act-

- (a) repeals an Act and substitutes other provisions; or
- (b) repeals and re-enacts an Act, with or without modification,

any subsidiary legislation made under the repealed Act and in operation immediately before the commencement of the repealing Act shall, so far as it is consistent with the repealing Act, continue in operation and have effect for all purposes as if made under the repealing Act.

(2) Subsidiary legislation which continues in operation under subsection (1), may be amended or repealed as if it has been made under the repealing Act.

Effect of
expiry of
written law

34. Upon the expiry or lapse of any enactment, the provisions of section 33 shall apply as if that enactment had been repealed.

**PART VI
PROVISIONS RELATING TO SUBSIDIARY LEGISLATION**

President
may make
subsidiary
legislation

35. Where a written law provides that subsidiary legislation may or shall be made and does not provide by whom, such subsidiary legislation made under such a provision shall be made by the President.

General
provisions
regarding
power to
make
subsidiary
legislation

36. - (1) Subsidiary legislation shall not be inconsistent with the provisions of the written law under which it is made, or of any Act, and subsidiary legislation shall be void to the extent of any such inconsistency.

(2) Where any subsidiary legislation purports to be made in exercise of a particular power or powers, it shall be deemed also to be made in exercise of all powers under which it may be made.

(3) It shall be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of subsidiary legislation have been complied with and performed.

(4) Where a written law confers a power to make subsidiary legislation, it shall be deemed also to include a power exercisable in the like manner and subject to the like conditions (if any) to

amend or repeal any such subsidiary legislation; and if the person on whom such power is conferred has been replaced wholly or in part by another person, the power conferred by this subsection upon the original person may be exercised by the replacing person concerning all matters or things within his jurisdiction as if he were the original person.

(5) Where a written law confers power on a person to make subsidiary legislation for any general purpose and also for any special purposes incidental thereto, the enumeration of the special purposes shall not derogate from the generality of the powers conferred with reference to the general purpose.

(6) Subject to subsection (4) of section 2, subsidiary legislation may provide that contravention of a provision constitutes an offence and may provide for a penalty in respect of such a contravention not exceeding a fine of six hundred thousand shillings.

(7) A power to make subsidiary legislation may be exercised-

- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or category of cases; and
- (b) so as to make, as respects the cases in relation to which it is exercised-
 - (i) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or class or cases, or different provisions for the same case or category of cases for different purposes of the legislation; or
 - (ii) any such provision either unconditionally or subject to any specified condition.

(8) Subsidiary legislation may be made-

- (a) so as to apply:
 - (i) at all times or at a specified time;
 - (ii) throughout or in a specified part of;
- (b) so as to require a matter affected by the legislation to be-
 - (i) in accordance with a specified standard or specified requirement;
 - (ii) approved by or to the satisfaction of a specified person or body or a specified class of persons or body;

- (c) so as to confer a discretionary authority on a specified person or body or a specified class of person or body; and
- (d) so as to provide, in a specified case or class of cases for the exemption of persons or things or a class of persons or things from the provisions of the subsidiary legislation, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.

(9) In subsections (7) and (8) “specified” means specified in the subsidiary legislation.

Publication
and
commencem
ent of
subsidiary
legislation

37.-(1) Where a written law confers power to make subsidiary legislation, all subsidiary legislation made under that power shall, unless the contrary intention appears-

- (a) be published in the *Gazette*;
- (b) subject to subsection (2) and to section 39, come into operation on the day of publication, or where another day is specified or provided for in the subsidiary legislation, on that day.

(2) Subsidiary legislation shall not be expressed to come into operation on a day before the day of publication in any case where, if the subsidiary legislation so came into operation-

- (a) the rights of a person (other than the Government or an institution of the Government) existing immediately before the day of publication would be affected in a manner prejudicial to that person;
- (b) liabilities would be imposed on any person (other than the Government or an institution of the Government) in respect of anything done or omitted to be done before the day of publication,

and if any provision is made in contravention of this subsection, that provision shall be void.

(3) A power to fix a day on which subsidiary legislation shall come into operation does not include power to fix different days for different provisions of that legislation unless express provision is made in that behalf.

