



Approved
Ogogo DINA
14/03/2024

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| THE NATIONAL ASSEMBLY PAPERS LAID | |
| REPUBLIC OF KENYA | |
| DATE: 14 MAR 2024 | DAY: THUR |
| TABLED BY: | HON. SAMUEL CHEPKONGA, MP CHAIRPERSON, DELEGATED LEGISLATION |
| CLERK-AT-THE-TABLE: | XNNE SHIBUKO |

THIRTEENTH PARLIAMENT- THIRD SESSION - (2024)

PARLIAMENT
OF KENYA
LIBRARY

THE NATIONAL ASSEMBLY

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF THE STATUTORY INSTRUMENTS
(AMENDMENT) BILL, 2024

MARCH, 2024

The Directorate of Audit, Appropriations and
General Purpose Committees

Clerk's Chambers

Parliament Buildings

NAIROBI

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CHAIRPERSON'S FOREWORD

This report contains the Committee on Delegated Legislation's proceedings on its consideration of the Statutory Instruments (Amendment) Bill (National Assembly Bill No. 3 of 2024) which was read a First Time on 14th February, 2024. The Bill was thereafter, committed to the Committee pursuant to National Assembly Standing Order 127(2).

The main object of the Bill is to amend the provisions of the Statutory Instruments Act, 2013 to streamline it with the Constitution and to ensure better application of its provisions. Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly placed an advertisement in the Daily Nation and the Standard Newspapers of 21st February, 2024 requesting for comments on the Bill from members of the public and stakeholders. By the close of business on the deadline for the submission of the memoranda on 5th March, 2024, the Committee had not received any views from the public.

The Committee vide letter Ref: NA/DAA&OSC/CDL/2024/ (004) dated 21st February, 2024 wrote to the Attorney General and the Kenya Law Reform Commission (KLRC) seeking for their views on the Bill. The Office of the Attorney General and Department of Justice submitted comments *vide* letters Ref. AG/LDD/32/1/8 dated 8th March, 2024. KLRC also submitted comments *vide* a letter ref. KLRC/8/64/(63) dated 4th March, 2024.. The Committee took into consideration the comments by the two institutions in consideration of the Bill.

In conclusion, the Committee is grateful to the Office of the Speaker and that of the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank all those who participated in the consideration of the Bill.

Finally, I wish to express my appreciation to the Honorable Members of the Committee for making useful contributions towards the preparation and production of this report.

On behalf of the Committee on Delegated Legislation and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Statutory Instruments (Amendment) Bill, 2024.

It is my pleasure to report that the Committee has considered the Statutory Instruments (Amendment) Bill, 2024, and has the honour to report back to the National Assembly with the recommendation that the Bill **approved with amendments** as contained in the report.



HON. SAMUEL KIPRONO CHEPKONGA, CBS, MP.

1.0. PREFACE

1.1 Establishment and Mandate

1. The Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.
2. The Committee is mandated to consider in respect of any statutory instrument, whether it:
 - a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
 - d) contains imposition of taxation;
 - e) directly or indirectly bars the jurisdiction of the Courts;
 - f) gives retrospective effect to any of the provisions in respect to which the Constitution or the Act does not expressly give any such power;
 - g) involves expenditure from the Consolidated Fund or other public revenues;
 - h) is defective in its drafting or for any reason the form or purport of the statutory instrument calls for any elucidation;
 - i) appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;
 - j) appears to have had an unjustifiable delay in its publication or laying before Parliament;
 - k) makes rights, liberties, or obligations unduly dependent upon non-reviewable decisions;
 - l) makes rights, liberties, or obligations unduly dependent on insufficiently defined administrative powers;
 - m) inappropriately delegates legislative powers;
 - n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
 - o) appears for any reason to infringe on the rule of law;
 - p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
 - q) accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

3. The Committee membership comprises of:

Hon. Chepkonga Samuel Kiprono, CBS, M.P.
(Chairperson)
UDA
Anaibkoi Constituency

Hon. Githinji Robert Gichimu, M.P.
(Vice Chairperson)
UDA
Gichugu Constituency

Hon. Mbui Robert, CBS, M.P.
WDM-KENYA
Kathiani Constituency

Hon. Chebor Paul Kibet, M.P.
UDA
Rongai Constituency

Hon. Maj. (Rtd) Dekow Barrow Mohamed, M.P
UDA
Garrisa Township Constituency

Hon. Yakub Adow Kuno, M.P.
UPIA
Bura Constituency

Hon. Julius Lekakeny Ole Sunkuli, EGH, MBS, M.P.
KANU
Kiligoris Constituency

Hon. Maj. (Rtd) Abdullahi Bashir Sheikh, M.P.
UDM
Mandera Constituency

Hon. Kamene Joyce, M.P.
WDM-KENYA
Machakos County

Hon. Mwirigi John Paul, M.P.
UDA
Igembe-South Constituency

Hon. Onchoke Mamwacha Charles, M.P.
UPA
Bonchari Constituency

Hon. Odoyo Jared Okello, M.P.
ODM
Nyando Constituency

Hon. Kimaiyo Gideon Kipkoech, M.P.
UDA
Keiyo-South Constituency

Hon. Chepkorir Linet, M.P
UDA
Bomet County

Hon. Komingoi Kibet Kirui, M.P.
UDA
Bureti Constituency

Hon. Munyoro Joseph Kamau, M.P
UDA
Kigumo Constituency

Hon. Ruku Geoffrey Kariuki Kiringa, M.P.
DP
Mbeere-North Constituency

Hon. Mwale Nicholas S. Tindi, M.P.
ODM
Butere Constituency

Hon. Lenguris Pauline, M.P.
UDA
Samburu County

Hon. Mnyazi Amina Laura, M.P.
ODM
Malindi Constituency

Hon. Mugabe Innocent Maino, M.P.

ODM
Likuyani Constituency

1.3. **Committee Secretariat**

4. The secretariat facilitating the Committee comprises of the following –

Ms. Esther Nginyo
Clerk Assistant I (Team Leader)

Mr. Dima Dima
Principal Legal Counsel I

Ms. Fiona Wanjiru Githunguri
Legal Counsel II

Mr. Brian Langwech
Clerk Assistant III

Ms. Isabella N. Mwembi
Clerk Assistant III

Mr. Silvanus Makau Mbuvi
Clerk Assistant III

Ms. Viola Khalwali Saiya
Research Officer III

Mr. Noah Chemweno
Serjeant at Arms

Ms. Rahab Chepkilim
Audio Officer

2.0 OVERVIEW OF THE STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2024

2.1 Introduction

5. The Statutory Instruments (Amendment) Bill (National Assembly Bill No. 3 of 2024) was sponsored by the Leader of Majority Party, the Hon. Kimani Ichung'wah, EGH, MP.
6. Pursuant to Standing Order 126, the Bill was read a First Time on 14th February, 2024 and thereafter, committed to the Committee on Delegated Legislation pursuant to Standing Order 127(2) of the National Assembly Standing Orders.
7. The main object of the Bill is to amend the Statutory Instruments Act, 2013 to streamline its provisions with the Constitution and to ensure better application of its provisions.
8. The Bill delegates legislative powers to the relevant House Committee as per section 12 of the Statutory Instruments Act, 2013, and does not limit fundamental rights and freedoms. Further, its enactment does not occasion additional expenditure on public funds.
9. In accordance with Article 118(1) (a) of the Constitution that requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees, an advertisement was placed on 21st February, 2024 in the Standard and Daily Nation newspapers inviting public participation and submission of memoranda. By the close of business on the deadline for the submission of the memoranda on 5th March, 2024, the Committee had not received any views from the public.
10. The Clerk of the National Assembly further wrote to the Attorney General and the Kenya Law Reform Commission *vide* a letter Reference NA/DAA&GPC/CDL/2024 dated 21st February, 2024 seeking views on the Bill.
The Office of the Attorney General responded *vide* letter Ref: AG/LDD/32/1/8 dated 11th March, 2024 in which they proposed several amendments in the proposed Statutory Instruments (Amendment) Bill, 2024. In addition, KLRC also submitted comments on the Bill *vide* letter Ref: KLRC/8/64/(63) dated 4th March, 2024.

2.2 Analysis of the Bill

11. The **principal object** of this Bill is to amend the provisions of the Statutory Instruments Act, 2013 to streamline it with the Constitution and ensure better application of its provisions.
12. **Clause 2** of the Bill seeks to amend section 11 of the Act, to enable the Committee on Delegated Legislation to require the regulation making authority to submit to Parliament a copy of any regulation that ceases to have effect by operation of law. The amendment further obligates Parliament to notify the general public in its website that a statutory instrument which ceases to have effect by operation of law is a nullity.
13. **Clause 3** of the Bill seeks to amend section 12 of the Act, to align the Act with the Constitutional provision delegated legislative authority as per article 94 (5).
14. **Clause 4** of the Bill seeks to amend section 14 of the Act, to provide that where the Committee recommends an exemption of any statutory instrument from scrutiny, then the exemption may only be done subject to approval by the House.
15. **Clause 5** of the Bill seeks to amend section 19 of the Act, to harmonize the wording of the law, specifying the action taken by Parliament as an annulment and deleting the word revoke.

16. **Clause 6** of the Bill seeks to amend the Title of Part V of the Act, to align it with the revised provisions.
17. **Clause 7** of the Bill seeks to amend section 21 of the Act, to remove the mandatory requirement for the review of subsidiary legislation and the expiration of statutory instruments.
18. **Clause 8** of the Bill seeks to amend section 24 of the Act, to increase the limit of fines and term of imprisonment for the law to act as adequate deterrent for violation or breach of regulations.
19. **Clause 9** of the Bill seeks to amend section 27 of the Act, to provide for savings provision, allowing the continuous operation of regulations that were in operation on or before the 24th January, 2024.

3.0 PUBLIC PARTICIPATION/VIEWS FROM STAKEHOLDERS

20. Following the call for memoranda from the public through the placement of advertisement in the print media on 21st February, 2024, and upon the expiry of the deadline which was on 5th March, 2024, the Committee did not receive any views from the general public.
21. The Committee wrote to the Office of the Attorney General and the Kenya Law Reform Commission (KLRC) vide a letter Reference number NA/DAA&GPC/CDL/2024/(004) on 21st February 2024 seeking views on the Bill.
22. The Office of the Attorney General and Department of Justice submitted comments *vide* letters Ref. AG/LDD/32/1/8 dated 11th March, 2024.
23. KLRC also submitted comments vide a letter ref. KLRC/8/64/(63) dated 4th March, 2024.
24. The Committee took into consideration the comments by the two institutions in the consideration of the Bill.
25. The comments from the two institutions on the Bill are contained in the matrix here below.

