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Eg 15/05/2024



REPUBLIC OF KENYA

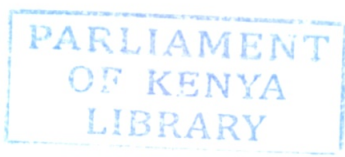
THIRTEENTH PARLIAMENT | THIRD SESSION



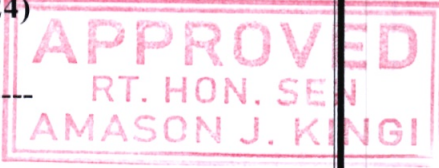
Rt. Hon. Speaker
You may approve for tabling
J. M. Nyegenye, C.B.S.,
Clerk of the senate/secretary, PSC
Date: 15/05/24

THE SENATE

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND
HUMAN RIGHTS



REPORT ON THE STATUTORY INSTRUMENTS (AMENDMENT)
BILL, 2024 (SENATE BILLS NO. 10 OF 2024)



PAPERS LAID	
DATE	21/5/2024
TABLED BY	Chair person
COMMITTEE	JLHRC
CLERK AT THE TABLE	Cherop

16/05/24

Clerk's Chambers,
The Senate,
Parliament Buildings,
NAIROBI.

May, 2024

DC-EG
Forwarded and recommended for
approval for tabling
15/05/2024

TABLE OF CONTENTS

Abbreviations and Acronyms	(ii)
Preliminaries	(iii)
Foreword by the Chairperson.....	(iv)
Adoption of the Report	(vi)
Chapter 1: Introduction	
Introduction.....	1
Objects of the Bill	1
Overview of the Bill.....	1
Consequences of the Bill	2
Chapter 2: Public Participation on the Bill	
Introduction.....	3
Overview of Stakeholder Submissions on the Bill	3
<i>Kenya Law Reform Commission</i>	3
<i>The Attorney General</i>	3
<i>The Political Parties Liaison Committee</i>	4
Chapter 3: Committee Observations	
Committee Observations.....	5
Chapter 4: Committee Recommendation	
Committee Recommendation.....	6
Annexures	

LIST OF ABBREVIATIONS/ACRONYMS

KLRC	Kenya Law Reform Commission
SEN	Senator

PRELIMINARIES

Establishment and Mandate of the Committee

The Standing Committee on Justice, Legal Affairs and Human Rights is established under the Standing Orders of the Senate and is mandated *'to consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.*

Membership of the Committee

The Committee is comprised of –

- | | |
|--|--------------------|
| 1) Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson |
| 2) Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chairperson |
| 3) Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 4) Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 5) Sen. Hamida Kibwana, MP | - Member |
| 6) Sen. Catherine Muyeka Mumma, MP | - Member |
| 7) Sen. Veronica W. Maina, MP | - Member |
| 8) Sen. Karen Njeri Nyamu, MP | - Member |
| 9) Sen. Andrew Omtatah Okoiti, MP | - Member |

Minutes of the Committee in considering the Statutory Instruments (Amendment) Bill, 2024 (Senate Bills No. 10 of 2024) are attached to this Report as *Annex 1*.

FOREWORD BY THE CHAIRPERSON

Hon. Speaker,

The Statutory Instruments (Amendment) Bill, 2024 (Senate Bills No. 10 of 2024) was introduced in the Senate by way of First Reading on Wednesday, 17th April, 2024 and thereafter stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.

Hon. Speaker,

The Bill seeks to amend the Statutory Instruments Act, Cap. 2A to provide the timelines for the making of regulations to ensure implementation of laws passed by Parliament. The Bill proposes to insert a new section 24A in the Statutory Instruments Act to require a person responsible for the making of regulations to make the regulations within twelve months, where the enabling statute has not set the timelines for the making of regulations. Where a person fails to make regulations within the required timelines, the person commits an offence punishable with a fine of five hundred thousand shillings. The Bill also empowers any person to petition Parliament where regulations have not been made within the required timeline, and even submit a copy of the proposed regulations with their petition.

Hon. Speaker

Pursuant to Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill. In that regard, the Committee published an advertisement in the *Daily Nation* and *Standard* newspapers on Friday, 19th April, 2024 inviting members of the public to submit written memoranda to the Committee on the Bill. Additionally, the Committee sent invitations to key stakeholders inviting them to submit their comments on the Bill.

The Committee received written memoranda from the Kenya Law Reform Commission, Office of the Attorney General and the Political Parties Liaison Committee. The proposed amendments in this Report are therefore the product of extensive consultations that have taken place to ensure that we have a good law in place that will stand the test of time.

Hon. Speaker,

I wish to thank the Office of the Speaker and the Clerk of the Senate for the logistical and technical support accorded to the Committee during consideration of the Bill. The

Committee further wishes to thank the Stakeholders who submitted written comments on the Bill.

Hon. Speaker,

It is now my pleasant duty, pursuant to Standing Order 148 (1) of the Senate Standing Orders, to present the Report of the Standing Committee on Justice, Legal Affairs and Human Rights on the Statutory Instruments (Amendment) Bill, 2024 (Senate Bills No. 10 of 2024).

Signed  Date 14/05/2024

**SEN. WAKILI HILLARY KIPROTICH SIGEI, MP
CHAIRPERSON, STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS
AND HUMAN RIGHTS**

ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS ON THE STATUTORY INSTRUMENTS (AMENDMENT) BILL (SENATE BILLS NO. 10 OF 2024)

We, the undersigned Members of the Standing Committee on Justice, Legal Affairs and Human rights, do hereby append our signatures to adopt this Report.