Laying
regulations
before
National
Assembly
and
disallowance

38.-(1) All regulations shall be laid before the National Assembly within six sitting days of the National Assembly next following publication of the regulations in the *Gazette*.

(2) Notwithstanding any provision in any Act to the contrary, if the National Assembly passes a resolution disallowing any regulations of which resolution notice has been given within fourteen sitting days of the National Assembly after such regulations have been laid before it or if any regulations are not laid before the National Assembly in accordance with subsection (1), such regulations shall cease to have effect, but without affecting the validity or curing the invalidity of anything done or of the omission of anything in the meantime.

(3) Subsection (2) applies notwithstanding that the period of fourteen days referred to in that subsection, or part of that period, does not occur in or during the same session of the National Assembly, that in which the regulation is laid before the National Assembly concerned.

(4) Notwithstanding any provision in any Act to the contrary, if the National Assembly at any time passes a resolution amending any such regulation or substituting another regulation or part of a regulation for that which has been disallowed by the National Assembly under subsection (2), then on the passing of any such resolution-

- (a) amending a regulation or part of a regulation the regulation or part of a regulation so amended shall, after the expiration of seven days from the publication in the *Gazette* of the notice provided for in subsection (5), take effect as so amended;
- (b) substituting a regulation or part of a regulation in place of a regulation so substituted shall, after the expiration of seven days from the publication in the *Gazette* of the notice provided for in subsection (5), take effect in place of that for which it is so substituted.

(5) When a resolution has been passed under subsection (2) or (4), notice of such resolution shall be published in the *Gazette* within twenty one days of the passing of the resolution.

(6) Notwithstanding subsection (1) of section 34, where-

- (a) regulations are disallowed under this section; and
- (b) those regulations amended or repealed regulations that were in operation immediately before the first-

mentioned regulations commenced,
the disallowance revives the previous regulations on and after the day of the disallowance.

(7) Where a written law which empowers or directs the making of regulations by a person other than the President and requires that the regulations be confirmed or approved by the President or by any other person or institution before having the force of law, subsection (1) does not apply to such regulations unless they are confirmed or approved as so required.

(8) In this section “regulations” include rules and by-laws.

Construction of subsidiary legislation

39.-(1) Words and expressions used in subsidiary legislation shall have the same respective meaning as in the written law under which the subsidiary legislation is made.

(2) A reference in subsidiary legislation to “the Act” shall be construed as a reference to the Act under which the subsidiary legislation is made.

Citation of subsidiary legislation

40. Subsidiary legislation may be cited by reference to the short title if any, or by reference to the number of the notices under which it appeared in the *Gazette*.

Reference to written law to include subsidiary legislation

41.-(1) A reference in a written law to a written law shall be construed to include a reference to any subsidiary legislation made under that written law.

(2) A reference in a written law to an applied Act shall be construed to include a reference to any subsidiary legislation made under that Act.

Acts under subsidiary legislation deemed done under Act

42. Any act done under subsidiary legislation shall be deemed to be done under the written law under which the subsidiary legislation was made.

Fees and charges

43.-(1) Subsidiary legislation may provide for the imposition of fees and charges in respect of any matter with regard to which provision is made in such subsidiary legislation or in the written law under which such subsidiary legislation is made.

(2) Where a provision is made by subsidiary legislation in respect of fees or charges, the subsidiary legislation may provide for all or any of the following matters-

(a) specific fees or charges;

- (b) maximum or minimum fees or charges;
- (c) maximum and minimum fees or charges;
- (d) *ad valorem* fees or charges;
- (e) the payment of fees and charges either generally or under specified conditions or in specified circumstances; and
- (f) the reduction, waiver or refund, in whole or in part, of such fees or charges.