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| | <p>days from the date of the resolution by the Committee.</p> <p>(6) Notwithstanding subsections (4) and (5), Parliament may, where a statutory instrument ceases to have effect in accordance with subsection (4), notify the public in the Parliamentary website, that the statutory instrument is a nullity.”</p> | | | <p>has failed to submit a statutory instrument within the period specified in subsection (1), the Committee may, by a resolution of the Committee, require the Cabinet Secretary to submit the statutory instrument to Parliament within seven days from the date of the resolution.”</p> <p>Justification There is need to connect the failure by the Cabinet Secretary responsible for the regulation making authority to comply with the timelines under subsection (1) and the <i>suo moto</i> power of the Committee to pass a resolution regarding that failure.</p> | <p>Cabinet Secretary responsible for a regulation making authority has failed to submit a statutory instrument in accordance with subsection (1), the Committee may, by a resolution require the Cabinet Secretary to publish a notice in the gazette within seven days from the date of the resolution, to the effect that the statutory instrument is a nullity, and to submit the notice to Parliament, upon publication.”</p> |
| 3. | Amendment of section 12 by deletion of subsection (3). | The effect of this amendment is to align the Act with the constitutional provision on Parliament’s power to delegate its legislative | Kenya Law Reform Commission | <p>1. It is not necessary to delete section 12(3) of CAP 2A since it is intended to ensure separation of powers between the judiciary and the legislature. It is proposed to retain the section as is.</p> <p>Justification Deletion of section 12(3) will mean that the</p> | <p>The Committee noted that Parliament under article 94(5) and (6)—</p> <p>“No person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by</p> |

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| | | <p>making authority as per Article 94(5). The current provision exempts any rules, regulations or orders from a court of competent jurisdiction from being tabled before the respective House of Parliament and referral to a relevant Committee for review and scrutiny.</p> | <p>Office of the Attorney General and Department of Justice</p> | <p>Chief Justice will be required to lay Rules of Court before Parliament. Rules of Court govern procedures for conduct of business in courts, nature of pleadings and court fees. In other jurisdictions including Zambia and Botswana there are specific provisions requiring that Rules of Court shall not be laid before Parliament.</p> <ol style="list-style-type: none"> 1. Delete the expression “subsection (3)” and substituting therefor the words “rules, regulations and”. 2. Add the following new subsection immediately after subsection (3)— <p>(4) Subsection (3) shall only apply to court orders made by courts of competent jurisdiction in the performance of judicial functions but shall not apply to statutory instruments made by the Judiciary.</p> <p><u>Justification</u></p> <ul style="list-style-type: none"> • The word “order” found in section 12(3) has more than one meaning. “Order” may also mean a court order in respect of any judicial proceedings. In terms of Article | <p><i>legislation.</i></p> <p><i>(6) An Act of Parliament, or legislation of a county, that confers on any State organ, State officer or person the authority to make provision having the force of law in Kenya, as contemplated in clause (5), shall expressly specify the purpose and objectives for which that authority is conferred, the limits of the authority, the nature and scope of the law that may be made, and the principles and standards applicable to the law made under the authority.”</i></p> <p>The Committee further noted that the Statutory Instrument Act, defines a "statutory instrument" as <i>any rule, order, regulation, direction, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution, guideline or other statutory instrument issued, made or established in the execution of a power conferred by or under an Act of Parliament under which that statutory instrument or subsidiary legislation is expressly authorized to be issued.</i></p> |
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| | | | | <p>160(1) of the Constitution, court orders fall within the ambit of the judicial authority of the Judiciary and consequently, are not subject to the control or direction of any person or authority. Consequently, court orders are not subject to parliamentary scrutiny but only to review by a court superior to the court that gave the order on appeal.</p> <ul style="list-style-type: none"> To provide clarity that only court orders shall not be subject to parliamentary scrutiny. | <p>Therefore, this amendment subjects the judiciary to the same procedure of making delegated legislation as is envisioned by the Constitution and the Statutory Instruments Act that law making is a role domiciled in the Legislative Arm of government. The only exemptions are orders made by a court of competent jurisdiction in line with the powers bestowed to the judiciary under article 159 of the Constitution.</p> <p>The Committee therefore propose an amendment to clause 3 to reflect the same by deleting the clause and substituting with the following new clause—</p> <p>Section 12 of the principal Act is amended by deleting the words “rules, regulations and” appearing in subsection (3).</p> |
| 4. | Amendment of section 14 by inserting the words “recommend to the House to” immediately after the words” the Committee may”. | The effect of this amendment is to ensure that when the Committee recommends an exemption from scrutiny, the | Kenya Law Reform Commission | <ol style="list-style-type: none"> A review of section 14 on the basis that exemption from scrutiny cannot solely be based on the number of instruments in a particular class tabled before the Committee. To widen the scope of section 14 to | The Committee noted that this amendment does not imply that exemptions would occur based on the number of instruments laid before the House, but on justified reasons recommended |

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| | | <p>exemption may only be done subject to approval by the House.</p> | | <p>enumerate grounds upon which an instrument or class of instruments may be exempted from scrutiny with Parliamentary approval. Some of these grounds may include:</p> <ul style="list-style-type: none"> (a) The instrument or class of instrument affects or is likely to affect only a limited number of persons and that reasonable steps have been or will be taken for the purpose of bringing the purport thereof to the notice of those persons affected by it; (b) The instrument or class of instruments will only affect internal controls within the Executive Arm of government; (c) The instrument or class of instruments is critical to ensuring urgent or decisive actions (COVID times); (d) The instrument is required under an international treaty or convection. However, this requires a position on the | <p>by the Committee and tabled before the House.</p> <p>The Committee further noted that the suggestion to widen the scope of section 14 by the Kenya Law Reform Commission goes against Article 2 of the Constitution on the stance of monism and dualism.</p> |
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| | | | | <p>monist or dualist approach.</p> <p>(e) The instrument maybe required for intergovernmental purposes in which case there has been considerable engagement and participation by the respective governments.</p> <p><u>Justification</u> KLRC welcomes the inclusion of the words “recommended to the House to”. The practice in other commonwealth jurisdiction is that there must be Parliamentary approval for exemption. This will enhance accountability. An exemption from scrutiny raises key questions about the accountability of executive to the Parliament as it effectively prevents scrutiny of delegated legislation. An exemption from scrutiny means the Parliament, the institution charged with making laws, loses the chief mechanism it has to prevent delegated legislative power being exercised in a manner not foreseen or provided for in the primary legislation, or in a way that might otherwise be considered undesirable. A further proposal to the criteria for exemption of statutory instruments be widened and not be based solely on the number of instruments laid before the House.</p> | |
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| | <i>Gazette</i> within fourteen days.” | | | Justification This is in recognition that statutory instruments can either be made by Cabinet Secretaries or the regulatory authorities themselves. | |
| 6. | Amendment of the title of PART V of the Act by deletion and substituting with the following new heading— “PART V –PURPOSE FOR REVIEW OF STATUTORY INSTRUMENTS” | The effect of this amendment is align the title of the Part to reflect the revised provisions under it. | Kenya Law Reform Commission Office of the Attorney General and Department of Justice | No comment. No comment. | |
| 7. | Repealing of section 21. | The effect of this amendment is to remove the mandatory requirement for review of subsidiary legislation and expiration of statutory instruments. | Kenya Law Reform Commission | 1. That section 21 of the Statutory Instruments Act, CAP 2A be repealed or otherwise suspended and that such repeal or suspension should retrospectively take effect from 25 th January, 2023. Justification: The Statutory Instruments Act, came into force on the 25 th of January, 2013, where statutory instruments which were in place as at that date were expected to be automatically revoked on the 25 th of January, 2023. In November 2022, the Attorney General on behalf of all the Cabinet Secretaries tabled before Parliament the Statutory Instruments Act, Exemption from Expiry) (No.2) | The Committee noted that there is an urgent need to remove the mandatory requirement for review of subsidiary legislation and expiration of statutory instruments. |

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| | | | Office of the Attorney General and Department of Justice | <p>Regulations, Legal Notice. No. 218 of 2022 which confers power to make regulations exempting instruments from expiry. The Senate however did not pass the Regulations. The Finance Act, 2023 sought to repeal section 21 of the Act, however the HCCP No. E181 of 2023 noted the inclusion of the repeal of section 21 of the Act and being a Money Bill was noted to have been extraneously included and therefore unconstitutional. This ruling implies that all subsidiary legislation older than 10 years with effect from 2023 stand revoked.</p> <p>No comment.</p> | |
| 8. | Amendment of section 24 (5) of the Act by deleting the words “not exceeding twenty thousand shillings or such term of imprisonment not exceeding six months” and substituting therefor the words “not exceeding one million shillings or such term of imprisonment not exceeding five years”. | The effect of this amendment is to increase limit of fines and the term of imprisonment to align punishment to the economic realities and to act as an adequate deterrent for breach of regulations. | Kenya Law Reform Commission | <p>1. No comment.</p> <p><u>Justification</u> Review of limitations for penal clauses for breach of statutory instruments is welcome. The current restriction of statutory instruments penalty, not exceeding twenty thousand shillings or term of imprisonment not exceeding six months is out of sync with economic status and other penalties in the statute book.</p> | The Committee agreed with the comment. |

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| | | | Office of the Attorney General and Department of Justice | No comment. | |
| 9. | Amendment of section 27 by inserting the following new subsection immediately after subsection (2)— “(3) Any statutory instrument that was in operation on or before the 24 th January, 2024, shall continue to operate and to have effect as if the instruments had not been automatically revoked on that date.” | The effect of this amendment is to provide for a saving provision and to allow for the continuous operation of regulations that were in operation on or before the 24 th of January, 2024. | Kenya Law Reform Commission Office of the Attorney General and Department of Justice | 1. No comment. Justification There is consensus to remove the mandatory requirement for review of subsidiary legislation and expiration of statutory instruments and to save the regulations that are affected by the expiration date of the 13 th of January, 2023. 1. In the proposed new section 27(3), insert the words “and on any day before the commencement of this provision”. Justification Such an amendment would serve to revive any statutory instruments that may have been automatically revoked by the revival of section 21 of the Act on the 24 th January, 2024, and between that date and the date of the commencement of the new subsection (3). | The Committee noted that there is an urgent need to save the regulations that are affected by the expiration date of the 24th January, 2024 and between that date and the date of commencement of the new subsection (3). The Committee agreed with the comments of the Office of the Attorney General and Department of Justice. The Committee recommended an amendment to section 27 by inserting the following new subsection immediately after subsection (2)— “(3) Any statutory instrument that was in operation and that would otherwise stand automatically revoked on any day before the commencement of this provision, shall |

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| | | | | | continue to operate and to have effect as if the instruments had not been automatically revoked on that date.” |
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4.0 COMMITTEE OBSERVATIONS

27. In considering the proposed amendments, the Committee observed that the amendments conform to the Constitution and other existing laws and that there was compliance with all the statutory procedures and the Standing Orders.
28. The Committee also observed that the principal object of this Bill was to amend the provisions of the Statutory Instruments Act, 2013 to streamline it with the Constitution and ensure better application of its provisions.
29. The Committee noted that the notification of the public by Parliament on the annulled instruments would ensure that the void instruments are not implemented without full force of law.
30. The Committee further noted that the amendment shall enable Parliament to require the Regulation Making Authority to publish a notice in the gazette within seven days from the date of the resolution, to the effect that the statutory instrument is a nullity, and to submit the notice to Parliament, upon publication.
31. The amendments would ensure that the penalties provided are aligned to the current economic circumstances as what the Act provides is not deterrent enough.
32. The Bill will ensure that the Regulations that may have automatically been revoked by operation of law are saved from the automatic revocation.