No	Name	Signature
1.	Sen. Wakili Hillary Kiprotich Sigei, MP <i>(Chairperson)</i>	
2.	Sen. Raphael Chimera Mwinzagu, MP <i>(Vice-Chairperson)</i>	
3.	Sen. Fatuma Adan Dullo, CBS, MP	
4.	Sen. William Cheptumo Kipkiror, CBS, MP	
5.	Sen. Hamida Kibwana, MP	
6.	Sen. Catherine Muyeka Mumma, MP	
7.	Sen. Veronica W. Maina, MP	
8.	Sen. Karen Njeri Nyamu, MP	
9.	Sen. Andrew Omtatah Okoiti, MP	

CHAPTER ONE: INTRODUCTION

1.1 Introduction

1. The Statutory Instruments (Amendment) Bill, 2024 (Senate Bills No. 10 of 2024) was introduced in the Senate by way of First Reading on Wednesday, 17th April, 2024 and thereafter stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration. A copy of the Bill as read at First Reading is attached to the Report as *Annex 2*.

1.2 Objects of the Bill

2. The main object of this Bill is to amend the Statutory Instruments Act, Cap. 2A to provide the timelines for the making of regulations to ensure implementation of laws passed by Parliament. The Bill proposes to insert a new section 24A in the Statutory Instruments Act to require a person responsible for the making of regulations to make the regulations within twelve months, where the enabling statute has not set the timelines for the making of regulations. Where a person fails to make regulations within the required timelines, the person commits an offence punishable with a fine of fine hundred thousand shillings. The Bill also empowers any person to petition Parliament where regulations have not been made within the required timeline, and even submit a copy of the proposed regulations with their petition.
3. The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.
4. The enactment of the Bill does not occasion additional expenditure or charge of the public funds.

1.3 Overview of the Bill

5. The Bill proposes the following amendments –

Clause 2 inserts a new section 24A which seeks to create timelines for making of statutory instruments. The new section provides that statutory instruments be made within twelve months of commencement of the Parent Act unless a different timeline is provided in that Act. Additionally, if the statutory instrument is not made within that timeline, any person may petition Parliament and provide a copy of his/her proposed statutory instrument for consideration. Failure to

make a statutory instrument shall be an offence punishable with a fine of up to Ksh. 500,000, and the fine may not be paid out of public funds.

1.4 Consequences of the Bill

6. Once enacted, regulation making authorities will have timelines within which to enact regulations, failure to which they may be prosecuted for an offence and fined if found liable.

CHAPTER TWO: PUBLIC PARTICIPATION ON THE BILL

2.1 Introduction

7. Pursuant to Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee proceeded to undertake public participation on the Bill. In that regard, the Committee published an advertisement in the *Daily Nation* and *Standard* newspapers on Friday, 19th April, 2024 inviting members of the public to submit written memoranda to the Committee on the Bill. Additionally, the Committee sent invitations to key stakeholders inviting them to submit their comments on the Bill. A copy of the advertisement is attached as *Annex 4*.
8. Additionally, the Committee sent invitations to key stakeholders inviting them to submit their comments on the Bill.
9. In response to the advertisement and invitations, the Committee received written submissions from three stakeholders, the Kenya Law Reform Commission, the Attorney General and the Political Parties Liaison Committee.
10. A copy of the said submissions is attached as *Annex 5*, with a summary thereon in the form of a matrix attached as *Annex 6*.

2.2 Overview of Stakeholder Submissions on the Bill

(a) The Kenya Law Reform Commission

11. The Kenya Law Reform Commission in their written submissions on Statutory Instruments (Amendment) Bill (Senate Bill No. 10 of 2024), concurred with the amendment proposed in the Bill noting that the introduction of timelines for statutory instruments is aligned with existing laws and policies and promotes consistency and coherence within the legal framework.
12. The Commission further noted that setting deadlines will hold regulation making authorities accountable for their work and enhance their service delivery by preventing excessive bureaucracy or administrative inertia, which can slow down delivery of public goods and services.

(b) The Attorney General

13. The Office of the Attorney General, in their written submissions, opposed the amendment citing the challenges that may arise due to implementation of the same.

14. The Attorney General was of the view that regulation making is a complex process that requires resource mobilisation and public participation making it difficult to accomplish within one year due to the financial implications.
15. Additionally, they were of the view that while an Act may require regulations to be put in place, in some instances it might not be prudent to make regulations due to lack of necessity. Regulations should therefore be made on a need basis in the implementation of the regulations.
16. Further, they noted that the Bill seeks to make it an offence if a person responsible for making regulations fails to do so, but however, some instruments are made by cabinet secretaries and it may be difficult to convict a cabinet secretary for not making regulations within the given timelines, especially, if the reasons for not making the regulations are valid.

(c) The Political Parties Liaison Committee

17. The Political Parties Liaison Committee submitted in favour of the amendments contained in the Bill. They noted that the proposals advanced are progressive and if enacted into law, will help address the inherent problems faced by various organisations tasked with implementing the law.
18. They noted that the proposed amendments will cure the uncertainty that surrounds the formulation of regulations that have made most Acts inoperable.

CHAPTER THREE: COMMITTEE OBSERVATIONS

3.1 Committee Observations

19. Having considered the Bill and the submissions received thereon, the Committee made the following observations –
- (a) that it is necessary that the exercise of delegated authority to make legislation be done within a reasonable timeline;
 - (b) that contrary to some of the stakeholder views, it is not necessarily difficult for regulation making authorities to make regulations within twelve months, as there have been regulations which have been made within a shorter duration of time especially where the Executive has a keen interest in a particular manner. It is therefore necessary that timelines be set so that the regulation making authority does not cherry-pick what regulations to make and which ones to ignore;
 - (c) that regulations, in some instances, give “flesh” to a particular legislation, hence failure to enact regulations often renders a statute inoperable and therefore making it not achieve its intended purpose;
 - (d) that the fine imposed on persons who fail to enact regulations is too low and should be enhanced so that it acts as a deterrent, and the lower limit should be set at not less than Kenya shillings five hundred thousand;
 - (e) that the Bill does not clearly provide for how draft regulations submitted by a person who petitions Parliament will be dealt with.
20. The Committee therefore observed amendments to the Bill would be required provide for—
- (a) how draft regulations submitted by a person who petitions Parliament will be dealt with; and
 - (b) the enhanced penalty for failure to make regulations.
21. The text of the proposed amendments is attached as *Annex 7*.

