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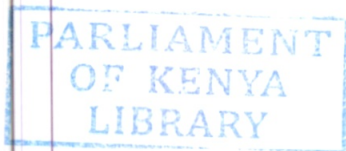
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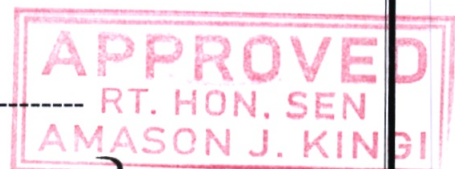
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15/05/2024

THE SENATE

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS



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)



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COMMITTEE	<i>JLHRC</i>
CLERK AT THE TABLE	<i>Cherof</i>

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May, 2024

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LIST OF ABBREVIATIONS/ACRONYMS

CDL	Select Committee on Delegated Legislation
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, 2023 (National Assembly Bills No. 2 of 2023) and the Statutory Instruments (Amendment) Bill (National Assembly Bills No. 3 of 2024) are attached to this Report as *Annex I*.

FOREWORD BY THE CHAIRPERSON

Honourable Speaker,

The Statutory Instruments (Amendment) Bill, 2023 (National Assembly Bills No. 2 of 2023) was passed by the National Assembly with amendments, on 28th November, 2023, and was transmitted to the Senate for its consideration. The Bill was read a First Time in the Senate on Thursday, 7th December, 2023 and committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.

Thereafter, the Statutory Instruments (Amendment) Bill (National Assembly Bills No. 3 of 2024) was passed by the National Assembly with amendments, on 21st March, 2024 and transmitted to the Senate for consideration. The Bill was read a first time in the Senate on Wednesday 17th April, 2024 and thereafter stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights.

Honourable Speaker,

The Statutory Instruments (Amendment) Bill, 2023 (National Assembly Bills No. 2 of 2023) seek to amend various sections of the Statutory Instruments Act, Cap 2A to provide for among others, publication of Parliament's decision to revoke or annul a statutory instrument, as well as reviewing the maximum penalties that may be stipulated in a proposed statutory instrument.

The Statutory Instruments (Amendment) Bill, 2024 (National Assembly Bills No. 3 of 2024) similarly seeks to amend various sections of the Statutory Instruments Act, particularly those dealing with informing the public, through notices in the Parliamentary website and in the gazette, of the lapse of instruments for failure to submit them for scrutiny within the required timelines, and also of decisions to annul instruments. The Bill also proposes to retroactively revive statutory instruments which had already been automatically revoked by operation of law and not been validly extended after being in place for ten years as provided for in section 21 of the Act, as well as repeal section 21 which provides for automatic revocation of statutory instruments.

Honourable 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 Bills. In that regard, the Committee published advertisements in the *Daily Nation* and *Standard* newspapers on Saturday, 9th December, 2023 and Friday, 26th April, 2024, respectively, inviting members of the public to submit written memoranda to the

Committee on the Bills. Additionally, the Committee sent invitations to key stakeholders inviting them to submit their comments on the Bills.

The Committee received written memoranda from the Senate Select Committee on Delegated Legislation, Kenya Law Reform Commission and the Attorney General on the Statutory Instruments (Amendment) Bill, 2023 (National Assembly Bills No. 2 of 2023). The Committee further received submissions from Kenya Law Reform Commission on the Statutory Instruments (Amendment) Bill (National Assembly Bills No. 3 of 2024). 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.

Honourable 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 Bills. The Committee further wishes to thank the Stakeholders who submitted written comments on the Bills.

Honourable 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, 2023 (National Assembly Bills No. 2 of 2023) and the Statutory Instruments (Amendment) Bill, 2024 (National Assembly Bills No. 3 of 2024).

Signed  Date..... 14/5/2024

**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, 2023 (NATIONAL ASSEMBLY BILLS NO. 2 OF 2023) AND THE STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2024 (NATIONAL ASSEMBLY BILLS NO. 3 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, 2023 (National Assembly Bill No. 2 of 2023) was published on 14th February, 2023 following which it was considered by the National Assembly and passed, with amendments, on 28th November, 2023. A copy of the Bill as passed by the National Assembly and referred to the Senate is attached to this Report as *Annex 2*.
2. Pursuant to Article 110(4) of the Constitution, the Bill was transmitted to the Senate where it was read a First Time on Thursday, 7th December, 2023, and thereafter the Bill stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration. A copy of the Message from the National Assembly conveying the Bill to the Senate is attached. *Annex 3*.
3. The Statutory Instruments (Amendment) Bill (National Assembly Bills No. 3 of 2024) was passed by the National Assembly with amendments, on 21st March, 2024. A copy of the Bill as passed by the National Assembly and referred to the Senate is attached to this Report as *Annex 4*.
4. Pursuant to Article 110(4) of the Constitution, the Bill was transmitted to the Senate where it was read a First Time on Wednesday, 17th April, 2024, and thereafter the Bill stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration. A copy of the Message from the National Assembly conveying the Bill to the Senate is attached to this Report as *Annex 5*.