5.0 COMMITTEE RECOMMENDATIONS

33. The Committee having considered the Statutory Instruments (Amendment) Bill (National Assembly Bill No. 3 of 2024) recommends that the Bill be proceeded with in accordance with Standing Order 114(3) (b) with amendments as proposed in the schedule below:

CLAUSE 2

THAT, clause 2 of the Bill be amended by deleting the proposed new subsection (5) and substituting therefor the following new subsection—

“(5) Where it comes to the attention of the Committee that a Cabinet Secretary responsible for a regulation making authority has failed to submit a statutory instrument in accordance with subsection (1), the Committee may, by a resolution require the Cabinet Secretary to publish a notice in the gazette within seven days from the date of the resolution, to the effect that the statutory instrument is a nullity, and to submit the notice to Parliament, upon publication.

CLAUSE 3

THAT, the Bill be amended by deleting clause 3 and substituting therefor the following new clause—

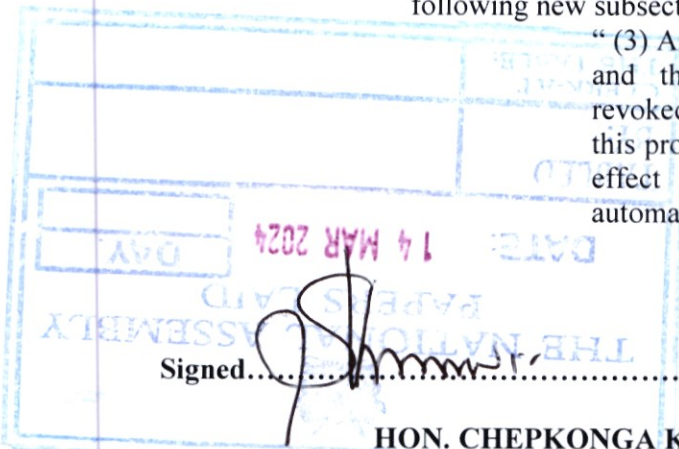
3. Section 12 of the principal Act is amended by deleting the words “rules, regulations and” appearing in subsection (3).

CLAUSE 9

THAT, the Bill be amended by deleting clause 9 and substituting therefor the following new clause —

9. Section 27 of the principal Act is amended by inserting the following new subsection immediately after subsection (2) —

“(3) Any statutory instrument that was in operation and that would otherwise stand automatically revoked on any day before the commencement of this provision, shall continue to operate and to have effect as if the instruments had not been automatically revoked on that date.”



Signed..... Date 14/03/2024.....

HON. CHEPKONGA KIPRONO SAMUEL, CBS, MP
CHAIRPERSON
COMMITTEE ON DELEGATED LEGISLATION

THIRTEENTH PARLIAMENT – THIRD SESSION

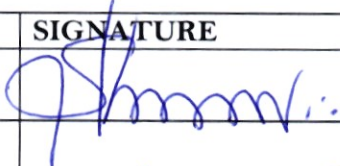
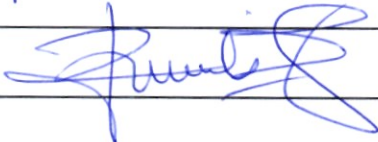


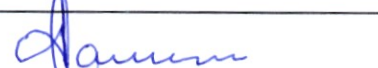
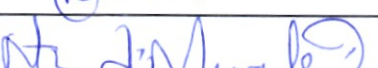
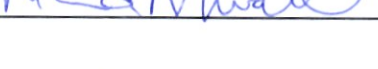


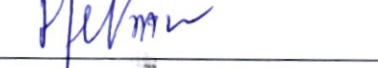


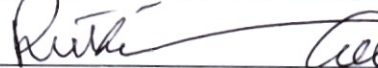


THE NATIONAL ASSEMBLY

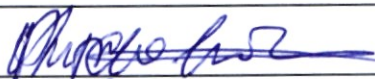


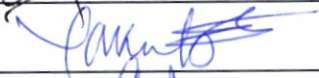
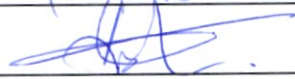

COMMITTEE ON DELEGATED LEGISLATION.

ADOPTION LIST FOR THE

STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2024

DATE 12/03/2024

| | NAME | SIGNATURE |
|-----|--|---|
| 1. | The Hon. Chepkonga Kiprono Samuel, CBS, M.P, Chairperson |  |
| 2. | The Hon. Githinji, Robert Gichumi, M.P. Vice-Chairperson |  |
| 3. | The Hon. Mbui, Robert, CBS, M.P. |  |
| 4. | The Hon. Sunkuli Julius Lekakeny, EGH,EBS,MP |  |
| 5. | The Hon. Maj. (Rtd) Abdullahi Bashir Sheikh, M.P. |  |
| 6. | The Hon. Mwirigi, John Paul, M.P. |  |
| 7. | The Hon. Kamene, Joyce, M.P. |  |
| 8. | The Hon. Mwale, Nicholas S. Tindi, M.P. |  |
| 9. | The Hon. Odoyo, Jared Okello, M.P. |  |
| 10. | The Hon. Komingoi, Kibet Kirui, M.P. |  |
| 11. | The Hon. Maj. (Rtd.) Dekow Barrow Mohamed, M.P. |  |
| 12. | The Hon. Munyoro, Joseph Kamau, M.P. |  |
| 13. | The Hon, Kimaiyo, Gideon Kipkoech, M.P. |  |
| 14. | The Hon. Ruku, Geoffrey Kariuki Kiringa, M.P. |  |
| 15. | The Hon. Chepkorir, Linet, M.P. |  |

| | | |
|-----|---|---|
| 16. | The Hon. Chebor, Paul, M.P. |  |
| 17. | The Hon. Lenguris, Pauline, M.P. |  |
| 18. | The Hon. Mamwacha Onchoke Charles, M.P. |  |
| 19. | The Hon. Yakub, Adow Kuno, M.P. |  |
| 20. | The Hon. Mnyazi, Amina Laura, M.P. |  |
| 21. | The Hon. Mugabe, Innocent Maino, M.P. |  |

MINUTES OF THE 2ND SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 20TH FEBRUARY, 2024, IN THE SMALL DINING ROOM, NEW WING LOUNGE, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. **The Hon Samuel Kiprono Chepkonga, CBS, M.P., Chairperson**
2. **The Hon. Robert Gichimu Githinji, M.P., Vice Chairperson**
3. The Hon. Robert Mbui, CBS, M.P.
4. The Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS M.P.
5. The Hon. Joyce Kamene, M.P.
6. The Hon. Nicholas S. Tindi Mwale, M.P.
7. The Hon. Jared Okello Odoyo, M.P.
8. The Hon. Kibet Kirui Komingoi, M.P.
9. The Hon. Gideon Kipkoech Kimaiyo, M.P.
10. The Hon. Geoffrey Kariuki Kiringa Ruku, M.P
11. The Hon. Paul Chebor, M.P.
12. The Hon. Pauline Lenguris, M.P.
13. The Hon. Charles Mamwacha Onchoke. M.P.
14. The Hon. Innocent Mugabe, M.P.

APOLOGIES

1. The Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, M.P.
2. The Hon. John Paul Mwirigi, M.P.
3. The Hon. Maj. (Rtd). Dekow Barrow Mohamed, M.P.
4. The Hon. Joseph Kamau Munyoro, M.P.
5. The Hon. Linet Chepkorir M.P.
6. The Hon. Yakub Adow Kuno, M.P.
7. The Hon. Laura Amina Mnyazi, M.P.

IN ATTENDANCE

SECRETARIAT

- | | | |
|--------------------------|---|----------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant I |
| 2. Mr. Peter Barasa | - | Legal Counsel II |
| 3. Mr. Brian Langwech | - | Clerk Assistant III |
| 4. Ms. Isabella Mwembi | - | Clerk Assistant III |
| 5. Mr. Silvanus Makau | - | Clerk Assistant III |
| 6. Ms. Viola Saiya | - | Research Officer III |
| 7. Ms. Rahab Chepkilim | - | Hansard Services |
| 8. Ms. Sheila Chebotibin | - | Serjeant-At-Arms. |

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Confirmation of minutes
5. Matters arising
6. **Briefing by the Directorate of Legal Services regarding the National Transport and Safety Authority Regulations.**
7. **Consideration of the Statutory Instruments (Amendment) (National Assembly Bill No. 3 of 2024)**
8. Any Other Business; and
9. Adjournment.

MIN. DAA&GPC/CDL/008/2024

PRELIMINARIES

The Chairperson called the Meeting to order at 10.05 a.m. after which he said a word of prayer. He then welcomed all to the Meeting.

MIN. DAA&GPC/CDL/009/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by the Hon. Gideon Kipkoech Kimaiyo, M.P and seconded by the Hon. Kibet Kirui Komingoi, M.P.

MIN. DAA&GPC/CDL/010/2024

CONFIRMATION OF MINUTES

The Minutes of the 1st Sitting held on Thursday, 15th February 2024, were confirmed as an accurate record of the proceedings having been proposed and seconded by Hon. Gideon Kipkoech Kimaiyo, M.P and Hon. Kibet Kirui Komingoi, M.P. respectively.

MIN. DAA&GPC/CDL/011/2024

MATTERS ARISING

Arising from MIN. DAA&GPS/CDL/005/2024, the Committee resolved to invite the Cabinet Secretary, for the National Treasury and Economic Planning, for a scrutiny meeting of the following regulations:

1. The Capital Markets (Alternative Investment Funds) Regulations, 2023, Legal Notice No. 170
2. The Capital Markets (Credit Rating Agencies) Regulations, 2023, Legal Notice No. 171
3. The Capital Markets (Public Offers, Listings and Disclosures) Regulations, 2023, Legal Notice No. 172
4. The Capital Markets (Collective Investment Schemes Regulations, 2023, Legal Notice No. 173
5. The Public Procurement Capacity Building Levy Order, 2023
6. The Proposed Public Private Partnerships Regulations, 2023.