(3) Where any reduction, waiver or refund, in whole or in part, of any fee or charge is provided for by subsidiary legislation, such reduction, waiver or refund may be expressed to apply or be applicable either generally or specifically-

- (a) in respect of certain matters or transactions or classes of matter or transaction;
- (b) in respect of certain documents or classes of document;
- (c) when any event happens or ceases to happen;
- (d) in respect of certain persons or classes of person; or
- (e) in respect of any combination of such matters, transactions, documents, events, or persons, and may be expressed to apply or to be applicable subject to such conditions as may be specified in the subsidiary legislation or in the discretion of any person specified in the subsidiary legislation.

(4) Subject to subsection (4) of section 2, this section applies to subsidiary legislation made under a power conferred by an enactment passed after the commencement of this Act.

PART VII STATUTORY POWERS AND DUTIES

Time for
exercise of
power or
performance
of duty

44. Where a written law confers a power or imposes a duty, the power may be exercised and the duty shall be performed from time to time as occasion requires.

Reference to
holder of
office
includes
successors

45. Where a written law confers a power or imposes a duty on the holder of a public office as such, the power may be exercised and the duty shall be performed by the person for the time being lawfully holding, acting in, or performing the functions of the office.

Construction
of enabling
words

46.-(1) Where a written law confers upon a person power to do or enforce the doing of any act or thing, all such power shall also be deemed to be conferred on the persons as are reasonably necessary to enable him to do or to enforce the doing of the act or thing.

(2) Without prejudice to the generality of subsection (1), where a written law confers power-

- (a) to provide for, prohibit, control or regulate any matter, such power includes power to provide for the same by the licensing or registration thereof or the granting of permits and power to prohibit acts whereby the prohibition, control, or regulation of such matter might be evaded;
- (b) to grant a licence, registration, lease, right, permit, authority, approval, or exemption, such power includes power to impose reasonable conditions subject to which such licence, registration, lease, right, permit, authority, approval or exemption may be granted;
- (c) to approve any person, matter, or thing, such power includes power to withdraw that approval;
- (d) to give directions, such power includes power to express the same in the form of prohibitions.

(3) Subject to subsection (4) of section 2, this section applies to written laws passed or made after the commencement of this Act.

Power to
issue licence,
etc,
discretionary

47.-(1) Where a written law confers power upon a person to issue, grant, give or renew any licence, registration, lease, right, authority, approval, permit, or exemption, the person so empowered shall have a discretion either to issue, grant, give or renew or to refuse to issue, grant, give or renew such licence, registration, lease, right, authority, approval, permit, or exemption.

(2) Nothing in this section shall affect any right which may be conferred by any written law upon a person to appeal against a refusal to issue, grant, give or renew any licence, registration, lease, right, authority, approval, permit, or exemption.

Power to
appoint
includes
power to
suspend,
dismiss, etc.

48.-(1) Where a written law confers a power or imposes a duty upon a person to make an appointment to an office or position, including an acting appointment, the person having such power or duty shall also have the power-

- (a) to remove or suspend a person so appointed to an office or position, and to re-appoint or reinstate, any person appointed in exercise of such power or duty;
- (b) where a person so appointed to an office or position is suspended or unable, or expected to become unable, for any other cause to perform the functions of such office or position, to appoint a person to act temporarily in place of the person so appointed during the period of suspension or inability, but a person shall not be appointed to act temporarily unless he is eligible and qualified to be appointed to the office or position; and
- (c) to specify the period for which any person appointed in exercise of such a power or duty shall hold his appointment.

(2) For the purposes of paragraph (b) of subsection (1), “cause” includes-

- (a) illness;
- (b) temporary absence from the United Republic; and
- (c) conflict of interest.

(3) The validity of anything done by a person purporting to act under an appointment made under paragraph (c) of subsection (1) shall not be called in question on the ground that the occasion for his appointment had not arisen or had ceased.

(4) Where a written law confers a power or imposes a duty upon a person to make an appointment to an office or position and that power or duty is exercisable only upon the nomination or recommendation, or is subject to the approval, concurrence, or consent of some other person, then the powers conferred by paragraphs (a) to (c) of subsection (1) shall only be exercisable upon such nomination or recommendation or subject to such approval concurrence, or consent.

(5) Nothing in this section affects the tenure of office or position of any person under the express provisions of any written law.