CHAPTER FOUR: COMMITTEE RECOMMENDATION

4.1 Committee Recommendation

22. Having considered the Statutory Instruments (Amendment) Bill, 2024 (National Assembly Bills No. 10 of 2024) and the submissions received thereon, the Standing Committee on Justice, Legal Affairs and Human Rights recommends that the Senate **passes the Bill with amendments** as proposed by the Committee.

LIST OF ANNEXES

- Annex 1:* Minutes of the sittings of the Committee in considering the Bill
- Annex 2:* Copy of the Statutory instruments (Amendment) Bill (Senate Bills No. 10 of 2024) as was introduced in the Senate by way of First Reading on Wednesday, 17th April, 2024
- Annex 3:* Advertisement published in the *Daily Nation* and *Standard* Newspapers on Friday, 19th April, 2024
- Annex 5:* Copies of Stakeholders Submissions on the Bill
- Annex 6:* Matrix on the Committee's consideration of Stakeholders Submissions
- Annex 7:* Text of the proposed Committee amendments to the Bill

ANNEX I: Minutes of the sittings of the Committee in
considering the Bill



13TH PARLIAMENT | 3RD SESSION

MINUTES OF THE 125TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THURSDAY, 3RD MAY, 2024 AT 09.00 A.M IN COMMITTEE ROOM 5, 1ST FLOOR, PARLIAMENT BUILDINGS

PRESENT

- | | | |
|----|---|-----------------------------------|
| 1. | Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. | Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 3. | Sen. Andrew Omtatah Okoiti, MP | - Member |
| 4. | Sen. Karen Njeri Nyamu, MP | - Member |

ABSENT WITH APOLOGY

- | | | |
|----|---|--------------|
| 1. | Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chair |
| 2. | Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 3. | Sen. Catherine Muyeka Mumma, MP | - Member |
| 4. | Sen. Veronica W. Maina, MP | - Member |
| 5. | Sen. Hamida Ali Kibwana, MP | - Member |

SECRETARIAT

- | | | |
|----|----------------------|---|
| 1. | Mr. Charles Munyua | - Senior Legal Counsel |
| 2. | Mr. Moses Kenyanchui | - Legal Counsel I |
| 3. | Ms. Lilian Waweru | - Legal Counsel II |
| 4. | Ms. Lynn Aseka | - Clerk Assistant III |
| 5. | Ms. Angela Bonaya | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 6. | Mr. Josphat Ng'eno | - Media Relations Officer III |
| 7. | Ms. Judith Aoka | - Assistant Audio Officer |
| 8. | Mr. Abadallah Mbore | - Serjeant-At-Arms |

MIN. NO. 116/2024

PRELIMINARIES

The Chairperson called the meeting to order at thirty-one minutes past nine O'clock and opened with a word of prayer.

MIN. NO. 117/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Veronica W. Maina, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 118/2024

MEETING WITH THE SOLICITOR-GENERAL AND THE KENYA LAW REFORM COMMISSION TO DELIBERATE ON: THE STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 2 OF 2023); THE STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2024 (NATIONAL ASSEMBLY BILLS NO. 3 OF 2024); AND THE STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2024 (SENATE BILLS NO. 10 OF 2024)

The Committee resumed consideration of the captioned Bills and was informed of the need to reopen the draft report on the Statutory Instruments (Amendment) Bill, 2023 (National Assembly Bills No. 2 of 2023) in order to consider the Bill alongside the Statutory Instruments (Amendment) Bill, 2024 (National Assembly Bills No. 3 of 2024) that stood committed to the Committee and they are all proposing amendments to the Statutory Instruments Act.

Members were informed that both the Office of the Attorney General and the Kenya Law Reform Commission had conveyed apologies for the meeting, with the KLRC having submitted its written comments, while those of the AG's Office were expected later in the day.

Thereupon, Members were taken through a Brief and Matrix indicating the amendments contained in each Bill and how they aligned on conflicted with the amendments proposed in the other Bills.

The Committee took note of the Brief, and resolved that consideration of the Bills resume at the upcoming Committee retreat, to take into account the comments from the AG's Office and the KLRC. The Committee would thereafter adopt its Report/s thereon on the said Bills.

MIN. NO. 119/2024

ADJOURNMENT

The Chairperson adjourned the meeting at three minutes past ten O'clock. The next meeting was scheduled to be held on Friday, 3rd May, 2024 at nine O'clock in Mombasa County.

SIGNED:



DATE: 14/05/2024



13TH PARLIAMENT | 3RD SESSION

MINUTES OF THE 129TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON SATURDAY, 4TH MAY, 2024 AT 2.00 P.M AT THE SERENA RESORT & SPA HOTEL, MOMBASA COUNTY

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chairperson |
| 3. Sen. Veronica W. Maina, MP | - Member |
| 4. Sen. Karen Njeri Nyamu, MP | - Member |
| 5. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 2. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 3. Sen. Hamida Ali Kibwana, MP | - Member |
| 4. Sen. Catherine Muyeka Mumma, MP | - Member |

SECRETARIAT

- | | |
|------------------------|--|
| 1. Mr. Njenga Njuguna | - Director, Governance & Accountability Committees |
| 2. Mr. Hassan Othowa | - Head of Department, Governance Committees |
| 3. Ms. Lilian Waweru | - Legal Counsel II |
| 4. Ms. Lynn Aseka | - Clerk Assistant III |
| 5. Ms. Angela Bonaya | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 6. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 7. Ms. Judith Aoka | - Assistant Audio Officer |
| 8. Mr. Abadallah Mbore | - Serjeant-At-Arms |

MIN. NO. 138/2024

PRELIMINARIES

The Chairperson called the meeting to order at fifteen minutes past two O'clock and opened with a word of prayer.