**BRIEFING BY THE DIRECTORATE
OF LEGAL SERVICES REGARDING
THE NATIONAL TRANSPORT AND
SAFETY AUTHORITY
REGULATIONS**

The Committee was briefed on the National Transport and Safety (Operation of Commercial Vehicles) Regulations as follows, that:

1. The National Transport and Safety Authority is mandated under the provisions of section 4(2)(b) and (h) of the Act to conduct regular inspection and certification of motor vehicles to ensure that they are compliant with the requirements laid down under the Kenyan Standards Ks. 2295-2:2018 implementation guidelines for licensing of speed limiter and any law governing transport in Kenya.
2. In conducting inspection and certification, the National Transport and Safety Authority must ensure that: —
 - a) the speed limiter supplier has obtained or is in possession of Kenya Bureau of Standards (KEBS) Permit;
 - b) the speed limiter supplier has approval from the chief mechanical and transport engineer;
 - c) the speed limiter supplier has obtained a licence from the National Transport and Safety Authority;
 - d) the speed limiters must demonstrate that they have the ability to limit speed, record, and store speed data for 72hours, transmit data to both the NTSA and the supplier servers every 5 seconds as per the requirements of the Kenya Standards KS2295 – 1&2: 2018.
3. This inspection and certification are conducted on an annual basis to ensure compliance on the part of the speed limiter suppliers and also to ensure that the aforementioned speed limiter suppliers comply with the Kenyan Standards under Ks. 2295-1&2:2018
4. Regulations that govern speed governors in Kenya is the National Transport and Safety Authority (Operation of commercial vehicles) Regulations, 2018 (LN No. 3 of 2018)
5. **Regulation 5(2)** of the National Transport and Safety Authority (Operation of Commercial vehicles) regulations provides that all commercial vehicles shall be fitted with a speed governor that conforms to the Kenyan Standard Ks. 2295 -2:2018 or as approved by the Authority.
6. **Regulation 5(3)** provides for the validity of the licence issued under regulation 5 which shall be valid for a period of one year and may be renewed annually.

7. **Regulation 6** provides that a carrier or a driver may apply for a commercial vehicle licence by submitting an application in the form set out in the First Schedule.
8. The Committee having been briefed on the said Regulations observed that:
 - i. The National Transport and Safety Authority could be over-delegating to a third party, its function of certification of speed limiter for the commercial vehicles without the attendant regulations;
 - ii. There was no schedule of fees chargeable to the commercial vehicle owners for certification of the speed limiter;
 - iii. There was need to have an approved list of suppliers of the speed limiters to ensure that the required standards were adhered to;
 - iv. There was need to ensure that the inspection sites for the commercial vehicles were gazetted.
 - v. The authorized officer for certification of speed limiter ought to be government officer to ensure that standards are adhered to.
 - vi. Consequently, the Committee resolved to invite the Director General, National Transport and Safety Authority to address the said concerns on Tuesday, 27th February, 2024.

MIN. DAA&GPC/CDL/013/2024

**CONSIDERATION OF THE STATUTORY
INSTRUMENTS (AMENDMENT)
(NATIONAL ASSEMBLY BILL NO. 3 OF 2024**

The Committee considered the Statutory Instruments (Amendment) (National Assembly Bill No. 3 of 2024) which seeks to;

- i) Amend Section 11 by inserting new sub-sections 5 and 6,
- ii) Amend Section 12 of the principal Act by deleting subsection (3)
- iii) Amend section 14 of the principal Act by inserting the words “recommended to the House to” immediately after the words “the Committee may”
- iv) Amend the principal Act by deleting section 19 and substituting it with new sections and
- v) Amend the principal Act by deleting the heading to part V and substituting with a new heading-
“PART V- PURPOSE FOR REVIEW OF STATUTORY INSTRUMENTS”
- vi) Amend the Principal Act by repealing Section 21.
- vii) Amend section 24 of the principal act in subsection (5) by deleting the words “ not exceeding twenty thousand shillings or such term of imprisonment not exceeding one million shillings or such term of imprisonment not exceeding five years”
- viii) Amend section 27 of the Principal Act by inserting a new subsection immediately after subsection (2) to read “(3) Any statutory instrument that was in operation on or before the 24th January, 2024, shall continue to operate and to have effect as if the instruments had not been automatically revoked on that date”

The Committee having considered the Bill, resolved that the Bill be subjected to public participation and thereafter invite targeted stakeholders to share their submissions on the Bill.


MIN. DAA&GPC/CDL/013/2024
There were no issues in this Agenda item

ANY OTHER BUSINESS

MIN. DAA&GPC/CDL/014/2023

ADJOURNMENT

There being no other business, the meeting was adjourned at Twenty Minutes past Eleven O'clock.

SIGNED: 

THE HON. SAMUEL CHEPKONGA, CBS, M.P.
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

DATE: 22/02/24

MINUTES OF THE 13TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 7TH MARCH, 2024, IN THE SMALL DINING ROOM, NEW WING LOUNGE, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. **The Hon Samuel Kiprono Chepkonga, CBS, M.P. Chairperson**
2. The Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS M.P
3. The Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, M.P.
4. The Hon. Nicholas S. Tindi Mwale, M.P
5. The Hon. Kibet Kirui Komingoi, M.P.
6. The Hon. Maj. (Rtd). Dekow Barrow Mohamed, M.P.
7. The Hon. Geoffrey Kariuki Kiringa Ruku, M.P
8. The Hon. Linet Chepkorir M.P.
9. The Hon. Paul Chebor, M.P.
10. The Hon. Pauline Lenguris, M.P.
11. The Hon. Charles Mamwacha Onchoke. M.P.
12. The Hon. Innocent Mugabe, M.P.

APOLOGIES

1. **The Hon. Robert Gichimu Githinji, M.P. Vice Chairperson**
2. The Hon. Robert Mbui, CBS, M.P.
3. The Hon. John Paul Mwirigi, M.P.
4. The Hon. Joyce Kamene, M.P.
5. The Hon. Jared Okello Odoyo, M.P.
6. The Hon. Joseph Kamau Munyoro, M.P
7. The Hon. Gideon Kipkoech Kimaiyo, M.P.
8. The Hon. Yakub Adow Kuno, M.P.
9. The Hon. Laura Amina Mnyazi, M.P.

IN ATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|---------------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant I |
| 2. Mr. Dima Dima | - | Principal Legal Counsel I |
| 3. Mr. Brian Langwech | - | Clerk Assistant III |
| 4. Ms. Isabella Mwembi | - | Clerk Assistant III |
| 5. Mr. Silvanus Makau | - | Clerk Assistant III |
| 6. Ms. Fiona Wanjiru | - | Legal Counsel II |
| 7. Ms. Viola Saiya | - | Research Officer III |
| 8. Ms. Rahab Chepkilim | - | Hansard Services |
| 9. Mr. Noah Chemweno | - | Serjeant-At-Arms |

OFFICERS FROM THE OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE

- | | | |
|--------------------------|---|---|
| 1. Ms. Catherine Ochanda | - | Chief State Counsel, OAG&DJ |
| 2. Mr. Samson Maundu | - | Principal State Counsel, OAG&DJ |
| 3. Ms. Wambui Kamau | - | Team Leader, National Council for Law Reporting |
| 4. Prof. Jack Masimali | - | CEO, National Council for Law Reporting |

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Confirmation of minutes
5. Matters arising
6. **Meeting with the Attorney General and Department of Justice regarding the following;**
 - i. **The Revision of the Laws Order, 2023**
 - ii. **Statutory Instruments (Amendment) Bill, 2024.**
7. Any Other Business; and
8. Adjournment.

MIN. DAA&GPC/CDL/076/2024

PRELIMINARIES

The Hon Samuel Kiprono Chepkonga, CBS, M.P. Chairperson, called the Meeting to order at 10.35 a.m. and requested Hon. Innocent Mugabe, M.P. to say a prayer. He then welcomed all to the meeting with a round of introductions.

MIN. DAA&GPC/CDL/077/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by the Hon. Geoffrey Kariuki Kiringa Ruku, M.P and seconded by the Hon. Innocent Mugabe, M.P.

MIN. DAA&GPC/CDL/078/2024

CONFIRMATION OF MINUTES

Minutes of the 8th Sitting held on Friday, 1st March 2024, were confirmed as an accurate record of the proceedings having been proposed by the Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS M.P and seconded by the Hon. Geoffrey Kariuki Kiringa Ruku, M.P

Minutes of the 9th Sitting held on Friday, 1st March 2024, were confirmed as an accurate record of the proceedings having been proposed by the Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS M.P. and seconded by the Hon. Innocent Mugabe, M.P.

Minutes of the 10th Sitting held on Saturday, 2nd March 2024, were confirmed as an accurate record of the proceedings having been proposed by the Hon. Innocent Mugabe, M.P. and seconded by the Hon. Geoffrey Kariuki Kiringa Ruku, M.P

Minutes of the 11th Sitting held on Saturday, 2nd March 2024, were confirmed as an accurate record of the proceedings having been proposed by the Hon. Geoffrey Kariuki Kiringa Ruku, M.P and seconded by the Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS M.P

Minutes of the 12th Sitting held on Tuesday, 5th March 2024, were confirmed as an accurate record of the proceedings having been proposed by the Hon. Pauline Lenguris, M.P. and seconded by the Hon. Charles Mamwacha Onchoke. M.P.

MIN. DAA&GPC/CDL/079/2024

MATTERS ARISING

Arising from MIN. DAA&GPC/CDL/073/2024, the Committee was notified that a compliance letter had been sent out requesting NTSA to adhere to the Committee's directive and submit the NTSA (Operation of Commercial Vehicles Regulations) within a month.

MIN. DAA&GPC/CDL/080/2024

**PRESENTATIONS FROM THE
OFFICE OF THE ATTORNEY
GENERAL AND DEPARTMENT OF
JUSTICE ON THE REVISION OF THE
LAWS ORDER, 2023**

Ms. Catherine Ochanda, Chief State Counsel, Office of the Attorney General & Department of Justice briefed the Committee on the Revision of the Laws Order, 2023 (LN 221 of 2023) as follows, that:

- i. The Revision of Laws Order was enacted in accordance with Section 7 of the Revision of the Laws Act (Cap.1) by the Attorney General, who delegated the responsibility to the National Council for Law Reporting through a legal notice.
- ii. The Order may be cited as the Revision of the Laws Order, 2023
- iii. The Twenty-Fourth Supplement to the Laws of Kenya prepared under section 7 of the Act Covered the period between 1995 and 2022 and shall come into force on the 30th January, 2024
- iv. The Twenty-Fourth Annual Supplement comprises the following new booklets which should be inserted in appropriate numerical sequence in the volumes of the Laws of Kenya:
 - a) The Constitution of Kenya
 - b) One hundred and twenty-six (126) revised chapters
 - c) Two hundred and fifty-nine (259) chapters which are incorporated in the Laws for the first time
 - d) A new revised accumulative index containing a complete noter up of the Laws as at 31st December, 2022 and including a supplement to the chronological table; and
 - e) A new revised table of contents including a separate table of Omitted Acts.