Appointment
by name or
officer, etc,
and
appointment

49.-(1) Where a written law confers a power or imposes a duty upon a person to appoint or designate a person to-

- (a) perform any function;
- (b) be a member of any board, tribunal, commission,

of Chairman,
etc, or
Board, etc.

committee, council, or other similar body, whether
corporate or unincorporated; or
(c) be or do any other thing,

that person may make the appointment or designation either by appointing or designating a person by name or by appointing or designating the holder of an office by the term designating his office; and any such appointment or designation of the holder of an office shall be construed as the appointment or designation of the person from time to time holding, acting in, or lawfully performing the functions of the office.

(2) Where by or under any Act power is conferred on any person or authority to appoint any board, commission, committee or similar body, such person or as the case may be authority, may, unless the contrary intention appears, appoint or provide, by regulations, for the appointment of Chairman or deputy chairman and a secretary of the board, commission, committee or similar body.

Power of
majority
quorum etc.

50.-(1) Where a written law confers or imposes a function upon a body or number of persons consisting of not less than three persons, the function may be performed by a majority of those persons.

(2) Where a written law establishes a board, commission, committee, council or other similar body consisting of 3 or more members (in this section called an “association”-

- (a) at a meeting of the association, a number of members of the association equal to:
 - (i) at least one-half of the number of members provided for by the written law, if that number is a fixed number; and
 - (ii) if the number of members provided for by the written law is not a fixed number but is within a range having a maximum or minimum, at least one-half of the number of members in office if that number is within the range, constitutes a quorum; and
- (b) an act or thing done by a majority of the members of the association present at a meeting, if the members present constitute a quorum, shall be deemed to have been done by the association.

Exercise of
power may
be corrected

51. Where a written law confers a power or imposes a duty upon a person to do any act or thing of an administrative or executive character or to make any appointment, the power or duty may be exercised or performed as often as is necessary to correct any error or omission in any previous purported exercise or performance of the power or duty, notwithstanding that the power or duty is not in general capable of being exercised or performed from time to time.

Effect of
appointment
when retiring
officer on
leave

52. When a substantive holder of any office created under any Act is on leave of absence pending relinquishment of his office, it shall be lawful for another person to be appointed substantively to the same office.

“May”
imports
discretion,
“shall” is
imperative

53.-(1) Where in a written law the word “may” is used in conferring a power, such word shall be interpreted to imply that the power so conferred may be exercised or not, at discretion.

(2) Where in a written law the word “shall” is used in conferring a function, such word shall be interpreted to mean that the function so conferred must be performed.

Powers of
board, etc,
not affected
by vacancy
or certain
defects
Acts Nos.
13 of 2019
s.39
3 of 2020
s.65

54.-(1) Where a board, tribunal, commission, committee, council or other similar body, whether corporate or unincorporated, is established under a written law, the powers of such a body shall not be affected by-

- (a) any vacancy in the membership of the body;
- (b) any defect afterwards discovered in the appointment or qualification of a person purporting to be a member of the body or the deputy member;
- (c) a minor irregularity in the convening or conduct of a meeting of the body; or
- (d) the presence or participation at a meeting of a person not entitled to be present or participate.

(2) Where-

- (a) a written law establishes a body and the body is not duly constituted;
- (b) a body under any written law has been dissolved; or
- (c) the tenure of body prescribed in any written law has come to an end,

it shall be lawful for any operation requiring the decisions of the body to be performed by the permanent secretary of the

ministry responsible for the body until such time a board is constituted:

Provided that, the permanent secretary shall perform such functions for a period not exceeding twelve months.

(3) Action or other legal proceeding shall not be instituted against the permanent secretary of the Ministry in respect of any action or omission by him done in good faith when exercising his functions under this Act

(4) Subject to subsection (2), the Minister responsible shall, as soon as the body falls vacant and before the new body is appointed, inform in writing the permanent secretary to perform the functions of the body under this section.

Exercise of
certain
powers by
delegate

55. Where under a written law the performance of a function by a person is dependent upon the opinion, belief, or state of mind of that person in relation to a matter and that function has been delegated under a written law, the function may be performed by the delegate upon the opinion, belief, or state of mind of the delegate in relation to that matter.