1.2 Objects of the Statutory instruments (Amendment) Bill, 2023 (National Assembly Bill No. 2 of 2023)

5. The main object of this Bill is to amend various sections of the Statutory Instruments Act, Cap 2A to provide for among others, publication of Parliament's decision to revoke or annul a statutory instrument, as well as reviewing the maximum penalties that may be stipulated in a statutory instrument.
6. The Bill seeks to amend the provisions of the Statutory Instruments Act, to enable the Committee on Delegated Legislation to require the Regulation

Making Authority to submit to Parliament a copy of any Statutory Instrument that ceases to have effect by operation of law.

7. The amendments further require Parliament to notify the general public in two newspapers of wide circulation, the Statutory Instrument which ceases to have effect by operation of law is a nullity.

1.3. Overview of the Bill

8. The Bill proposes the following amendments –

Clause 2 amends section 11 of the Act by inserting two new subsections to provide —

- (a) that the Delegated Committee may ask a regulation making authority to submit a statutory instrument for scrutiny within seven days where it has failed to do so within the required timeline; and
- (b) for Parliament to publish a notice in the parliamentary website and two newspapers of wide circulation that a statutory instrument which failed to be submitted for scrutiny within the required timelines is a nullity.

Clause 3 of the Bill deletes section 12(3) of the Act which exempts rules, regulations and orders emanating from Kenyan courts.

Clause 4 amends section 18 to provide for publication, by the Clerk of the relevant House, of a decision to annul a statutory instrument in the Kenya Gazette and the parliamentary website.

Clause 5 amends section 19 of the Act to provide for publication, by the Clerk of the relevant House, of a decision to revoke a statutory instrument in the Kenya Gazette and the parliamentary website.

Clause 6 amends section 23 of the Act to provide that a statutory instrument shall not come into effect until considered in accordance with the Act.

Clause 7 amends section 24 of the Act to enhance the maximum penalty that may be provided for in a statutory instrument from an amount not exceeding Kshs. 20,000 and imprisonment for a term of not more than six months to an

amount not exceeding Kshs. 500,000 and imprisonment for a term of not more than two years.

1.4 Objects of the Statutory Instruments (Amendment) Bill, 2024 (National Assembly Bills No. 3 of 2024)

9. The Bill seeks to amend various sections of the Statutory Instruments Act, particularly those dealing with informing the public, through notices in the Parliamentary website and in the gazette, of the lapse of instruments for failure to submit them for scrutiny within the required timelines, and also of decisions to annul instruments.
10. The Bill also proposes to extend a lifeline to instruments that became automatically revoked after being in place for ten years as provided for in section 21 of the Act, as well as repeal section 21 which provides for automatic revocation of statutory instruments.

1.5 Overview of the Bill

11. The Bill proposes the following amendments –

Clause 2 amends section 11 of the Act by inserting two new subsections to provide —

- (a) that where it comes to the attention of the Delegated Legislation Committee that the Cabinet Secretary responsible for a regulation making authority has failed to submit a statutory instrument for scrutiny within the required timeline (7 days of publication) the may by resolution require the CS to publish a notice in the Gazette that the instrument is a nullity, and submit the notice to Parliament within 7 days of the resolution; and
- (b) for Parliament to publish a notice in the parliamentary website that a statutory instrument which failed to be submitted for scrutiny within the required timelines is a nullity.

Clause 3 amends section 12(3) of the Act (which currently exempts rules, regulations and orders emanating from Kenyan courts from scrutiny by Parliament) by deleting the words “rules and regulations” thus limiting the exemption to orders.

Clause 4 deletes the existing section 19 of the Act and replaces it with a new section which provides for publishing of annulments. The new section 19 provides that—

- (a) where Parliament adopts a report or resolution that an instrument be annulled, the instrument is to stand annulled, and the Clerk of the relevant House is to publish the annulment in the Parliamentary website and convey the resolution of the House to the regulation making authority; and
- (b) the regulation making authority is required to publish the annulment in the gazette within 14 days of receipt of the resolution of the house annulling the instrument.

Clause 5 deletes the heading (Part V—Staged Automatic Expiry of Statutory Instruments) and substitutes it with a new one (Part V – Purpose For Review Of Statutory Instruments)

Clause 6 repeals section 21 of the Act which provides for automatic revocation of statutory instruments 10 years after the instrument was made, and the manner and duration for which the life of a statutory instrument may be extended.

Clause 7 amends section 24(5) of the Act to enhance the maximum penalty that may be provided for in a statutory instrument from an amount not exceeding Kshs. 20,000 and imprisonment for a term of not more than six months, to an amount not exceeding **Kshs. 1,000,000** and imprisonment for a term of not more than **five years**.

Clause 8 amends section 27 by inserting a new subsection (3) which provides that a statutory instrument that would otherwise stand automatically revoked on any day before the date of commencement of this provision shall continue to operate and to have effect as if the instrument had not been automatically revoked on that date.

1.6 Consequences of the Bills

12. The two bills make proposals on notifications to the general public as follows –

- (a) the Bills require Parliament to notify the general Public in two newspapers of wide circulation, of a Statutory Instrument which automatically becomes a nullity for failure to submit it to Parliament for scrutiny within the required timelines.