- v. As the new booklets were inserted in the volumes, the following booklets would be removed and stored for future reference;
 - a) The Constitution of Kenya, 1963
 - b) Eighty-Nine (89) chapters which have been replaced
 - c) Fifty-Seven (57) chapters which have been repealed
 - d) The old Index; and
 - e) The old Table of Contents including the table of omitted Acts
- vi. The Government Printer will Supply the Twenty-Fourth Annual Supplement at the Government Printer's Bookshop
- vii. The Twenty-Fourth Annual Supplement will also be available on the National Council for Law Reporting Website,
- viii. Members were also informed that the NG-CDF amended Bill on 2023 was also updated.
- ix. The Committee consequently **APPROVED** the Revision of the Laws Order, 2023 as was proposed by the Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS M.P. and seconded by the Hon. Linet Chepkorir, M.P.

MIN. DAA&GPC/CDL/081/2024

**COMMENTS REGARDING THE
STATUTORY INSTRUMENTS
(AMENDMENT) BILL, 2024
(NATIONAL ASSEMBLY BILL NO. 3
OF 2024)**

The Attorney General submitted the following comments regarding the aforementioned Bill;

- i. In clause 2 of the Bill, delete the propose subsection (5) of section 11 and substitute therefor the following new subsection—

(5) Where it comes to the attention of the Committee that a Cabinet Secretary responsible for a regulation making authority has failed to submit a statutory instrument within the period specified in subsection (1), the Committee may, by a resolution of the Committee, require the Cabinet Secretary to submit the statutory instrument to Parliament within seven days from the date of the resolution.

Justification

There is need to connect the failure by the Cabinet Secretary responsible for the regulation making authority to comply with the timeline under subsection (1) and the *suo motu* power of the Committee to pass a resolution regarding that failure.

Not agreed to as it is making it discretionary for the Committee to require the Regulation making authority to submit statutory instrument to Parliament within seven days.

- ii. In clause 3 of the Bill, by deleting the expression “subsection (3)” and substituting therefor the words “rules, regulations and”.

Justification

The word “order” found in section 12(3) has more than one meaning. “Order” may also mean a court order in respect of any judicial proceedings. In terms of Article 160(1) of the Constitution, court orders fall within the ambit of the judicial authority of the Judiciary and consequently, are not subject to the control or direction of any person or authority. Consequently, court orders are not subject to parliamentary scrutiny but only to review by a court superior to the court that gave the order on appeal.

Further, the Bill be amended to add a new subsection to section 12 as follows:

(4) Subsection (3) shall only apply to court orders made by courts of competent jurisdiction in the performance of judicial functions but shall not apply to statutory instruments made by the Judiciary.

- iii. In the proposed new section 19(1) set out in clause 5 of the Bill:

- (i) insert the words “Cabinet Secretary responsible for a regulatory authority or” immediately after the words “House to the”; and
(ii) Insert the words “Cabinet Secretary responsible for a regulatory authority or” immediately after the words “this section”.

Justification

This would recognize that statutory instruments can either be made by Cabinet Secretaries or the regulatory authorities themselves.

- iv. In the proposed new section 27(3) set out in clause 9, insert the words “and on any day before the commencement of this provision”.

Justification

Such an amendment would serve to revive any statutory instruments that may have been automatically revoked by the revival of section 21 of the Act on the 24th January, 2024, and between that date and the date of the commencement of the new subsection (3).

The Kenya Law Reforms Commission submitted the following comments regarding the aforementioned Bill;

- i. On the Amendment by insertion of new sub-sections immediately after sub-section (4) in section 11, the KLR proposed that the requirement by the Committee to the Statutory-

making Authority under the proposed subsection (5) should be accompanied by a requirement to republish the Statutory Instruments

- ii. On the Amendment of section 12 by deletion of subsection (3), KLRC stated that it is not necessary to delete section 12 (3) of CAP 2A since it was intended to ensure the separation of powers between the Judiciary and the Legislature. They proposed retaining the section
- iii. On the Amendment of section 14 by inserting the words “recommend to the House to” immediately after the words “the Committee may”, KLR proposed a review of section 14 on the basis that exemption from scrutiny cannot solely be based on the number of instruments in a particular class tabled before the Committee.
- iv. On Amendment of section 19 by deleting section 19 and substituting 19 (1) (a, b) and 19 (2), KLR recommended that there is need to harmonize section 19 as it currently stands with the proposal to insert a new 19 (2) requiring publication of revocation on Statutory Instruments.
- v. On repealing of section 21, KLRC proposed that section 21 of the Statutory Instruments Act, CAP 2A be repealed or otherwise suspended and that such repeal or suspension should retrospectively take effect from 25th January, 2023.

MIN. DAA&GPC/CDL/082/2024

ANY OTHER BUSINESS

The Committee was informed that nine regulations from the Ministry of Lands, Public Works, Housing, and Urban Development were submitted by the House for consideration.

The Committee was also notified that an Advert for Public Participation regarding Statutory Instruments from the National Treasury and Economic Planning on the Capital Markets Authority Regulations which was to be published on Friday, 8th March, 2024.

MIN. DAA&GPC/CDL/083/2024

ADJOURNMENT

There being no other business, the meeting was adjourned at 12:45 p.m.

SIGNED: 

THE HON. SAMUEL CHEPKONGA, CBS, M.P.
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

DATE: 12/03/2024

MINUTES OF THE 14TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 12TH MARCH, 2024, IN THE SMALL DINING ROOM, NEW WING LOUNGE, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. **The Hon Samuel Kiprono Chepkonga, CBS, M.P. Chairperson**
2. The Hon. Robert Mbui, CBS, M.P.
3. The Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, M.P.
4. The Hon. Joyce Kamene, M.P.
5. The Hon. Nicholas S. Tindi Mwale, M.P
6. The Hon. Kibet Kirui Komingoi, M.P.
7. The Hon. Maj. (Rtd). Dekow Barrow Mohamed, M.P.
8. The Hon. Geoffrey Kariuki Kiringa Ruku, M.P
9. The Hon. Paul Chebor, M.P.
10. The Hon. Pauline Lenguris, M.P.
11. The Hon. Charles Mamwacha Onchoke. M.P.
12. The Hon. Yakub Adow Kuno, M.P.
13. The Hon. Laura Amina Mnyazi, M.P.

APOLOGIES

1. **The Hon. Robert Gichimu Githinji, M.P. Vice Chairperson**
2. The Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS M.P
3. The Hon. John Paul Mwirigi, M.P.
4. The Hon. Jared Okello Odoyo, M.P.
5. The Hon. Joseph Kamau Munyoro, M.P
6. The Hon. Gideon Kipkoech Kimaiyo, M.P.
7. The Hon. Linet Chepkorir M.P.
8. The Hon. Innocent Mugabe, M.P.

IN ATTENDANCE

SECRETARIAT

- | | | |
|------------------------|---|---------------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant I |
| 2. Mr. Dima Dima | - | Principal Legal Counsel I |
| 3. Mr. Brian Langwech | - | Clerk Assistant III |
| 4. Ms. Isabella Mwembi | - | Clerk Assistant III |
| 5. Mr. Silvanus Makau | - | Clerk Assistant III |
| 6. Ms. Fiona Wanjiru | - | Legal Counsel II |
| 7. Ms. Viola Saiya | - | Research Officer III |
| 8. Ms. Rahab Chepkilim | - | Hansard Services |

9. Mr. Noah Chemweno - Serjeant-At-Arms

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Confirmation of minutes
5. Matters arising
6. **Consideration and Adoption of the Report on the Statutory Instruments (Amendment) Bill, 2024.**
7. Any Other Business; and
8. Adjournment.

MIN. DAA&GPC/CDL/084/2024

PRELIMINARIES

The Hon Samuel Kiprono Chepkonga, CBS, M.P. Chairperson, called the Meeting to order at 10.05 a.m. and requested Hon. Kibet Kirui Komingoi, M.P to say a prayer. He then welcomed all present to the meeting.

MIN. DAA&GPC/CDL/085/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by the Hon. Charles Mamwacha Onchoke. M.P and seconded by the Hon. Laura Amina Mnyazi, M.P.

MIN. DAA&GPC/CDL/086/2024

CONFIRMATION OF MINUTES

Minutes of the 13th Sitting held on Thursday, 7th March 2024, were confirmed as an accurate record of the proceedings having been proposed by the Hon. Pauline Lenguris, M.P and seconded by the Hon. Charles Mamwacha Onchoke, M.P.

MIN. DAA&GPC/CDL/087/2024

MATTERS ARISING

There were no matters arising from the previous Minutes.

MIN. DAA&GPC/CDL/088/2024

CONSIDERATION AND ADOPTION OF THE REPORT ON STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2024

The Committee considered and adopted the Report on the Statutory Instruments (Amendment) Bill (National Assembly Bill No. 3 of 2024), with the following observations and recommendations, having been proposed by Hon. Pauline Lenguris, M.P and seconded by Hon. Laura Amina Mnyazi, M.P.:

Observations:

1. In considering the proposed amendments, the Committee observed that the amendments conform to the Constitution and other existing laws and that there was compliance with all the statutory procedures and the Standing Orders.
2. The Committee also observed that the principal object of this Bill was to amend the provisions of the Statutory Instruments Act, 2013 to streamline it with the Constitution and ensure better application of its provisions.
3. The Committee noted that the notification of the public by Parliament on the annulled instruments would ensure that the void instruments are not implemented without full force of law.
4. The Committee further noted that the amendment shall enable Parliament to require the Regulation Making Authority to publish a notice in the gazette within seven days from the date of the resolution, to the effect that the statutory instrument is a nullity, and to submit the notice to Parliament, upon publication..
5. The amendments would ensure that the penalties provided are aligned to the current economic circumstances as what the Act provides is not deterrent enough.
6. The Bill will ensure that the Regulations that may have automatically been revoked by operation of law are saved from the automatic revocation.

Recommendations:

CLAUSE 2

THAT, clause 2 of the Bill be amended by deleting the proposed new subsection (5) and substituting therefor the following new subsection—

“(5) Where it comes to the attention of the Committee that a Cabinet Secretary responsible for a regulation making authority has failed to submit a statutory instrument in accordance with subsection (1), the Committee may, by a resolution require the Cabinet Secretary to publish a notice in the gazette within seven days from the date of the resolution, to the effect that the statutory instrument is a nullity, and to submit the notice to Parliament, upon publication.

CLAUSE 3

THAT, the Bill be amended by deleting clause 3 and substituting therefor the following new clause—

3. Section 12 of the principal Act is amended by deleting the words “rules, regulations and” appearing in subsection (3).

CLAUSE 9

THAT, the Bill be amended by deleting clause 9 and substituting therefor the following new clause —

9. Section 27 of the principal Act is amended by inserting the following new subsection immediately after subsection (2) —

“ (3) Any statutory instrument that was in operation and that would otherwise stand automatically revoked on any day before the commencement of this provision, shall continue to operate and to have effect as if the instruments had not been automatically revoked on that date.”