Reference to
an area by
designation

56.-(1) Where an Act applies or refers to any area of United Republic by a particular designation it shall apply or refer, as the case may be, to the area so designated as from time to time defined, delimited or described unless otherwise provided.

(2) Where the designation by reference of any such area is changed, all reference in any written law to such area by its previous designation shall be construed as reference to the area so re-designated.

Construction
of power to
delegate

57.-(1) Where a written law confers power upon a person to delegate the exercise of any power or the performance of any duty conferred or imposed upon him under a written law-

- (a) such a delegation shall not preclude a person so delegating from exercising or performing at any time a power or duty so delegated;
- (b) such a delegation may be made subject to such conditions, qualifications, limitations or exceptions as the person so delegating may specify;
- (c) if the delegation may be made only with the approval of some person, such delegation, and any amendment of the delegation, may be made subject to such conditions, qualifications, limitations or exceptions as

- the person whose approval is required may specify;
- (d) such a delegation may be made to a specified person or to persons of a specified class, or may be made to the holder or holders for the time being of a specified office or class of offices;
 - (e) such a delegation may be amended or revoked by instrument in writing signed by the person so delegating;
 - (f) in the case of a power conferred upon a person by reference to the term designating an office, such a delegation shall not cease to have effect by reason only of a change in the person lawfully holding, acting in or performing the functions of that office.

(2) The delegation of a power shall be deemed to include the delegation of any incidental or connected duty and the delegation of a duty shall be deemed to include the delegation of any incidental or connected power.

(3) Where under a written law an act or thing may, or is required to be done to, by reference to or in relation to, a person and that person has been under a written law delegated a relevant function conferred or imposed on him with respect to or in consequence of the doing of that act or thing, the act or thing shall be regarded as effectually done if done to, by reference to or in relation to the person to whom the said function has been delegated.

Who shall
affix
common seal
of a body
corporate

58. Where in a written law a board or committee is authorised or required to do any act, matter, or thing, it shall be taken to mean that such act, matter, or thing may or shall be done by the board or committee as the case may be.

Rights of
Government

59. No Act shall in any manner bind or otherwise affect the right of the United Republic unless it is expressly provided, or unless it appears by necessary implication that the United Republic is bound.

PART VIII PROVISIONS REGARDING TIME AND DISTANCE

Computation
of time

60.-(1) In computing time for the purposes of a written law-

- (a) where a period of time is expressed to be at, on, or with a specified day, that day shall be included in the period;

- (b) where a period of time is expressed to be reckoned from, or after, a specified day, that day shall not be included in the period;
- (c) where anything is to be done within a time before a specified day, the time shall not include that day;
- (d) where a period of time is expressed to end at, on, or with a specified day or to continue to or until a specified day, that day shall be included in the period;
- (e) where the time limited for the doing of a thing expires or falls upon an excluded day, the thing may be done on the next day that is not an excluded day;
- (f) where there is a reference to a number of clear days or “at least” or “not less than” a number of days between two events, in calculating the number of days there shall be excluded the days on which the events happen;
- (g) where there is a reference to a number of days not expressed to be clear days or “at least” or “not less than” a number of days between two events, in calculating the number of days there shall be excluded the day on which the first event happens and there shall be included the day on which the second event happens;
- (h) where an act or proceeding is directed or allowed to be done or taken on a certain day, or on or before a certain day, then, if that day is an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day that is not an excluded day.

(2) For the purposes of this section, “excluded day” means Saturday, Sunday or public holiday throughout or in that part of which is relevant to the event, act, thing or proceeding concerned.

Reckoning
of months

61.-(1) In a written law, “month” means a calendar month, that is to say, a month reckoned according to the calendar.

(2) Where a period of one month indicated in a written law begins on any date other than the first day of any of the 12 months of the calendar, it shall be reckoned from the date on which it is to begin to the date in the next month numerically corresponding, less one, or, if there is no corresponding date, to the last day of that month.