(b) the Bills further shall require Parliament to publish a notice on the Parliamentary website in respect of instruments which are revoked or annulled by Parliament.

13. Additionally, by removing the exemption granted by the Act to orders, rules and regulations issued by courts of competent jurisdiction, the Bills may be viewed as potentially encroaching on the independence of the Judiciary.
14. The Bills further propose to increase the power of the Cabinet Secretary to impose, in regulations made, enhanced fines and imprisonment terms for breach of a statutory instruments.
15. The Statutory Instruments (Amendment) Bill (National Assembly Bills No. 2 of 2023) also proposes to change the procedure of scrutinising instruments from a negative resolution procedure where the Delegated Committee only needs to issue a resolution that a certain instrument be revoked thus making the instrument valid and operational until revoked, to an affirmative resolution procedure where instruments do not come into force until approved by the Delegated Committee.
16. The Statutory Instruments (Amendment) Bill (National Assembly Bills No. 3 of 2024) seeks to repeal the section of the Act providing for automatic revocation of statutory instruments ten years after the instrument was made, thus depriving Parliament and the Executive the opportunity to rethink, rework and continuously review the usefulness of statutory instruments.
17. The Statutory Instruments (Amendment) Bill (National Assembly Bills No. 3 of 2024) also seeks to retroactively revive statutory instruments which had already been automatically revoked by operation of law and not been validly extended.

CHAPTER TWO: PUBLIC PARTICIPATION ON THE BILL

2.1 Introduction

18. 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 Statutory Instruments (Amendment) Bill, 2023 (National Assembly Bills No. 2 of 2023). In this regard, the Committee published an advertisement in the *Daily Nation* and *Standard* newspapers on Saturday, 9th December, 2023 inviting members of the public to submit written memoranda on the Bill. A copy of the advertisement is attached as *Annex 6*.
19. The Committee further proceeded to undertake public participation on the Statutory Instruments (Amendment) Bill, 2024 (National Assembly Bills No. 3 of 2024). In this regard, the Committee published an advertisement in the *Daily Nation* and *Standard* newspapers on Friday, 26th April, 2024 inviting members of the public to submit written memoranda on the Bill. A copy of the advertisement is attached as *Annex 7*.
20. Additionally, the Committee sent invitations to key stakeholders inviting them to submit their comments on the Bills.
21. In response to the advertisement and invitations, the Committee received written submissions on the Statutory Instruments (Amendment) Bill, 2023 (National Assembly Bills No. 2 of 2023) from –
 - a) Kenya Law Reform Commission;
 - b) The Senate Select Committee on Delegated Legislation; and
 - c) The Attorney General.
22. Further, the Committee received written submissions on the Statutory Instruments (Amendment) Bill, 2024 (National Assembly Bills No. 3 of 2024) from the Kenya Law Reform Commission.
23. Copies of the said submissions are attached as *Annexes 8(a), 8(b), 8(c) and 8(d)* with a summary thereon in the form of a matrix attached as *Annexes 9(a) and 9(b)*.

2.2 Overview of Stakeholder Submissions on the Statutory Instruments (Amendment) Bill (National Assembly Bill No. 2 of 2023)

a) The Kenya Law Reform Commission

24. The Kenya Law Reform Commission in their written submissions on Statutory Instruments (Amendment) Bill (National Assembly Bill No. 2 of 2023), concurred with the amendments proposed in the Bill with reservations that –
- i) the Statutory-making authority as proposed under subsection (5) as proposed in the Bill should be accompanied by a requirement to re-publish the statutory instrument.
 - ii) the proposed amendment in the Bill ought to be harmonised with section 19 to avoid publishing revocation of a statutory instrument twice, by two different agencies.
 - iii) the proposed amendment in the Bill to amend Section 23 failed to provide for clarity on commencement date of a statutory instrument especially those on time -bound events such as revenue collection and determination of the date of revocation.
25. However, the Commission rejected the proposal to amend Section 12(3) of the Statutory Instrument Act on the grounds such provision safeguards the doctrine of separation of powers between Judiciary and the Legislature and proposes to retain the Section as is.

b) The Senate Select Committee on Delegated Legislation

26. The Select Committee on Delegated Legislation held a meeting with the Standing Committee on Justice, Legal Affairs and Human Rights on Thursday, 22nd February, 2024 to deliberate on the Bill. The Committee subsequently submitted its written submissions on the Bill, in which it concurred with the amendments proposed, and further proposed that the Committee under the Act may require the regulation making authority to republish an instrument where it failed to submit it to the Committee within the required timelines.
27. The Committee submitted in favour of a hybrid system where all instruments would be brought to Parliament for scrutiny before they become operational, with a few exceptions being given for instruments there is a need to legislate with urgency in certain circumstances failing which the purpose of the legislation could be defeated.