MIN. DAA&GPC/CDL/089/2024

ANY OTHER BUSINESS

There were no issues in this Agenda item

MIN. DAA&GPC/CDL/090/2024

ADJOURNMENT

There being no other business, the meeting was adjourned at Thirty Minutes past Ten O'clock.

SIGNED: 

THE HON. SAMUEL CHEPKONGA, CBS, M.P.
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

DATE: 14/03/2024



**THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK**

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: cpa@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote

REF: NA/DAA&GPC/CDL/2024/(004)

21st February, 2024

Hon. Shadrack John Mose
Solicitor General
Office of the Attorney General and Department of Justice
Sheria House
P.O BOX 40112 – 00100
NAIROBI.

Mr. Joash Dache, MBS
Commission Secretary / CEO
Kenya Law Reform Commission
Reinsurance Plaza, 3rd Floor, Taifa Road
Po Box 34999 – 00100
NAIROBI.

Dear *Sir*.

RE: SCRUTINY OF THE STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2024

The Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* of the National Assembly Standing Orders and is mandated to, consider and scrutinize statutory instruments submitted to Parliament to ensure conformity with the Constitution, the Statutory Instruments Act (No. 23 of 2013), the Acts under which it is made, or other relevant written laws.

Pursuant to the provisions of Standing Order 127 (2), the Statutory Instruments (Amendment) (National Assembly Bill No. 3 of 2024) (copy attached) was read a First Time on Wednesday, 14th February, 2024 and was referred to the Committee for its consideration.

The purpose of this letter therefore, is to request you to submit your comments and recommendations on the said Bill to the Committee for its consideration and reporting back to the House. The Committee would appreciate to receive the comments on or before **Friday, 1st March, 2024.**

The officer facilitating this Committee is Ms. Esther Nginyo, who may be contacted on Tel. No. 0722262228 email address esther.nginyo@parliament.go.ke.

Yours *Sincerely,*



Sarah M. Kioko, MBS

For: CLERK OF THE NATIONAL ASSEMBLY

Copy to: **Hon. Justin B.N. Muturi, EGH**
Attorney-General and Department of Justice
State Law Office
NAIROBI.

Encls



**REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – THIRD SESSION [2024]**

**IN THE MATTER OF ARTICLE 118(1) (b) OF THE CONSTITUTION
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE STATUTORY
INSTRUMENTS (AMENDMENT) (NATIONAL ASSEMBLY BILL NO. 3 OF 2024)
INVITATION TO SUBMIT MEMORANDA**

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and the National Assembly Standing Orders require House Committees considering Bills to facilitate public participation;

AND WHEREAS the Statutory Instruments (Amendment) Bill (National Assembly Bill No. 3 of 2024) was read a First Time on Wednesday, 14th February, 2024 and referred to the relevant Committee for consideration and reporting to the House;

IT IS NOTIFIED that the Statutory Instruments (Amendment) Bill (National Assembly Bill No. 3 of 2024) sponsored by Leader of the Majority Party, Hon. Kiamani Ichung'uwa, EGH, MP seeks to amend the Statutory Instruments Act, 2013 to streamline its provisions with the requirements of Article 94(5) of the Constitution and ensure better application of the Act. In particular, the Bill proposes to—

- (a) amend section 1) of the Act to enable the Committee on Delegated Legislation to require a regulation-making authority to submit a copy of any regulation that ceases to have effect by operation of law to Parliament. Upon submission, Parliament is required to notify the general public of the nullity of such an instrument in two newspapers of wide circulation;
- (b) amend section 12 of the Act to align the Act with Article 94 (5) of the Constitution on delegation of legislative authority;
- (c) amend section 14 of the Act to subject any exemption made by the Committee on Delegated Legislation to approval by the House;
- (d) amend section 19 of the Act, to harmonize the wording of the Act. The amendment replaces the word "revoke" with the word "annul" for consistency;
- (e) repeal section 21 of the Act to remove the mandatory requirement for the review of subsidiary legislation and the expiry of statutory instruments;
- (f) amend section 24 of the Act, to increase the limit of fines and term of imprisonment that may be imposed for breach of regulations. The amendment seeks to provide for penalties that adequately deter violation or breach of regulations; and
- (g) amend section 27 of the Act to save and allow the continued operation of regulations that were in operation on or before the 24th January, 2024.

NOW THEREFORE, in compliance with Article 118(1) (b) of the Constitution and the National Assembly Standing Orders, the Clerk of the National Assembly hereby invites the public and stakeholders to submit memoranda on the Bill to the Committee on Delegated Legislation. A copy of the Bill is available at the National Assembly Table Office, First Floor, Main Parliament Buildings, Nairobi and on www.parliament.go.ke/the-national-assembly/notice-business/bills.

Memoranda may be addressed to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, First Floor, Main Parliament Buildings, Nairobi; or emailed to cas@parliament.go.ke; to be received on or before Tuesday, 5th March, 2024 at 5.00 p.m.

S. NJOROGE, CBS
CLERK OF THE NATIONAL ASSEMBLY

21st February, 2024

"For the Welfare of Society and the Just Government of the People"

REPUBLIC OF KENYA



**THE SENATE
(THIRTEENTH PARLIAMENT - THIRD SESSION)
CALENDAR**

(Regular Sessions of the Senate – February to December, 2024)

IT IS NOTIFIED for general information that pursuant to Standing Order 32 of the Senate Standing Orders, by a Resolution made on 15th February, 2024, the Senate approved its Calendar (Regular Sessions) for the Third Session, 2024 as set out in the Schedule.

SCHEDULE

| SITTING DATES | SITTING DAYS | RECESS DATES |
|--|---|---|
| Third Session: Part I 13 th February, 2024 to 28 th March, 2024 | Tuesdays Wednesdays Thursdays - afternoon - morning - afternoon - afternoon | 29 th March, 2024 to 15 th April, 2024 |
| Third Session: Part II 16 th April, 2024 to 9 th May, 2024 | Tuesdays Wednesdays Thursdays - afternoon - morning - afternoon - afternoon | 31 st May, 2024 to 24 th June, 2024 |
| Third Session: Part III 25 th June, 2024 to 8 th August, 2024 | Tuesdays Wednesdays Thursdays - afternoon - morning - afternoon - afternoon | 9 th August, 2024 to 2 nd September, 2024 |
| Third Session: Part IV 3 rd September, 2024 to 17 th October, 2024 | Tuesdays Wednesdays Thursdays - afternoon - morning - afternoon - afternoon | 18 th October, 2024 to 4 th November, 2024 |
| Third Session: Part V 5 th November, 2024 to 5 th December, 2024 | Tuesdays Wednesdays Thursdays - afternoon - morning - afternoon - afternoon | 6 th December, 2024 to 10 th February, 2025 |

- NOTE:**
- i) The Senate shall sit from 2.30 p.m. to 6.30 p.m. on Tuesdays, Wednesdays and Thursdays and from 9.30 am to 1.00pm on Wednesdays, pursuant to Standing Order 34 of the Senate Standing Orders.
 - ii) Special Sittings shall be notified through Kenya Gazette notices, as per Standing Order 33 of the Senate Standing Orders.

J. M. NYEGENYE, CBS,
CLERK OF THE SENATE



PUBLIC NOTICE

INVITATION TO A STAKEHOLDER ENGAGEMENT WORKSHOP ON THE DRAFT ENERGY (ELECTRICITY MARKET, BULK SUPPLY AND OPEN ACCESS) REGULATIONS, 2024

The Energy and Petroleum Regulatory Authority (EPRA) is established under the Energy Act, 2019 with the responsibility for economic and technical regulation of the electric power, coal, renewable energy and petroleum subsectors. The Authority has developed the Draft Energy (Electricity Market, Bulk Supply and Open Access) Regulations, 2024 in line with the provisions of the Energy Act 2019.

| Regulation | Objective |
|--|---|
| Draft Energy (Electricity Market, Bulk Supply and Open Access) Regulations, 2024 | To establish a transparent, competitive, and efficient electricity market that promotes fair competition, ensures reliable bulk supply of electricity, matches demand and supply and facilitates open access to transmission and distribution infrastructure to various players including eligible customers. |

The draft regulations were published on the Kenya Gazette on 16th February 2024 for stakeholders and public comments. The draft regulations can be accessed and downloaded through EPRA's website www.epra.go.ke

EPRA intends to undertake a Stakeholder engagement workshop on the proposed draft regulations on 4th March 2024 at the Sarova Stanley Hotel from 8:00 a.m. to 3:00 p.m. Proceedings of the engagement will be streamed live on the Authority's Facebook page, YouTube channel and Zoom to enable remote participation.

Comments on the draft regulations can be submitted through email info@epra.go.ke. Additionally, written comments may be physically delivered to the Authority's headquarters in Nairobi or the regional offices listed below, not later than Friday 8th March, 2024

| Regions | Physical Address |
|----------------------------------|---|
| Nairobi Office | 1 st Floor, Eagle Africa Centre, Longonot Road, Upper Hill |
| Coast Region Office - Mombasa | 3 rd Floor, Kilindini Plaza Building, Moi Avenue |
| Nyanza & Western Region - Kisumu | 2 nd Floor, Lake Basin Mall |
| North Rift Region - Eldoret | 7 th Floor, Eldoret Daima Towers |
| South Rift Region - Nakuru | 3 rd Floor, Jeniffer Riria Hub |
| Central Region - Nyeri | 4 th Floor, KDS Centre, Kimathi Way |

The Authority therefore wishes to invite all the stakeholders and the public to attend the stakeholder engagement workshop.

Director General
Energy and Petroleum Regulatory Authority
P.O. Box 42681 – 00100 GPO, Nairobi, Kenya
Telephone: +254-709 336 000 | 020 284 7000 | 0734 414 333
Website: <https://www.epra.go.ke/>



www.epra.go.ke



(1) D/AAGPC
 Please deal.
 SO:
 13/03/24



REPUBLIC OF KENYA
 OFFICE OF THE ATTORNEY-GENERAL
 &
 DEPARTMENT OF JUSTICE

(11) 651422
 Please deal
 fMA
 13/3/24

(11) 1. GME
 2. LUC
 please note
 fMA
 13/3/24

Our Ref. AG/LDD/32/1/8
 Your Ref. NA/DAA&GPC/CDL/2024(004)

11th March, 2024

Mr. Samuel Njoroge, CBS
 Clerk of the National Assembly
 Parliament Buildings
 NAIROBI

RE: SCRUTINY OF THE STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2024

This has reference to your letter under Ref. NA/DAA&GPC/CDL/2024(004) dated the 21st February, 2024, and the request for comments and recommendations on the Statutory Instruments (Amendment) Bill, 2024 (NA Bills No. 3 of 2024), and the invitation to appear before the Committee on Delegated Legislation on the 7th March, 2024.

We note that though the letter is dated the 21st February, 2024, it was received in this Office on the 28th February, 2024, and that our comments and recommendations were to be submitted on or before the 1st March, 2024.