MIN. NO. 139/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Veronica W. Maina, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 140/2024

CONSIDERATION OF THE DRAFT COMMITTEE
REPORT ON THE STATUTORY INSTRUMENTS
(AMENDMENT) BILL, 2023 (NATIONAL
ASSEMBLY BILLS NO. 2 OF 2023) AND THE
STATUTORY INSTRUMENTS (AMENDMENT)
BILL, 2024 (NATIONAL ASSEMBLY BILLS NO. 3
OF 2024)

The Committee was taken through the draft Report on the Statutory Instruments (Amendment) Bill, 2023 (National Assembly Bills No. 2 of 2023) and the Statutory Instruments (Amendment) Bill, 2024 (National Assembly Bills No. 3 of 2024) with the proposed amendments incorporated as observations and recommendations at chapters three and four of the Report.

Thereafter, the Committee adopted the Report, having been proposed by Sen. Raphael Chimera Mwinzagu, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 141/2024

CONSIDERATION OF THE DRAFT COMMITTEE
REPORT ON THE STATUTORY INSTRUMENTS
(AMENDMENT) BILL, 2024 (SENATE BILL NO. 10
OF 2024)

The Committee was taken through the draft Report on the Statutory Instruments (Amendment) Bill, 2024 (Senate Bill No. 10 of 2024) with the proposed amendments incorporated as observations and recommendations at chapters three and four of the Report.

Thereafter, the Committee adopted the Report, having been proposed by Sen. Raphael Chimera Mwinzagu, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 142/2024

ADJOURNMENT

The Chairperson adjourned the meeting at twenty minutes past four O'clock. The next meeting was scheduled to be held on the Wednesday, 8th May, 2024 at eight O'clock in Parliament.

SIGNED:

DATE: 09/05/2024

ANNEX 2: Copy of The Statutory instruments (Amendment)
Bill (Senate Bills No. 10 of 2024)

SPECIAL ISSUE

Kenya Gazette Supplement No. 52 (Senate Bills No. 10)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2024

NAIROBI, 7th March, 2024

CONTENT

Bill for Introduction into the Senate—	PAGE
The Statutory Instruments (Amendment) Bill, 2024	113

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

A Bill for

AN ACT of Parliament to amend the Statutory Instruments Act to provide for the timelines within which statutory instruments shall be made; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows —

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

Short title.

2. The Statutory Instruments Act is amended by inserting the following new section immediately after section 24 —

Insertion of new section 24A to No. 23 of 2023.

Timelines for making of statutory instrument.

24A. (1) A regulatory-making authority shall make a statutory instrument within the period provided for under the enabling legislation.

(2) If the enabling legislation does not provide the timelines within which a statutory instrument is to be made, the regulatory-making authority shall make the statutory instrument within twelve months from the date of commencement of the enabling legislation.

(3) If a regulatory-making authority fails to make a statutory instrument within the specified time, any person may petition Parliament and where possible together with a draft of the statutory instrument for consideration.

(4) A person who without a reasonable cause fails to make a statutory instrument within the required timelines commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings.

(5) A person liable for an offence under subsection (4) shall be personally liable for the fine and public funds shall not be used to pay such a fine.

MEMORANDUM OF OBJECTS AND REASONS**Statement of objects and reasons**

The principal object of the Bill is to amend the Statutory Instruments Act, Cap. 2A to provide the timelines for the making of regulations to ensure implementation of laws passed by Parliament. The Bill proposes to insert a new section 24A in the Statutory Instruments Act to require a person responsible for the making of regulations to make the regulations within twelve months, where the enabling legislation has not set the timelines for the making of regulations. Where a person fails to make regulations within the required timelines, the person commits an offence punishable with a fine of five hundred thousand shillings.

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

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

Statutory Instruments are a form of delegated legislation, at the National and County Governments. Statutory Instruments are crucial at both levels of government as they give effect to a number of provisions usually contained in the Parent Act. The Bill is therefore a Bill concerning county governments as County Executives and County Assemblies are central in the processing of statutory instruments in order to actualize a number of functions and powers as contained in Part 2 of the Fourth Schedule to the Constitution.

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

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 6th March, 2024.

AARON CHERUIYOT,
Senate Majority Leader.

STEWART MADZAYO,
Senate Minority Leader.

ANNEX 3: Advertisement Published in the *Daily Nation* and
Standard Newspapers on Friday, 19th April, 2024

REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT | THIRD SESSION
THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

At the sitting of the Senate held on Wednesday, 17th April, 2024, the Bills listed below were introduced in the Senate by way of First Reading and thereafter stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights -

- a) The Statutory Instruments (Amendment) Bill (National Assembly Bills No. 5 of 2023);
- b) The Election Offences (Amendment) Bill (Senate Bills No. 9 of 2024);
- c) The Statutory Instruments (Amendment) Bill (Senate Bills No. 10 of 2024);
- d) The Elections (Amendment) Bill (Senate Bill No. 11 of 2024); and
- e) The Political Parties (Amendment) Bill (Senate Bills No. 13 of 2024).

Pursuant to the provisions of Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committee now invites interested members of the public to submit any representations that they may have on the Bills by way of written memoranda.

The memoranda may be submitted to the Clerk of the Senate, P. O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate, Main Parliament Buildings, Nairobi or emailed to clerk.senate@parliament.go.ke and copied to senatejlahrc@parliament.go.ke, to be received on or before **Friday, 3rd May, 2023 at 5.00 p.m.**

The Bills may be accessed on the Parliament website at <http://www.parliament.go.ke/the-senate/house-business/bills>.