28. Further the Committee rejected the proposal of the Bill to amend Section 12(3) of the Statutory Instruments Act on the limb to safeguard the doctrine of separation of powers between the Legislature and the Judiciary. The Committee observed the jurisdiction to make rules that guide the Court on practice procedures is derived from the Constitution and derogating from the same shall be a violation of the Constitution.
29. The Committee proposed that the Bill be amended to retain the term of imprisonment for breach of an instrument as provided for under the Act i.e. six months but enhance the fine to Kshs. 500,000/=, noting that there has been concern that the current penalties under the Act are not punitive enough to deter infractions. It also observed that while the increased fine is reasonable, deprivation of liberty is a severe sanction, and a long custodial sentence should ideally be imposed through primary legislation. The propriety of a fine or the sentence should be looked at on a case-by-case basis. If it appears in the primary legislation that a longer jail term is necessary, the parent statute could prescribe a more punitive sentence.

c) The Attorney General

30. The Attorney General, in his written submissions, was in support of the Bill and noted that it did not offend the Constitution or other written laws. He noted that the proposal to insert a new subsection (5) should be harmonized with the existing subsection (4) which deems a statutory instrument to have ceased to have effect immediately after the last day when it was required to be laid, and that 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 moto power of the Committee to pass a resolution regarding that failure.
31. He proposed that the proposed new subsection 5 be deleted and substituted with the following—

(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.

2.3 Overview of Stakeholder Submissions on the Statutory Instruments (Amendment) Bill (National Assembly Bill No. 3 of 2024)

a) The Kenya Law Reform Commission

32. The Kenya Law Reform Commission in their written submissions on Statutory Instruments (Amendment) Bill (National Assembly Bill No. 3 of 2024), concurred with some of the amendments proposed in the Bill with reservations that –
- (i) the requirement by the Committee to the regulation making authority under the proposed subsection (5) should be accompanied by a requirement to re-published the statutory instrument;
 - (ii) section 11 as a whole should also be reviewed because there are regulations making authorities that are not under a Cabinet Secretary;
 - (iii) deletion of section 12(3) will mean that the Chief Justice will be required to lay 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;
 - (iv) review of penal clauses for breach of statutory instruments is welcome;
 - (v) it is not clear what the proposed amendment to the heading in Part V is intended to achieve; and
 - (vi) automatic expiration ensures that statutory instruments are regularly reviewed to assess their continued relevance, effectiveness and alignment with current conditions. This process helps to keep the legal framework updated and responsive to changing societal needs. The sunset process typically involves public consultation and review, promoting accountability and transparency. 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. As technology, society, and the economy evolve, statutory instruments may need adjustment to stay relevant. Automatic expiration encourages adaptation by forcing a periodic re-evaluation of the appropriateness of existing rules in light of new developments. Regulatory capture occurs when regulation making authorities gain undue influence over the regulatory process, leading to stagnation or bias in favour of certain interests. Regulation expiration helps combat this by encouraging fresh perspectives and reducing the chances of entrenched interests dominating the regulatory landscape.

CHAPTER THREE: COMMITTEE OBSERVATIONS

- 3.1 Committee Observations on the Statutory Instruments (Amendment) Bill, 2023 (National Assembly Bill No. 2 of 2023) and the Statutory Instruments (Amendment) Bill, 2024 (National Assembly Bills No. 3 of 2024)**
33. Having considered the Bill and the submissions received thereon, the Committee made the following observations –
- (a) That currently, there is no mechanism through which the public is notified of any revocation or annulment of a statutory instrument by the Delegated Committee under the Statutory Instruments Act, or even notification of which instruments have become automatically revoked for failure to submit them to Parliament for scrutiny upon publication. Publication of decisions to annul or revoke an instrument therefore ensures greater transparency and keeps the public informed on what regulations are in force and those that have been automatically revoked for failure to submit them to Parliament within the required timelines, or which ones have been revoked or annulled following resolution being made by a House of Parliament. This also prevents the illegal implementation of such regulations.
 - (b) That the Statutory Instruments (Amendment) Bill, 2023 (National Assembly Bill No. 2 of 2023) provides that the Delegated Committee may require a regulation making authority to submit a statutory instrument within seven days where it has failed to do so within the required timeline. The purpose of the submission is not stated in the Bill hence it is not clear if it is for purposes of scrutiny or only for notification purposes. This creates unnecessary confusion and if the Delegated Committee were to scrutinise the instrument, it would contradict and beat the purpose of section 11(4) of the Act which provides for automatic revocation of an instrument which was not submitted within the required timeline. However, the Statutory Instruments (Amendment) Bill, 2024 (National Assembly Bills No. 3 of 2024) makes a clearer proposal by requiring that the responsible Cabinet Secretary be required, through a resolution of the Delegated Legislation Committee, to publish a notice in the *Gazette* informing the public that the regulations are a nullity;
 - (c) That the concerns raised by stakeholders on interference with the independence of the Judiciary if Parliament were to scrutinise rules, regulations and orders emanating from a court of competent jurisdiction in Kenya were valid, and it was further observed that –