Following our submissions to the Committee on the 7th March, 2024, and discussions with the members of the Committee on the Bill, we recommend that the Bill be amended as follows:

| S/No. | Clause in the Bill | Proposed amendment | Reason for the amendment |
|-------|--------------------|--|--|
| 1. | Clause 2 | Delete the proposed subsection (5) of section 11 and substitute therefor the following new subsection— (5) Where it comes to the attention of the Committee that a Cabinet Secretary responsible for a regulation making authority has failed to submit a statutory instrument within the period specified in subsection (1), the Committee may, by a resolution of the | There is need to connect the failure by the Cabinet Secretary responsible for the regulation making authority to comply with the timeline under subsection (1) and the <i>suo motu</i> power of the Committee to pass a resolution regarding that failure. |

SHERIA HOUSE, HARAMBEE AVENUE
 P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995
 E-MAIL: info_statelawoffice@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
 CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
 E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

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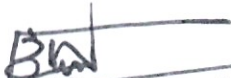
13 MAR 2024

NATIONAL ASSEMBLY
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 12 MAR 2024
 DEPUTY CLERK S. KIOKO
 P. O. Box 41842 - 00100, NAIROBI

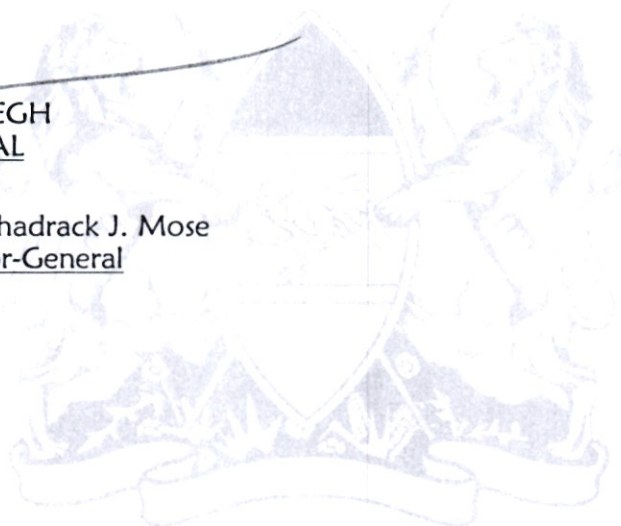
| <i>S/No.</i> | <i>Clause in the Bill</i> | <i>Proposed amendment</i> | <i>Reason for the amendment</i> |
|--------------|---------------------------|---|--|
| | | Committee, require the Cabinet Secretary to submit the statutory instrument to Parliament within seven days from the date of the resolution. | |
| 2. | Clause 3 | Delete the expression "subsection (3)" and substituting therefor the words "rules, regulations and". | The word "order" found in section 12(3) has more than one meaning. "Order" may also mean a court order in respect of any judicial proceedings. In terms of Article 160(1) of the Constitution, court orders fall within the ambit of the judicial authority of the Judiciary and consequently, are not subject to the control or direction of any person or authority. Consequently, court orders are not subject to parliamentary scrutiny but only to review by a court superior to the court that gave the order on appeal. |
| 3. | | Add the following new subsection immediately after subsection (3)— (4) Subsection (3) shall only apply to court orders made by courts of competent jurisdiction in the performance of judicial functions but shall not apply to statutory instruments made by the Judiciary. | To provide clarity that only court orders shall not be subject to parliamentary scrutiny. |
| 4. | Clause 5 | In the proposed new section 19(1) set out in clause 5 of the Bill: (a) insert the words "Cabinet Secretary responsible for a regulatory authority or" immediately after the words "House to the"; and (b) insert the words "Cabinet | This is in recognition that statutory instruments can either be made by Cabinet Secretaries or the regulatory authorities themselves. |

| <i>S/No.</i> | <i>Clause in the Bill</i> | <i>Proposed amendment</i> | <i>Reason for the amendment</i> |
|--------------|---------------------------|---|---|
| | | Secretary responsible for a regulatory authority or” immediately after the words “this section”. | |
| 5. | Clause 9 | In the proposed new section 27(3), insert the words “and on any day before the commencement of this provision”. | Such an amendment would serve to revive any statutory instruments that may have been automatically revoked by the revival of section 21 of the Act on the 24th January, 2024, and between that date and the date of the commencement of the new subsection (3). |

We trust that this is in order.


Hon. J.B.N. Muturi EGH
ATTORNEY-GENERAL

Copy to: Hon. Shadrack J. Mose
Solicitor-General



KENYA LAW REFORM COMMISSION



U) D/AAGPC

"A Vibrant Agency for Responsive Law Reform"
 Telegrams: "LAWREFORM" NAIROBI
 Telephone: Nairobi, +254-20-2241186/2241201
 Fax: +254-20-2225786
 www.info@klrc.go.ke

Please deal.
[Signature]
 05/03/2024

KENYA LAW REFORM COMMISSION
 REINSURANCE PLAZA
 3RD FLOOR
 TAIFA ROAD
 P.O. Box 34999-00100
 NAIROBI, KENYA

When replying please quote
 Ref. No. KLRC/8/64/(63)
 and Date

4th March, 2024

Clerk of the National Assembly
 Clerks Chambers
 National Assembly
 Parliament Buildings
 P. O. Box 41842 - 00100
 NAIROBI.

(ii) Gsther
 please
 deal
 FAA
 05/3/24

(iii) 1. Enyesen
2. Lucy
 please
 note
 FAA
 05/3/24

(Attn: Serah Kioko, MBS)

Dear Serah

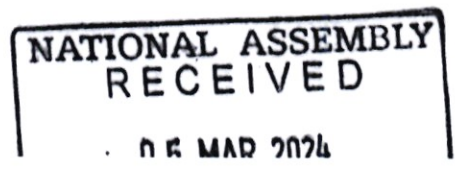
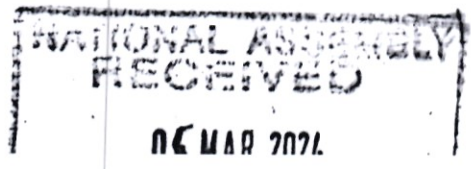
RE: SCRUTINY OF THE STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2024

Your letter Ref NA/DAA&GPC/CDL/2024(004) dated 21st February, 2024 on the above subject refers.

The Kenya Law Reform Commission (KLRC) is established under the Kenya Law Reform Commission Act No. 19 of 2013 with the mandate of keeping the law under review and recommending its reform to ensure among other things that the law conforms to the Constitution, is consistent, harmonized, just, simple, accessible, modern and cost-effective in application.

The KLRC has studied the Bill and makes the following comments.

| Clause | Comments | Rationale |
|---------------|----------------------------------|----------------------------------|
| 1-Short title | No comments | Standard clause |
| 2- Amendment | The requirement by the Committee | A statutory instrument which has |



| | | |
|---|--|---|
| <p>of section of Cap 2A</p> | <p>to the statutory-making authority under the proposed subsection (5) should be accompanied by a requirement to re-publish the statutory instrument.</p> | <p>not been laid before the House shall have ceased to have effect immediately after the last day it was supposed to have been laid before the House. For it to be properly laid before the House again, it has to be first published.</p> |
| <p>3-Amendment of section 12 of Cap 2A</p> | <p>It is not necessary to delete Section 12 (3) of Cap 2A since it is intended to ensure separation of powers between Judiciary and the Legislature. It is proposed to retain the section as is.</p> | <p>Deletion of section 12(3) will mean that that the Chief Justice will be required to lay Rules of Court before Parliament. Rules of Court govern procedures for conduct of business in courts, nature of pleadings and court fees. In other jurisdictions including Zambia and Botswana there are specific provisions requiring that Rules of Court shall not be laid before Parliament.</p> |
| <p>4- Amendment of section 14 of Cap 2A</p> | <p>Further we propose a review of Section 14 on the basis that exemption from scrutiny cannot solely be based on the number of instruments in a particular class tabled before the Committee.</p> <p>Widen the scope of Section 14 to enumerate grounds upon which an instrument or class of instruments may be exempted from scrutiny with Parliamentary approval. Some of these grounds may include:</p> <ul style="list-style-type: none"> • The instrument or class of instrument affects or is likely to affect only a limited | <p>We welcome the inclusion of the words "recommend to the House to". The practice in other commonwealth jurisdictions is that there must be Parliamentary approval for the exemption. This will enhance accountability.</p> <p>An exemption from scrutiny raises key questions about the accountability of the executive to the Parliament as it effectively prevents scrutiny of delegated legislation.</p> <p>An exemption from scrutiny means the Parliament, the</p> |

| | | |
|-------------------------------------|--|---|
| | <p>or will be taken for the purpose of bringing the purport thereof to the notice of those persons affected or likely to be affected by it;</p> <ul style="list-style-type: none"> • The instrument or class of instruments will only affect internal controls within the executive arm of government; • The instrument or class of instruments is critical to ensuring urgent or decisive actions (COVID times) • The instrument is required under an international treaty or convention. However this requires a position on the monist or dualist approach. • The instrument may be required for intergovernmental purposes in which case there has been considerable engagement and participation by the respective governments; | <p>has to prevent delegated legislative power being exercised in a manner not foreseen or provided for in the primary legislation, or in a way that might otherwise be considered undesirable.</p> <p>We also propose that the criteria for exemption of statutory instruments be widened and not be based solely on the number of instruments laid before the House.</p> |
| <p>Amendment section 19 of p 2A</p> | <p>There is need to harmonize section 19 as it currently stands with the proposal to insert a new 19(2) requiring publication of revocation of a statutory instrument.</p> | <p>Section 19 already provides that the regulation-making authority shall publish the revocation within fourteen days. The new proposal means that the revocation will be required to be published twice by two different agencies.</p> |
| <p>Amendment</p> | <p>No comment</p> | <p>Review of limitations for penal clauses for breach of statute</p> |

| | | |
|--|--|--|
| | | current restriction of statutory instrument penalty, not exceeding twenty thousand shillings or term of imprisonment not exceeding six months is out of sync with the economic status and other penalties in the statute book. |
|--|--|--|

As you may have noticed, the Statutory Instruments (Amendment) Bill (National Assembly Bills No 2 of 2024) published on 1st February, 2024 sought to repeal section 21 of Cap 2A but this appears to have been dropped in the version of the Bill as passed by the National Assembly.

Section 21 of Cap 2 provides for automatic revocation of statutory instruments ten years after the making of the statutory instrument unless it is sooner repealed, expires or a regulation is made exempting it from expiry.