For example: a month beginning on 15 January, ends on 14 February and a month beginning on 30, 31 January ends on 28 February (or 29 February in a leap year).

(3) Where a period indicated in a written law is of 2, 3 or more months, it shall be reckoned from the date on which it is to begin to the numerically corresponding, less one, in the second, third or other successive month thereafter or, if there is no such corresponding date, to the last day of the latter month.

For example: a period of 6 months beginning on 15 August ends on 14 February and a period of 6 months beginning on 30 or 31 August ends on 28 February (or 29 February in a leap year).

Provisions
where no
time fixed

62. Where no time is fixed or allowed within which an act or thing shall be done, such act or thing shall be done with all convenient speed and as often as due occasion arises.

Construction
of power to
extend time

63-(1) Where in a written law a time is fixed or allowed for doing any act or thing or taking any proceeding and power is given to a court or other authority to extend that time, such power may be exercised by the court or other authority although the application for an extension is not made until after the expiration of the time fixed or allowed.

(2) Subject to subsection (1), this section applies to written laws passed or made after the commencement of this Act.

Deviations
from forms

64. Except as is otherwise provided, wherever forms are prescribed, deviations therefrom not affecting the substance and not calculated to mislead, shall not vitiate them.

Measuremen
t of distance

65. In the measurement of any distance for the purposes of a written law, the distance shall be measured in a straight line on a horizontal plane.

PART IX PROCEDURES AND PENALTIES

Ex officio
proceeding
not to abate
on death

66. Any civil or criminal proceedings taken by or against any person by virtue of his office shall not be discontinued or abate by his death, resignation or absence or removal from office, but may be carried on by or against, as the case may be, the person for the time being holding that office.

Rules of
court

67. (1) In a written law, “rules of court” in relation to any court, means rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of such court.

(2) The power of an authority referred to in subsection (1) includes a power to make rules of court for the purpose of any written law which directs or authorises anything to be done by or in accordance with rules of court.

Imposition
of penalty
not bar to
civil action

68. The imposition of a penalty or fine by or under the authority of any Act shall not, in the absence of express provisions to the contrary, relieve any person from liability to answer for damages to any person injured.

Recovery of
fines and
penalties

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69. Where a fine or other penalty is recoverable under a written law and no means is provided in that law for the recovery of the fine or penalty shall be deemed to provide that such fine or penalty may be recovered summarily under the provision of the Criminal Procedure Act, or any written law for the time being in force relating to summary proceedings.

Double
jeopardy

70. Where an act constitutes two or more offences, whether under the same written law or otherwise, the offender is liable to be prosecuted and punished for any or all such offences but is not liable to be punished twice for the same offence.

Application
of penal laws
to bodies
corporate

71.-(1) Every enactment relating to an offence punishable on conviction or on summary conviction shall be taken to refer to bodies corporate as well as to individuals.

(2) Where under a written law, a forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where that body is the party aggrieved.

(3) Except where otherwise expressly provided, where the penalty prescribed in a written law in respect of an offence does not consist of or include a fine, the court before which the offence is tried may, in the case of a body corporate, impose a fine-

- (a) where a term of imprisonment not exceeding six months is prescribed, a fine of two million shillings;
- (b) where a term of imprisonment exceeding six months but not exceeding one year is prescribed, a fine of three million shillings;

- (c) where a term of imprisonment exceeding one year but not exceeding two years is prescribed, a fine of five million shillings;
- (d) where a term of imprisonment exceeding three years is prescribed, a fine of ten million shillings.

Provisions
as to
offences
under two or
more Acts

72. Where any act constitutes an offence under two or more Acts, the offender shall unless the contrary intention appears, be liable to be prosecuted and punished under either or any of such Acts, but shall not be liable to be punished more than once for the same offence.

Amendment
of penalty

73. Where an act constitutes an offence, and the penalty for such offence is amended between the time of the commission of such offence and the conviction therefore, the offender shall, unless the contrary intention appears, be liable to the penalty prescribed at the time of the commission of such offence.