- (i) not all instruments made by the Chief Justice on behalf of the Judiciary were statutory instruments within the meaning of the Statutory Instruments Act;
 - (ii) some of the instruments, such as practice directions, rules and regulations were made pursuant to the inherent authority of the Judiciary under among others, Article 159(1) of the Constitution;
 - (iii) the High Court in *Ombati v. Chief Justice & President of the Supreme Court & another (Petition E242 of 2022) [2022] KEHC 11630 (KLR)*, while acknowledging that the Supreme Court (Presidential Election Petition) (Amendment) Rules, 2022 – LN No 79 were not a statutory instrument within the meaning of the Statutory Instruments Act, had affirmed that not all instruments emanating from the Judiciary were statutory instruments within the meaning of the Act, particularly where an instrument was made pursuant to authority expressly granted by the Constitution;
 - (iv) the above notwithstanding, if the instrument created offences and contained penalty provisions, it ought to be scrutinised by Parliament as only Parliament has authority to legislate on such matters; and
 - (v) that no concerns have been raised justifying the removal of the exemption from scrutiny currently provided for under section 12(3) of the Act, and as such, this particular clause can be viewed as clawing back on the gains made towards strengthening the operational and decisional independence of the Judiciary;
- (d) That the Statutory Instruments (Amendment) Bill, 2023 (National Assembly Bill No. 2 of 2023) proposes to change the procedure of scrutinising instruments from a negative resolution procedure (where the Delegated Committee only needs to issue a resolution that a certain instrument be revoked thus making the instrument valid and operational until revoked), to an affirmative resolution procedure (where instruments do not come into force until approved by the Delegated Committee). However, other sections of the Act that deal with automatic revocation and the procedure and timelines for reviewing statutory instruments would need a comprehensive review and overhaul and as such amending the section as proposed in the Bill would only cause confusion and uncertainty as to when an instrument actually comes into force;
- (e) That, additionally, where Parliament deems it fit that a certain statutory instrument should be scrutinised before it comes into force due to its

potential effects, it has always stated in the parent Act that the proposed instrument will come into force once approved by Parliament, thus in some way creating a hybrid system of scrutiny. For instance, the National Construction Authority Act (Cap 118) and the Public Finance Management Act (Cap 412A) provide that regulations made shall be tabled in Parliament for approval before taking effect. For that reason, there is no need to amend the Statutory Instruments Act as the parent Acts can contain similar requirements for statutory instruments of a sensitive nature;

- (f) That notwithstanding the above, the Statutory Instruments (Amendment) Bill (National Assembly Bill No. 4 of 2024) proposes to do away with automatic revocation of statutory instruments under section 21 of the Act. It was noted that statutory instruments greatly increase the power of the Executive arm of Government by avoiding unfavourable publicity and critical examination of legislation. In order to reduce substantially the regulatory burden on the people of Kenya without compromising law and order, essential economic, environmental and social objectives, and to ensure subordinate legislation is relevant to the economic, social and general wellbeing of the people of Kenya, it is necessary to have regular review as well as automatic revocation of instruments, as this is the main way through which Parliament retains oversight over the legislation to ensure that the power is exercised within the confines of the delegated authority;
- (g) That there has been concern that the current penalties under the Act are not punitive enough to deter the breach of statutory instruments as they are out of sync with the current economic conditions as well as other penalties in the statute books, thus necessitating the increase in the penalties. While this could justify the increased fine as being reasonable, it is noted that deprivation of liberty is a severe sanction and a long custodial sentence should ideally be imposed through primary legislation, to prevent unnecessarily harsh penalties from being imposed through a statutory. If Parliament deems it necessary for a statutory instrument to provide for a custodial sentence longer than six months, the preferred maximum sentence can be set in the parent Act when delegating the power to make regulations; and

- (h) That the Statutory Instruments (Amendment) Bill (National Assembly Bill No. 3 of 2024) proposes to revive statutory instruments which expired on 24th January 2023 and extend their lifespan indefinitely. The Committee noted that the statutory instruments were not validly extended as required under section 21 of the Act, and the Bill therefore seeks to retroactively revive instruments which expired over one year ago. Moreover, even if the instruments had been validly extended, that extension would have been operative for only twelve months and hence the instruments would be deemed to have expired on 24th January 2024. As such, the proposed extension is illegal and should be expunged from the Bill.
34. The Committee also noted that since the two Bills were partly amending similar sections of the Act, the amendments should be harmonised and presented as Committee Stage Amendments to the Statutory Instruments (Amendment) Bill (National Assembly Bill No. 2 of 2023).
35. The Committee therefore observed that the following amendments to the Bill would be required –
- (a) that the Bill be amended at clause 2 to delete the new subsection (5) to eliminate the confusion that is created when the Delegated Committee asks for regulations which have already been automatically nullified by adopting the wording in clause 2 of the Statutory Instruments (Amendment) Bill, 2024 (National Assembly Bill No. 3 of 2024);
 - (b) that the Bill be further amended by deleting clause 3 so as to retain the current provision in the Act (section 12(3)) exempting rules, regulations and orders emanating from a court of competent jurisdiction in Kenya from scrutiny by Parliament in order to maintain the independence of the judiciary;
 - (c) That the Bill be amended by deleting clause 6 so as to retain the negative resolution procedure currently provided for under the Act whereby statutory instruments that have been published are considered valid unless revoked or annulled in accordance with the Act;
 - (d) That the Bill be amended by deleting clause 7 and adopting the wording in clause 4 of the Statutory Instruments (Amendment) Bill (National Assembly Bill No. 3 of 2024); and
 - (e) That the Bill be amended to provide for the penalty for breach of an instrument to be a fine not exceeding Kenya Shillings five hundred thousand and imprisonment for a term not exceeding six months as opposed to the two years' imprisonment term proposed in the Bill.