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



ANNEX 4(a): Kenya Law Reform Commission (KLRC)

KENYA LAW REFORM COMMISSION



"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

When replying please quote

Ref. No. KLRC/8/86(33)
and Date



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

1st May, 2014 20.....

The Clerk,
Clerks Chambers
The Senate
Parliament Buildings
P O Box 41842 – 00100
Nairobi
clerk.senate@parliament.go.ke

Dear, *Clerk,*

RE: SCRUTINY OF THE STATUTORY INSTRUMENTS (AMENDMENT) BILLS -
[NATIONAL ASSEMBLY BILLS NO. 2 OF 2023, NATIONAL ASSEMBLY BILL NO. 3
OF 2024; SENATE BILL NO. 15 OF 2024; SENATE BILL NUMBER 10 OF 2024]

The above refers.

Under Section 6 (1) (c) of the Kenya Law Reform Commission Act, No. 19 of 2013, KLRC is mandated to provide advice technical assistance and information to the national and county governments with regard to the reform or amendment of a branch of the law.

Further, KLRC is mandated to keep under review all the law and recommend its reform to ensure that it conforms to the letter and spirit of the Constitution, that it systematically develops the law in compliance with the values and principles enshrined in the Constitution and to ensure that the law is consistent, harmonized, just, simple, accessible, modern and cost effective in application. KLRC is also required to ensure that in reviewing the law the respect for and observance of treaty obligations in relation to international instruments that constitute part of the law of Kenya by virtue of Article 2(5) and (6) of the Constitution is upheld.

In light of this, KLRC hereby forwards its comments in consideration of the aforementioned Statutory Instruments (Amendment) Bills. Please find the comments attached to this letter.

We conclude by stating that KLRC is committed to ensuring that legislation is drafted to the highest standards possible to promote their legal effectiveness, clarity and intelligibility to anticipated users.

As always, we thank you for your continued cooperation.

Yours sincerely,

 JOASH DACHE, MBS
SECRETARY/ CEO

KENYA LAW REFORM COMMISSION COMMENTS ON BILLS BEFORE THE SENATE PROPOSING AMENDMENTS TO THE STATUTORY INSTRUMENTS ACT

Section of the SIA	The Statutory Instruments (Amendment) Bill, 2023 (NA Bills No. 2 of 2023)	The Statutory Instruments (Amendment) Bill, 2024 (NA Bills No. 3 of 2024)	The Statutory Instruments (Amendment) Bill, 2024 (Senate Bills No. 10 of 2024)	The Statute Law (Miscellaneous Amendments) Bill, 2024 (Senate Bills No. 15 of 2024)	Comments
11	Insertion of new subsections immediately after subsection (4)	Insertion of new subsections immediately after subsection (4)			<p>The requirement by the Committee to the regulation making authority under the proposed subsection (5) should be accompanied by a requirement to re-publish the statutory instrument.</p> <p>Section 11 as a whole should also be reviewed because there are regulation making authorities that are not under a Cabinet Secretary.</p> <p>Rationale: A statutory instrument which has not been laid before the House in accordance with Section 11(1) ceases 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 published or re-published.</p>

Section of the SIA	The Statutory Instruments (Amendment) Bill, 2023 (NA Bills No. 2 of 2023)	The Statutory Instruments (Amendment) Bill, 2024 (NA Bills No. 3 of 2024)	The Statutory Instruments (Amendment) Bill, 2024 (Senate Bills No. 10 of 2024)	The Statute Law (Miscellaneous Amendments) Bill, 2024 (Senate Bills No. 15 of 2024)	Comments
12	Deletion of subsection (3)	Deletion of some words appearing in subsection (3)			<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>Rationale: 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>
18	Renumbering the existing provision as subsection (1)				Aligned with numbering provisions in drafting.
	Insertion of a new subsection immediately after subsection (1)				<p>We welcome this amendment. It brings clarity to the procedure for annulment. Legislation is required to be clear and concise.</p> <p>Rationale:</p>

Section of the SIA	The Statutory Instruments (Amendment) Bill, 2023 (NA Bills No. 2 of 2023)	The Statutory Instruments (Amendment) Bill, 2024 (NA Bills No. 3 of 2024)	The Statutory Instruments (Amendment) Bill, 2024 (Senate Bills No. 10 of 2024)	The Statute Law (Miscellaneous Amendments) Bill, 2024 (Senate Bills No. 15 of 2024)	Comments
					<p>The verb "deemed" as used under current Section 18, can be considered subjective because it often involves interpretation, opinion, or judgment rather than objective measurement or observation.</p> <p>When you say something is "deemed" to be true, safe, appropriate, etc., it generally reflects a perspective or conclusion drawn by someone or some group, which could vary depending on the context or criteria used.</p>
19	Renumbering the existing provision as subsection (1)	Deletion of the section and substitution with a new section			Aligned with numbering provisions in drafting.
	Insertion of a new subsection immediately after subsection (1)				<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>Rationale: Section 19 already provides that the regulation-making authority shall publish the revocation</p>

Section of the SIA	The Statutory Instruments (Amendment) Bill, 2023 (NA Bills No. 2 of 2023)	The Statutory Instruments (Amendment) Bill, 2024 (NA Bills No. 3 of 2024)	The Statutory Instruments (Amendment) Bill, 2024 (Senate Bills No. 10 of 2024)	The Statute Law (Miscellaneous Amendments) Bill, 2024 (Senate Bills No. 15 of 2024)	Comments
					within fourteen days. The new proposal means that the revocation will be required to be published twice by two different agencies.
Heading to Part V		Deletion of the heading and substitution with a new one		Deletion of the heading and substitution with a new one	It is not clear what the proposed amendment is intended to achieve.
21		Repeal of the section		Repeal of the section	<p>We note that this section is already expunged from the statute book.</p> <p>We also note that there are cases in court regarding the repeal of this section.</p> <p>That notwithstanding we give our rationale for the value of expiration of statutory instruments below.</p> <p>Rationale:</p> <p>Automatic expiration ensures that statutory instruments are regularly reviewed to assess their continued relevance, effectiveness and alignment with current conditions. This process</p>