Prescription
of maximum,
minimum
daily and
cumulative
penalties

74.-(1) Where in a written law a penalty is specified in respect of an offence, that penalty is the maximum penalty that may be imposed for that offence.

(2) Where in a written law more than one penalty is specified in respect of an offence, the use of the word “and” between the respective penalties means that the penalties may be imposed alternatively or cumulatively.

(3) Where in a written law a maximum penalty and a minimum penalty are specified in respect of an offence, the offence is punishable by a penalty not less than that minimum nor greater than that maximum.

(4) Where in any written law a minimum penalty is specified in respect of an offence, the offence is punishable by a penalty not less than the minimum.

(5) Where in a written law a penalty specified in respect of an offence is referred to as being a daily penalty, that reference indicates that a penalty not exceeding that daily penalty may, in addition to any other penalty that may be imposed in respect of the offence, be imposed for each day or part of a day during which the offence continues.

Provision as
to attempts

75. A provision in any Act which constitutes an offence shall, unless a contrary intention appears, be deemed to provide

also that an attempt to commit such offence shall be an offence under such provision, punishable as if the offence itself had been committed.

Disposal of
forfeits

76.-(1) Where by or under any act any animal or anything is adjudged by any court or other authority to be forfeited, it shall, unless the contrary is otherwise provided or unless it is expressed by law to be forfeited to any person, be forfeited to the Government of the United Republic, and the net proceeds thereof, if it is ordered by a competent authority to be sold, shall be paid into and shall form part of the public revenue unless other provision is made.

(2) Nothing in this section shall affect any provision in any written law whereby any portion of any fine or forfeit, or of the proceeds of any forfeit, is expressed to be recoverable by any person or may be granted by any authority to any person.

Liability of
employer or
principal

77. Where any offence under any Act is committed by a person as an agent or employee then, unless a contrary intention appears, as well as the agent or employee, the principal or employer shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly unless he proves to the satisfaction of the court that he had no knowledge, and could not, by the exercise of reasonable diligence, have had knowledge, of the commission of the offence.

Evidence of
fiat, sanction
or consent of
public
officer

78. Wherever the fiat, sanction or consent of any public officer is necessary before any prosecution or action is commenced, any document purporting to bear such fiat, sanction or consent shall be received as *prima facie* evidence in any proceeding without proof being given that the signature is that of the public officer.

Exercise of
DPP's
functions in
his absence

79. The functions of the Director of Public Prosecutions may, in his absence from headquarters office or incapacity to act through illness or otherwise, be exercised by such Law Officer as the Attorney General may nominate in that behalf.

Statement of
penalty at
end of
provision

80. Where in an Act a penalty-

- (a) is specified without qualification at the foot of a section of the Act;
- (b) is specified at the foot of a subsection of a section of

- the Act, but not at the foot of the section; or
- (c) is specified at the foot of a section of the Act and expressed to apply to a specified subsection or specified subsections of the section,

then, unless the contrary is expressly provided, that specification indicates that a contravention of the section or subsection, or as the case may be, any of the subsections, is an offence and that the offence is punishable on conviction by a penalty not exceeding that so specified.

Continuing
offences

81.-(1) Where-

- (a) by or under a written law an act or thing is required or directed to be done within a particular period or before a particular time;
- (b) failure to do that act or thing within the period or before the time referred to in paragraph (a) constitutes an offence; and
- (c) that act or thing is not done within the period or before the time referred to in paragraph (a), the following provisions have effect-

- (i) the obligation to do that act or thing continues, notwithstanding that period had expired or that time has passed, until that act or thing is done;
- (ii) where a person is convicted of an offence that, by virtue of subparagraph (i), is constituted by failure to do that act or thing after the expiration of that period or after that time, as the case may be, that person is guilty of a separate and further offence in respect of each day after the day of the conviction during which the failure to do that act or thing continues; and
- (iii) unless otherwise provided, the penalty applicable to each separate and further offence is the sum equivalent to thirty thousand shillings.