36. The text of the proposed amendments is attached as *Annex 10*.

CHAPTER FOUR: COMMITTEE RECOMMENDATION

4.1 Committee Recommendation

37. Having considered 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) as well as the submissions received thereon, the Standing Committee on Justice, Legal Affairs and Human Rights recommends that –

- a. the Senate **passes the Statutory Instruments (Amendment) Bill, 2023 (National Assembly Bills No. 2 of 2023) with amendments** as proposed by the Committee; and
- b. having incorporated some of the amendments proposed in the **Statutory Instruments (Amendment) Bill, 2023 (National Assembly Bills No. 4 of 2024)** in the attached proposed Committee Stage amendments, the Senate **rejects** the Bill in the Second Reading.

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 (National Assembly Bill No. 2 of 2023) as passed by the National Assembly, with amendments, on 28th November, 2023.
- Annex 3:** Copy of the Message conveying the Bill to the Senate
- Annex 4:** Advertisement published in the *Daily Nation* and *Standard* Newspapers on Saturday, 9th December, 2023
- Annex 5:** Copies of Stakeholder Submissions on the Bill
- Annex 6:** Matrix on the Committee's consideration of Stakeholder 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 111TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 18TH MARCH, 2024 AT 8.00 A.M ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | | |
|----|---|-----------------------------------|
| 1. | Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. | Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chair |
| 3. | Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 4. | Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | | |
|----|---|----------|
| 1. | Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 2. | Sen. Hamida Ali Kibwana, MP | - Member |
| 3. | Sen. Catherine Muyeka Mumma, MP | - Member |
| 4. | Sen. Veronica W. Maina, MP | - Member |
| 5. | Sen. Karen Njeri Nyamu, MP | - Member |

SECRETARIAT

- | | | |
|----|----------------------|---|
| 1. | Mr. Charles Munyua | - Senior Clerk Assistant |
| 2. | Mr. Moses Kenyanchui | - Legal Counsel I |
| 3. | Ms. Lilian Waweru | - Legal Counsel II |
| 4. | Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 5. | Mr. Jackson Osore | - Research Officer III |
| 6. | Mr. Josphat Ng'eno | - Media Relations Officer III |
| 7. | Ms. Rosebella Ngesa | - Protocol Officer III |
| 8. | Ms. Judith Aoka | - Assistant Audio Officer |

MIN. NO. 50/2024

PRELIMINARIES

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

MIN. NO. 51/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Raphael Chimera Mwinzagu, MP and seconded by Sen. Fatuma Adan Dullo, CBS, MP.

MIN. NO. 52/2024

**REPORT ON THE STATUTORY INSTRUMENTS
(AMENDMENT) BILL (NATIONAL ASSEMBLY
BILLS NO. 2 OF 2023)**

The Committee deferred adoption of the Report as there were less than five (5) Members present.

MIN. NO. 53/2024

**THE CONSTITUTION OF KENYA (AMENDMENT)
(NO.2) BILL (SENATE BILLS NO. 52 OF 2023)**

The Committee was taken through a Brief on the Constitution of Kenya (Amendment) (No. 2) Bill (Senate Bills No. 52 of 2023).

Following deliberations, the Committee resolved –

- i) to hold a meeting with the eight (8) stakeholders who have submitted written comments on the Bill, on Monday, 15th April, 2024, in Machakos County;
- ii) to hold a public hearing on the Bill on Friday, 3rd May, 2024 at a venue in Mombasa County; and
- iii) thereafter, to consider, adopt and table its Report in the Senate before 14th May, 2024

MIN. NO. 54/2024

**THE CONFLICT OF INTEREST BILL, 2023
(NATIONAL ASSEMBLY BILLS NO. 12 OF 2023)**

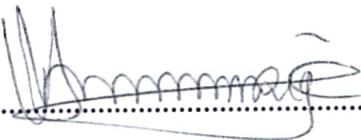
The Committee resumed consideration of the submissions received on the Conflict of Interest Bill (National Assembly Bills No. 12 of 2023).

Due to lapse of time, the Committee resolved to resume consideration of the matrix at a subsequent meeting to be held on Wednesday, 20th March, 2024 at 8.00 a.m.

MIN. NO. 55/2024

ADJOURNMENT

The Chairperson adjourned the meeting at forty-four minutes past nine O'clock. The next meeting was scheduled to be held on Wednesday, 20th March, 2024 at eight O'clock.