Section of the SIA	The Statutory Instruments (Amendment) Bill, 2023 (NA Bills No. 2 of 2023)	The Statutory Instruments (Amendment) Bill, 2024 (NA Bills No. 3 of 2024)	The Statutory Instruments (Amendment) Bill, 2024 (Senate Bills No. 10 of 2024)	The Statute Law (Miscellaneous Amendments) Bill, 2024 (Senate Bills No. 15 of 2024)	Comments
					<p>helps to keep the legal framework updated and responsive to changing societal needs.</p> <p>The sunset process typically involves public consultation and review, promoting accountability and transparency.</p> <p>Over time, statutory instruments can lead to unintended consequences or create loopholes. Automatic expiration provides an opportunity to address these issues, allowing stakeholders to identify problems and propose changes to improve the regulatory framework.</p> <p>As technology, society, and the economy evolve, statutory instruments may need adjustment to stay relevant.</p> <p>Automatic expiration encourages adaptation by forcing a periodic reevaluation of the appropriateness of existing rules in light of new</p>

Section of the SIA	The Statutory Instruments (Amendment) Bill, 2023 (NA Bills No. 2 of 2023)	The Statutory Instruments (Amendment) Bill, 2024 (NA Bills No. 3 of 2024)	The Statutory Instruments (Amendment) Bill, 2024 (Senate Bills No. 10 of 2024)	The Statute Law (Miscellaneous Amendments) Bill, 2024 (Senate Bills No. 15 of 2024)	Comments
					<p>developments.</p> <p>Regulatory capture occurs when regulation making authorities gain undue influence over the regulatory process, leading to stagnation or bias in favor of certain interests. Regular expiration helps combat this by encouraging fresh perspectives and reducing the chances of entrenched interests dominating the regulatory landscape.</p>

23	Deletion of subsection (1) and substitution with a new subsection				This is very welcome. It standardizes process for all statutory instruments.
24	Deletion of some words and replacement with new words	Deletion of some words and replacement with new words			Review of limitations for penal clauses for breach of statutory instruments is welcome. Rationale: The 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.
27		Insertion of a new subsection immediately after subsection (2)			Refer to our comments on Section 21.
New Section				Insertion of a new section 21A immediately after section 21	Refer to our comments on Section 21.
New Section			Insertion of a new section 24A immediately after section 24		We welcome this proposed amendment. Rationale: Timelines help ensure that new statutory instruments are aligned with existing laws and policies. This promotes consistency and coherence within the legal

					<p>framework.</p> <p>Setting deadlines holds regulation making authorities accountable for their work.</p> <p>Statutory instruments operationalize statute; they are the oil and cogs in the engines. This means that service delivery by Government will not be affected due to absence of the statutory instrument. Timelines help prevent excessive bureaucracy or administrative inertia, which can slow down delivery of public goods and services.</p>
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ANNEX 4(b): Office of the Attorney General



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

M. Waweru
You are dealing
6/05/2024

RECEIVED
THE SENATE

Our Ref: AG/LDD/32/1/8

THE SENATE
RECEIVED
DEPUTY CLERK

2nd May, 2024

Mr. J. M. Nyegenye, CBS
The Clerk of the Senate
Clerk's Chambers, Parliament Buildings
P. O. Box 41842-00100
NAIROBI

DGAC
DHY
kindly deal-
EP

RE: PROPOSED AMENDMENTS TO THE STATUTORY INSTRUMENTS ACT, (CAP. 2A)

Reference is made to your letter dated the 26th April, 2024 and referenced SEN/DGAC/DGC/JLAHRC/2024/16(a) requesting this Office for comments on the following proposed Bills that seek to amend various provisions of the Statutory Instruments Act, (Cap. 2A)—

(a) The Statutory Instruments (Amendment) Bill, 2023 (National Assembly Bills No. 2 Of 2023);

We have reviewed the proposed legislation and noted that we submitted our comments to the National Assembly on a letter dated 26th March, 2024 and our comments were considered by the National Assembly and incorporated.

(b) The Statutory Instruments (Amendment) Bill, 2024 (National Assembly Bills No. 3 Of 2024);

We have reviewed the proposed legislation and noted the amendment bears similarities to the Statutory Instruments Act (Amendment) Bill, 2023 (National Assembly Bills No. 3 of 2023) and submitted our comments on the same to the National Assembly vide letter dated 11th March, 2024 and our comments were considered by the National Assembly and incorporated, where applicable.

(c) The Statute Law (Miscellaneous Amendments) Bill, 202 (Senate Bills No. 15 of 2024)

Following a scrutiny of the contents, we note that the provisions the Bill seeks to amend have been adequately provided for under the Statutory Instruments (Amendment) Bill, 2024 (National Assembly Bills No. 2 Of 2024).

THE SENATE
RECEIVED

06 MAY 2024

DIRECTOR LEGAL SERVICES

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 2724029/ 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

ISO 9001:2008 Certified




(d) The Statutory Instruments Act (Amendment) Bill, 2023 (Senate Bills No. 10 Of 2024).