You are no doubt aware of the following background and developments which have taken place:

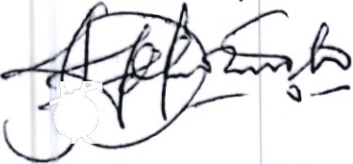
1. The Statutory Instruments Act came into force on the 25th January, 2013.
2. The statutory instruments which were in place as at that date, were expected to be automatically revoked on 25th January 2023.
3. In November 2022, the Attorney General on behalf of all Cabinet Secretaries, published and tabled before Parliament *the Statutory Instruments Act, (Exemption from expiry) (No. 2) Regulations, 2022, LN No. 218 of 2022* pursuant to section 21(2) of the Statutory Instruments Act, 2013 which confers power to make Regulations exempting an Instrument from expiry.
4. The Regulations sought to indefinitely extend the life of statutory instruments developed under some 400 Statutes and 1,764 Legal Notices.
5. The Regulations were passed by the National Assembly and declined by the Senate and therefore did not take effect.
6. The Finance Act 2023 sought to repeal the said Section 21.

7. However, the High Court in Constitutional Petition No E181 of 2023 (as consolidated) noted that the inclusion of repeal of Section 21 of the Statutory Instruments Act in the Finance Bill, being a money Bill was extraneous and therefore unconstitutional.
8. The implications of this turn of events is that all subsidiary legislation older than 10 with effect from January 2013 stand revoked.

In view of this, KLRC recommends that Section 21 be repealed or otherwise suspended and that such repeal or suspension to retrospectively take effect from 25th January 2023.

As always, we thank you for your continued cooperation.

Yours Sincerely,



Joash Dache, MBS
SECRETARY/CEO

Copy to: Hon. Justin B. N. Muturi, EGH
Attorney-General and Department of Justice
State Law Office
NAIROBI

Hon. Shadrack John Mose
Solicitor General
Office of the Attorney General &
Department of Justice
Sheria House
NAIROBI

Ms. Christine A. Agimba
Chairperson, KLRC - To see file copy

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SPECIAL ISSUE

Kenya Gazette Supplement No. 27 (National Assembly Bills No. 3)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2024

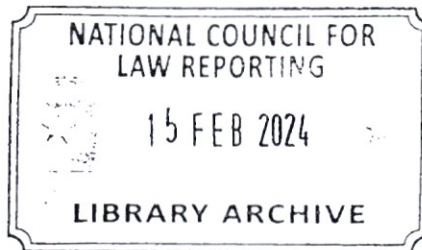
NAIROBI, 1st February, 2024

CONTENT

Bill for Introduction into the National Assembly—

PAGE

The Statutory Instruments (Amendment) Bill, 2024 59



**THE STATUTORY INSTRUMENTS (AMENDMENT)
BILL, 2024**

A Bill for

AN ACT of Parliament to amend the Statutory Instruments Act

ENACTED by the Parliament of Kenya as follows—

1. This Act may be cited as the Statutory Instruments (Amendment) Act, 2024.

Short title.

2. Section 11 of the Statutory Instruments Act, 2013 (in this Act referred to as the “principal Act”) is amended by inserting the following new subsections immediately after subsection (4)—

Amendment of section 11 of No. 23 of 2013.

“(5) Where a regulation making authority fails to submit a statutory instrument in accordance with subsection (1), the Committee shall require the regulation making authority to submit the statutory instrument to Parliament within seven days from the date of the resolution by the Committee.

(6) Notwithstanding subsections (4) and (5), Parliament may, where a statutory instrument ceases to have effect in accordance with subsection (4), notify the public in the Parliamentary website, that the statutory instrument is a nullity.”

3. Section 12 of the principal Act is amended by deleting subsection (3).

Amendment of section 12 of No. 23 of 2013.

4. Section 14 of the principal Act is amended by inserting the words “recommend to the House to” immediately after the words “the Committee may”.

Amendment of section 14 of No. 23 of 2013.

5. The principal Act is amended by deleting section 19 and substituting therefor the following new section—

Amendment of section 19 of No. 23 of 2013.

Requirements for publishing an annulment.

19. (1) Where Parliament has adopted a report or a resolution that a statutory instrument be annulled—

(a) the instrument shall stand annulled; and

(b) the Clerk of the relevant House shall publish the annulment in the Parliamentary website and shall convey the resolution of the House to the regulation making authority.

(2) Upon receipt of the communication from the Clerk in accordance with this section, the regulation making authority shall publish the annulment in the *Gazette* within fourteen days.

6. The principal Act is amended by deleting the heading to Part V and substituting therefor the following new heading —

Amendment of title of PART V of No. 23 of 2013.

“PART V –PURPOSE FOR REVIEW OF STATUTORY INSTRUMENTS”

7. The principal Act is amended by repealing section 21.

Amendment of section 21 of No. 23 of 2013

8. Section 24 of the principal Act is amended in subsection (5) by deleting the words “not exceeding twenty thousand shillings or such term of imprisonment not exceeding six months” and substituting therefor the words “not exceeding one million shillings or such term of imprisonment not exceeding five years”.

Amendment of section 24 of No. 23 of 2013.

9. Section 27 of the principal Act is amended by inserting the following new subsection immediately after subsection (2) —

Amendment of section 27 of No. 23 of 2013.

“(3) Any statutory instrument that was in operation on or before the 24th January, 2024, shall continue to operate and to have effect as if the instruments had not been automatically revoked on that date.”

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons for the Bill

The principal object of this Bill is to amend the provisions of the Statutory Instruments Act, 2013 to streamline its provisions with the Constitution and ensure better application of its provisions.

Clause 2 of the Bill seeks to amend section 11 of the Act, to enable the Committee on Delegated Legislation to require the regulation making authority to submit to Parliament a copy of any regulation that ceases to have effect by operation of law. The amendment further obligates Parliament to notify the general public in two newspapers of wide circulation, that a statutory instrument which ceases to have effect by operation of law is a nullity.

Clause 3 of the Bill seeks to amend section 12 of the Act, to align the Act with the constitutional provision delegated legislative authority as per article 94 (5).

Clause 4 of the Bill seeks to amend section 14 of the Act to provide that where the committee recommends an exemption of any statutory instrument from scrutiny, then the exemption may only be done subject to approval by the House.

Clause 5 of the Bill seeks to amend section 19 of the Act, to harmonize the wording of the law, specifying the action taken by Parliament as an annulment and deleting the word revoke.

Clause 6 of the Bill seeks to amend the Title of Part V of the Act, to align it with the revised provisions.

Clause 7 of the Bill seeks to amend section 21 of the Act, to remove the mandatory requirement for the review of subsidiary legislation and the expiration of statutory instruments.

Clause 8 of the Bill seeks to amend section 24 of the Act, to increase the limit of fines and term of imprisonment in order for the law to act as an adequate deterrent for violation or breach of regulations.

Clause 9 of the Bill seeks to amend section 27 of the Act, to provide for savings provision, allowing the continuous operation of regulations that were in operation on or before the 24th of January, 2024.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill delegates legislative powers to the relevant House Committee as per section 12 of the Statutory Instruments Act, 2013, and does not limit fundamental rights and freedoms.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill does not occasion additional expenditure on public funds.

Dated the 30th January, 2024.

KIMANI ICHUNG'WAH,
Leader of Majority Party.

Section 11 of No. 23 of 2013 which it is proposed to amend —

11. Laying of statutory instruments before Parliament

(1) Every Cabinet Secretary responsible for a regulation-making authority shall within seven (7) sitting days after the publication of a statutory instrument, ensure that a copy of the statutory instrument is transmitted to the responsible Clerk for tabling before the relevant House of Parliament.

(2) Notwithstanding subsection (1) and pursuant to the legislative powers conferred on the National Assembly under Article 109 of the Constitution, all regulation-making authorities shall submit copies of all statutory instruments for tabling before the National Assembly.

(3) The responsible Clerk shall register or cause to be registered every statutory instrument transmitted to the respective House for tabling or laying under this Part.

(4) If a copy of a statutory instrument that is required to be laid before the relevant House of Parliament is not so laid in accordance with this section, the statutory instrument shall cease to have effect immediately after the last day for it to be so laid but without prejudice to any act done under the statutory instrument before it became void.

Section 12 of No. 23 of 2013 which it is proposed to amend —

12. Referral to the Committee

(1) Every statutory instrument issued, made or established after the commencement of this Act shall upon tabling before the respective House of Parliament stand referred to the Committee or any other committee that may be established for the purpose of reviewing and scrutinizing statutory instruments.

(2) Nothing under subsection (1) may be construed as precluding the Committee from scrutinizing statutory instruments previously published before the commencement of this Act.

(3) The provisions of subsection (1) shall not apply to any rules, regulations and orders emanating from a court of competent jurisdiction in Kenya.

Section 19 of No. 23 of 2013 which it is proposed to amend –

19. Revocation

Where Parliament has adopted a report or a resolution that a statutory instrument be revoked, the instrument shall stand revoked and the regulation making authority shall publish the revocation within fourteen days.

Section 21 of No. 23 of 2013 which it is proposed to amend –

PART V – STAGED AUTOMATIC EXPIRY OF STATUTORY INSTRUMENTS

21. Automatic revocation of statutory instruments

(1) Subject to subsection (3), a statutory instrument is by virtue of this section revoked on the day which is ten years after the making of the statutory instrument unless—

- (a) it is sooner repealed or expires; or
- (b) a regulation is made exempting it from expiry.

(2) The responsible Cabinet Secretary may in consultation with the Committee, make a regulation under this Act extending the operation of a statutory rule that would otherwise be revoked by virtue of this section for a period as is specified in the regulation not exceeding twelve months.

(3) Only one extension of the operation of a statutory rule can be made under subsection (2).

(4) The automatic revocation period for statutory instruments issued under the Income Tax Act (Cap. 470), the Stamp Duty Act (Cap. 480), the Value Added Tax Act, No. 35 of 2013, Tax Appeal Tribunal Act, No. 40 of 2013, Excise Duty Act, No. 23 of 2015 and Tax Procedure Act, No. 29 of 2015, is hereby extended for a period of twenty-four months with effect from the twenty fifth day of January, 2023.

Section 24 of No. 23 of 2013 which it is proposed to amend —

24. Exercise of powers

(1) Where any statutory instrument or appointment or any other thing purports to be made or done in exercise of a particular power, it shall be deemed also to be made or done in exercise of all powers thereunto enabling.

(2) A statutory instrument shall not be inconsistent with the provisions of the enabling legislation, or of any Act, and the statutory instrument shall be void to the extent of the inconsistency.

(3) Where an enactment confers a power to make a statutory instrument it shall be deemed also to include a power exercisable in the like manner and subject to the like conditions (if any) to amend, repeal or replace the statutory instrument.

(4) Where any enactment power is conferred on any person to make a statutory instrument or to do anything 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 general purpose.

(5) There may be annexed to the breach of statutory instrument a penalty, not exceeding twenty thousand shillings or such term of imprisonment not exceeding six months, or both, which the regulation making authority may think fit.

Section 27 of No. 23 of 2013 which it is proposed to amend —

27. Transition and saving

(1) Sections 27 and 34 of the Interpretation and General Provisions Act (Cap. 2) are hereby repealed.

(2) Despite the provisions of subsection (1), any regulations, order or notice issued immediately before the commencement of this Act shall continue in force as if it were made under this Act unless it is expressly revoked by an Act of Parliament under which it is made.