SIGNED: 

DATE: 04/05/2024



13TH PARLIAMENT | 3RD SESSION

MINUTES OF THE JOINT SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS AND THE SELECT COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 22ND FEBRUARY, 2024 AT 9.00 A.M. AT THE LAKE TURUKANA ROOM, KICC BUILDING AND ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT – JLAHRC

- | | |
|--|--------------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Co-Chairing</i>) |
| 2. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 3. Sen. Catherine Muyeka Mumma, MP | - Member |
| 4. Sen. Veronica W. Maina, MP | - Member |
| 5. Sen. Karen Njeri Nyamu, MP | - Member |
| 6. Sen. Andrew Omtatah Okoiti, MP | - Member |

PRESENT – CDL

- | | |
|-----------------------------------|--------------------------------------|
| 1. Sen. Mwenda Gataya Mo Fire, MP | - Chairperson (<i>Co-Chairing</i>) |
| 2. Sen. Gloria Orwoba, MP | - Member |
| 3. Sen. Betty Batuli Montet, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|--------------|
| 1. Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chair |
| 2. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 3. Sen. Hamida Ali Kibwana, MP | - Member |

SECRETARIAT

- | | |
|------------------------|---|
| 1. Mr. Joseph Mwangi | - Senior Clerk Assistant |
| 2. Ms. Lilian Waweru | - Legal Counsel II |
| 3. Ms. Lynn Aseka | - Clerk Assistant III (<i>Taking Minutes</i>) |
| 4. Ms. Rahma Abdulahi | - Clerk Assistant III |
| 5. Mr. Jackson Osore | - Research Officer III |
| 6. Mr. Josphat Ng'eno | - Media Relations Officer III |
| 7. Ms. Rosebella Ngesa | - Public Communications Officer III |
| 8. Ms. Judith Aoka | - Assistant Audio Officer |

MIN. NO. 19/2024

PRELIMINARIES

Sen. Mwenda Gataya Mo Fire, MP, called the meeting to order at twenty-nine minutes past nine O'clock and opened with a word of prayer.

This was followed by a self-introduction session by the Senators from both the Standing Committee on Justice, Legal Affairs and Human Rights and the Select Committee on Delegated Legislation and the Secretariat.

MIN. NO. 20/2024 **ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. Gloria Orwoba, MP and seconded by Sen. Betty Batuli Montet, MP.

MIN. NO. 21/2024 **THE STATUTORY INSTRUMENTS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 2 OF 2023)**

The Committees were taken through a Legal Brief on the Statutory Instrument (Amendment) Bill, (National Assembly Bills No. 2 of 2023).

The Committees noted that the Bill sought to amend various sections of the Statutory Instrument Act, Cap 2A to provide for among others, publication of Parliament's decision to revoke or annul a statutory instrument, as well as reviewing the maximum penalties that may be stipulated in a statutory instrument.

During deliberations, Members noted that –


- i) **Clause 2-** amended section 11 of the Act by inserting two new subsections to provide-
 - a) That the Committee on Delegated Legislation may require a regulation making authority to submit a statutory instrument within seven days where it has failed to do so within the required timeline- and that meant that, if that was not done the Committee could sit and require an RMA to submit the instrument; and
 - b) For Parliament to publish a notice in the Parliamentary website and two newspapers of wide circulation that a statutory instrument which failed to be submitted for scrutiny within the required timelines is a nullity- previously the public did not have information, on the status of Statutory Instruments.
- ii) **Clause 6** – amends section 23 (1) of the Act to provide that a statutory instrument shall not come into effect until considered in accordance with the Act. Currently, a statutory instrument comes into effect on the date stated in the statutory instrument or if none is stated, upon publication in the Gazette;
- iii) the bill is changing the procedure from a negative resolution procedure – where an instrument is operational from the day it is published until the day it is revoked or annulled, to one where an instrument does not come into force until approved. However, there were other sections, like the section dealing with automatic revocation which had not been deleted from the Act, thus causing some contradiction;

- iv) the jail term sentencing up from six months to two years for those who commit an offence. Members felt that such hefty punishment should be prescribed by an Act of Parliament as opposed to regulations; and
- v) Parliament scrutinizing instruments coming from the courts was clarified not to mean that Parliament could scrutinize a court orders, rather it would scrutinize regulations made by the Court in furtherance to a Parent Act.

Thereafter the Committee resolved that the Select Committee on Delegated Legislation would hold an internal meeting on Tuesday, 27th February, 2024 to further discuss the Statutory Instrument (Amendment) Bill (National Assembly Bills No. 2 of 2023) and share their comments with the Standing Committee on Justice, Legal, Affairs and Human Rights for the inclusion in the Report of the Statutory Instrument.

MIN. NO. 22/2024 **ADJOURNMENT**

The Chairperson adjourned the meeting at ten minutes past eleven O'clock. The next meeting was scheduled to be held on Tuesday, 27th February, 2024 at eight O'clock.