Meanwhile, we have scrutinized the constitutionality of the proposed Statutory Instruments Act (Amendment) Bill, 2024 (Senate Bills No. 10 Of 2024) and whether it contravenes existing legislation. We note that the proposed Bill does not offend the Constitution, however we object the proposed amendment and our comments are set in the matrix below—

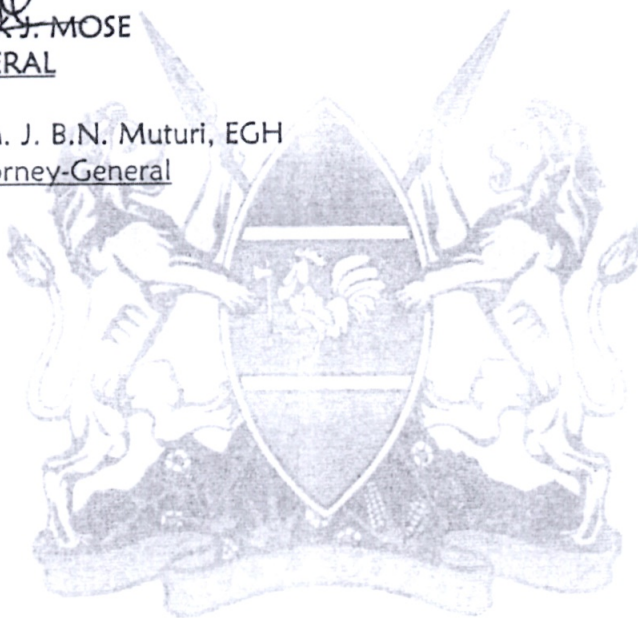
Section of the Statutory Instruments Act. (Cap. 2A)	The Statutory Instruments Act (Amendment) Bill, 2024 (Senate Bills No. 10 Of 2024);	Comments
24	Insertion of a new section 24A immediately after section 24 	<p>The Bill proposes that Statutory Instruments should be made within twelve months and if the responsible person fails to make the statutory instruments within the provided timeline, the person commits an offence punishable with a fine of five hundred thousand shillings.</p> <p>Regulation making process is a complex process that requires resource mobilization and public participation making it difficult to accomplish within one year due to the financial implications.</p> <p>Secondly, while an Act may require Regulations to be put in place, in some instances it might not be prudent to make the Regulations due to lack of necessity.</p> <p>Furthermore, the Bills seeks to make it an offence if a person responsible for making Regulations fails to do so, however, some Statutory Instruments are made by Cabinet Secretaries and it may be difficult to convict a Cabinet Secretary for not making Regulations within the given timelines especially if the reasons for not making the Regulations are valid.</p> <p>It's our view that statutory instruments be made on a need</p>

		<p>basis in the implementation process of the legislation.</p> <p>We therefore object the proposed amendment due the challenges that may arise.</p>
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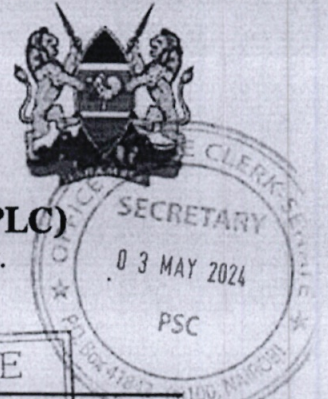
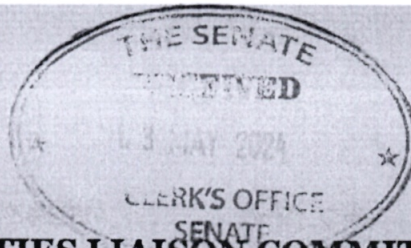
Consequently, we note that the proposed amendments emanate from the same Act, we therefore recommend all the proposed amendments to be merged under one Bill which is the Statutory Instruments Act (Amendment) Bill, 2023 (National Assembly Bills No. 2 Of 2023) instead of three separate pieces of legislation.


HON. ~~SHADRACK J. MOSE~~
SOLICITOR-GENERAL

Copy to: Hon. J. B.N. Muturi, EGH
Attorney-General



ANNEX 4(c): The Political Parties Liaison Committee



POLITICAL PARTIES LIAISON COMMITTEE (PPLC)

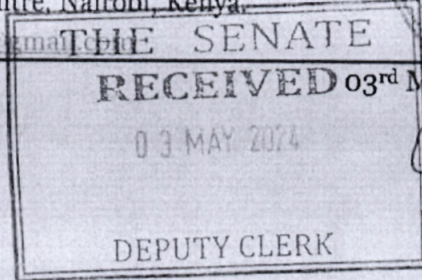
C/o Office of the Registrar of Political Parties, Lions Place, 1st Floor.

Karuna Close, Waiyaki Way, Westland's

P.O Box 1131-00606, Sarit Centre, Nairobi, Kenya.

Email: pplcparties@gmail.com

Ref; fin.com PBO4-03/05/24



Mr. Jeremiah M. Nyegenye, CBS
Clerk of the Senate
PARLIAMENT BUILDINGS.

Dear Sir,

THE STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2024 PROPOSALS

The Political Parties Liaison Committee (PPLC) appreciates this opportunity to give feedback on the proposed amendments to the Statutory Instruments Act. We appreciate the efforts of the National Dialogue Committee (NADCO) and indeed the Senate for formulating and processing this Bill for public input.

Background of PPLC

The Political Parties Liaison Committee is a tripartite dialogue platform comprising all the fully registered political parties in Kenya, the Office of the Registrar of Political Parties, and the Independent Electoral and Boundaries Commission.

Introduction

The Senate introduces the Statutory Instruments (Amendment) Bill, 2024 that seeks to:

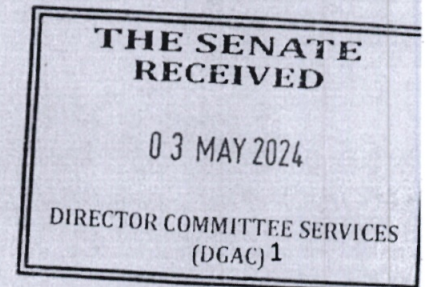
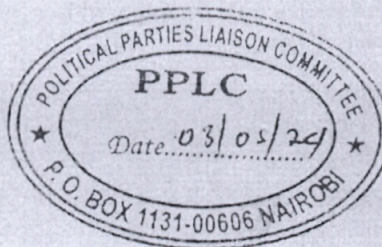
- i) Create timelines for Regulations to be made where the enabling legislation is silent.
- ii) Creates an offence where a person obligated to formulate the Regulations fails to do so.