(2) Where-

- (a) by or under a written law an act or thing is required or directed to be done but no period within which or time by which that act or thing is to be done is specified;
- (b) failure to do that act or thing constitutes an offence; and

- (c) a person is convicted of an offence in respect of a failure to do that act or thing,

that person is guilty of a separate and further offence in respect of each day after the day of the conviction during which the failure to do that act or thing continues and, unless otherwise provided, the penalty applicable to each such separate and further offence is the sum of thirty thousand shillings.

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(3) Charges against the same person for any number of offences under subparagraph (ii) of paragraph (c) of subsection (1) or under subsection (2) may be joined in the same information or complaint if those offences relate to a failure to do the same act or thing.

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(4) Where a person is convicted of more than one offence under subparagraph (ii) of paragraph (c) of subsection (1) or more than the offence under subsection (2), the court may impose one penalty in respect of all the offences of which the person is so convicted under the relevant subsection, but that penalty shall not exceed the sum of the maximum penalties that could be imposed if a penalty were imposed separately in respect of each offence.

PART X MISCELLANEOUS PROVISIONS

Service of
documents
by post

82.-(1) Where a written law authorises or requires a document to be served by post, whether the word “serve” or any of the words “give”, “deliver”, or “send” or any other similar word or expression is used, service shall be deemed to be effected by properly addressing and posting (by pre-paid post) the document as a letter to the last-known address and unless the contrary is proved, to have been effected at the time when the letter would have been delivered in the ordinary course of post.

(2) Where a written law authorises or requires a document to be served by registered post, whether the word “serve” or any of the words “give”, “deliver”, or “send” or any other similar word or expression is used, then, if similar word or expression is used, then, if the document is eligible and acceptable for transmission as certified mail, the service of the document may be effected either by registered post or by certified mail.

(3) Subsections (1) and (2) apply unless the contrary intention appears and subsection (2) does not apply where a written law requires the production of an acknowledgement signed

by a person to whom a document was addressed to the effect that the document was delivered to that person.

Service of documents generally

83. Where a written law authorizes or requires a document to be served, whether the word “serve” or any of the words “give”, “deliver”, or send” or any other similar word or expression is used, without directing it to be served in a particular manner, service of that document may be effected on the person to be served-

- (a) by delivering the document to him personally;
- (b) by post in accordance with subsection (1) of section 82;
- (c) by leaving it for him at his usual or last known place of abode, or if he is a principal of a business, at his usual or last known place of business; or
- (d) in the case of a corporation or of an association of persons (whether incorporated or not) by delivering or leaving the document or posting it as a letter, addressed in each case to the corporation or association, at its principal place of business or principal office in the United Republic.

Language of Laws of Tanzania

84.-(1) The language of the laws of Tanzania shall be English or Kiswahili or both.

(2) The Attorney General may translate any written law from one language of enactment into another and, by notice in the *Gazette*, publish the version which is translated.

(3) Where any written law is translated from one language into another and published in both languages, then in the case of conflict or doubt as to the meaning of any word or expression, the version of the language in which the law was enacted shall take precedence.

(4) Where any written law is enacted in both languages and there occurs a conflict or doubt as to the meaning of any word or expression, the English version shall take precedence.

Repeal

85. Repeals Act No. 30 of 1972.

SCHEDULE

(Made under section 4)

COMMONWEALTH COUNTRIES

Antigua and Bermuda	Namibia
Australia	Nauru
The Bahamas	New Zealand
Bangladesh	Nigeria
Barbados	Papua New Guinea
Belize	Seychelles
Botswana	Sierra Leone
Brunei Darusalaam	Singapore
Canada	Solomon Islands
Mauritius	South Africa
Cyprus	Sri Lanka
Dominica	St. Kitts and Nevis
The Gambia	St. Lucia
Ghana	St. Vincent and the Grenadines
Grenada	Swaziland
Pakistan	Tanzania
Guyana	Tonga
India	Trinidad and Tobago
Jamaica	Tuvalu
Kenya	Uganda
Kiribati	United Kingdom
Lesotho	Vanuatu
Malawi	Western Somoa
Malaysia	Zambia
Maldives	Zimbabwe
Malta	
Mozambique	