These amendments stem from the presentations made by various stakeholders before the National Dialogue Committee hearings. We believe that these amendments will cure the endemic problem of having laws passed without having Regulations to operationalize them.

The proposals advanced, are progressive and if adopted by Parliament and enacted into law, will help address the inherent problems faced by various organizations tasked with implementing the law.

Yours Sincerely,

Hon. Evans Misati,
CHAIRPERSON - PPLC



DGAC
DLS
Kindly deal
EJ
03/05/2024

HSD - Governance
Lead Clerk - IL
Kindly See
03/05/2024

Clause	Issue / What the Bill Provides	Proposal/Recommendations
<p>2</p> <p>Timelines for making of statutory instruments</p>	<p>The Bill seeks to introduce Section 24A in the Act to provide the timelines for the making of regulations to ensure the implementation of laws passed by Parliament.</p> <p>The regulatory-making body/person is obligated to make the regulations within twelve months in cases where the enabling legislation has not set the timelines for the making of regulations.</p> <p>Where a person fails to make regulations within the required timelines, the person commits an offence punishable with a fine of five hundred thousand.</p>	<p>We are in agreement with the proposed amendments as they will cure the uncertainty that surrounds the formulation of Regulations that have made most Acts of Parliament inoperative.</p>

Handwritten signature

ANNEX 5: Matrix on the Committee's Consideration of the
Stakeholder Submissions

THE SENATE



MATRIX

THE STATUTORY INSTRUMENT (AMENDMENT) BILL, 2024 (SENATE BILLS NO. 10 OF 2024)

Stakeholders:

1. Kenya Law Reform Commission (KLRC)
2. Attorney General (AG)
3. Political Parties Liaison Committee (PPLC)

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
2	KLRC	The KLRC supports the amendment.	Introduction of timelines for statutory instruments is aligned with existing laws and policies and promotes consistency and coherence within the legal framework, and setting deadlines will hold regulation making authorities accountable for their work and enhance their service delivery by preventing excessive bureaucracy or administrative inertia, which can slow down delivery of public goods and services.	The Committee agrees with the stakeholder's views.

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
	AG	The AG opposes the amendment.	<p>Implementation of the amendment may be a challenge because—</p> <p>(a) regulation making is a complex process that requires resource mobilisation and public participation making it difficult to accomplish within one year due to the financial implications;</p> <p>(b) while an Act may require regulations to be put in place, in some instances it might not be prudent to make regulations due to lack of necessity. Regulations should therefore be made on a need basis in the implementation of the regulations; and</p> <p>(c) the Bill seeks to make it an offence if a person responsible for making regulations fails to do so, but however, some instruments are made by cabinet secretaries and it may be difficult to convict a cabinet secretary for not making regulations within the given timelines, especially, if the reasons for not making the regulations are valid.</p>	<p>The Committee disagrees with the stakeholder's views, and notes that it is necessary that the exercise of delegated authority to make legislation be done within a reasonable timeline.</p> <p>It is not difficult for the executive to make regulations within twelve months, as there have been regulations which have been made within a shorter duration of time where the Executive has a keen interest in a particular manner. It is therefore necessary that timelines be set so that the regulation making authority does not cherry-pick what regulations to make and which ones to ignore.</p>
	PPLC	The PPLC supports the amendment.	The proposals advanced are progressive and if enacted into law, will help address the inherent problems faced by various organisations tasked with	The Committee agrees with the stakeholder's views.

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			implementing the law and will cure the uncertainty that surrounds the formulation of regulations that have made most Acts inoperable.	

ANNEX 6: Text of proposed Committee stage amendments to
the Bill

9th May, 2024

The Clerk of the Senate
Parliament Buildings
NAIROBI

**RE: COMMITTEE STAGE AMENDMENTS TO THE STATUTORY INSTRUMENTS
(AMENDMENT) BILL, SENATE BILLS NO. 10 OF 2024**

NOTICE is given that Sen. Wakili Hillary Kiprotich Sigei, Chairperson to the Standing Committee on Justice, Legal Affairs and Human Rights, intends to move the following amendments to the Statutory Instruments (Amendment) Bill, Senate Bills No. 10 of 2024, at the Committee Stage —

CLAUSE 2

THAT clause 2 of the Bill be amended in the proposed new section 24A by—

- (a) deleting the proposed subsection (3);
- (b) deleting the proposed subsection (4) and substituting therefor the following new subsection —

“(4) If a regulation making authority, without a reasonable cause, fails to make a statutory instrument within the required timelines, the person in charge of that regulation making authority commits an offence and is liable, on conviction, to a fine not less than five hundred thousand shillings and not exceeding two million shillings.

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause—

Insertion of new section 24B to Cap 2A. **3.** The Statutory Instruments Act is amended by inserting the following new section 24B—

Petition to make a statutory instrument.

24B. (1) If a regulation making authority fails to make a statutory instrument within the specified time, any person may petition Parliament and may where possible, submit the petition together with a draft of the statutory instrument for consideration.

(2) The petitions presented shall be considered in accordance with the relevant Act relating to petitions to Parliament.

(3) If the relevant House allows a petition submitted under subsection (1), the Clerk of that House shall submit a copy of the report of resolution to the regulation making authority within seven days of

adoption, together with a copy of the draft statutory instrument, if any was submitted by the petitioner, for implementation.

(4) The regulation making authority shall implement the resolutions of the House within sixty days of receipt of the report or resolution of the House under subsection (3).

Dated  14/5/24, 2024.

Wakili Hillary Kiprotich Sigei,
Chairperson,
Standing Committee on Justice, Legal Affairs and Human Rights.