SIGNED: 

DATE: 4/5/24



13TH PARLIAMENT | 3RD SESSION

MINUTES OF THE 109TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 5TH MARCH, 2024 AT 8.00 A.M. IN COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDINGS AND ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | | |
|----|---|-----------------------------------|
| 1. | Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. | Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 3. | Sen. Catherine Muyeka Mumma, MP | - Member |
| 4. | Sen. Veronica W. Maina, MP | - Member |
| 5. | Sen. Karen Njeri Nyamu, MP | - Member |
| 6. | Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | | |
|----|---|--------------|
| 1. | Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chair |
| 2. | Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 3. | Sen. Hamida Ali Kibwana, MP | - Member |

SECRETARIAT

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

MIN. NO. 37/2024

PRELIMINARIES

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

MIN. NO. 38/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Karen Njeri Nyamu, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 39/2024

CONFIRMATION OF MINUTES OF THE PREVIOUS MEETINGS

The Minutes of the 107th Sitting held on Wednesday, 28th February, 2024 were confirmed as a true record of proceedings, after being proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Karen Njeri Nyamu, MP.

The Minutes of the 108th Sitting held on Thursday, 29th February, 2024 were confirmed as a true record of proceedings, after being proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen. Karen Njeri Nyamu, MP.

MIN. NO. 40/2024

MATERS ARISING FROM THE MINUTES OF THE PREVIOUS MEETING

Under Min. No. 35/2024: The Committee noted the need to propose a date to deliberate on the Two-Third Gender Principle and the Bills submitted with the Report.

MIN. NO. 41/2024

CONSIDERATION OF THE STATUTORY INSTRUMENTS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 2 OF 2023)

The Committee resumed consideration of the Statutory Instruments (Amendment) Bill (National Assembly Bills No. 2 of 2023) and considered the matrix of submissions from the Select Committee on Delegated Legislation.

The Committee observed that the proposed amendment to Clause 3 of the Bill would interfere with the independence of the Judiciary and thus resolved that the Clause ought to be retained as it was.

Thereafter, the Committee directed the Secretariat to proceed and prepare a draft Report with the proposed amendments for consideration and adoption by the Committee.

MIN. NO. 42/2024

ANY OTHER BUSINESS

- i) The Committee was informed of the proposed joint meeting with the counterpart Committee of the National Assembly on Thursday, 7th March, 2024 to deliberate on the framework for actualization of the recommendations of the National Dialogue Committee for amendment to the Constitution.; and
- ii) The Committee resolved to organize a one-day retreat to deliberate on the draft County Government (State Officers' Removal from Office) Procedure Bill, 2023 with the Sponsor of the Bill and targeted Stakeholders in Machakos County on Monday, 18th March, 2024.



13TH PARLIAMENT | 3RD SESSION

MINUTES OF THE 110TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 12TH MARCH, 2024 AT 8.00 A.M. AT BILATERAL II, KICC BUILDING AND ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | | |
|----|---|-----------------------------------|
| 1. | Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. | Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chair |
| 3. | Sen. Catherine Muyeka Mumma, MP | - Member |
| 4. | Sen. Veronica W. Maina, MP | - Member |
| 5. | Sen. Karen Njeri Nyamu, MP | - Member |
| 6. | 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 |

SECRETARIAT

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

MIN. NO. 44/2024

PRELIMINARIES

The Chairperson called the meeting to order at twenty-five minutes past eight O'clock and opened with a word of prayer.

MIN. NO. 45/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Karen Njeri Nyamu, MP and seconded by Sen. Veronica W. Maina, MP.

MIN. NO. 46/2024 CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

Confirmation of Minutes of the previous meeting were deferred.

MIN. NO. 47/2024 CONSIDERATION OF THE DRAFT REPORT ON THE STATUTORY INSTRUMENTS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 2 OF 2023)

The Committee was taken through and considered the draft Report on the Statutory Instruments (Amendment) Bill (National Assembly Bills No. 2 of 2023). Members made proposals to be incorporated as observations and recommendations at chapter Three of the report, following which the report would be scheduled for adoption.


MIN. NO. 48/2024 CONSIDERATION OF THE MATRIX OF STAKEHOLDER SUBMISSIONS ON THE CONFLICT OF INTEREST BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 12 OF 2023)

The Committee resumed consideration of the Conflict of Interest Bill (National Assembly Bills No. 12 of 2023) and commenced consideration of the matrix on the stakeholder submissions.

Due to lapse of time, and noting the volume of submissions received, the Committee resolved to resume consideration of the matrix at a physical meeting to be held on Monday, 18th March, 2024.

MIN. NO. 49/2024 ADJOURNMENT

The Chairperson adjourned the meeting at forty-three minutes past nine O'clock. The next meeting was scheduled to be held on Monday, 18th March, 2024 at nine O'clock.

SIGNED: 04/05/2024 

DATE: 4/5/24



13TH PARLIAMENT | 3RD SESSION

MINUTES OF THE 112TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON WEDNESDAY, 20TH MARCH, 2024 AT 8.00 A.M ON THE ZOOM ONLINE MEETING PLATFORM

PRESENT

- | | | |
|----|---|-----------------------------------|
| 1. | Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>Chairing</i>) |
| 2. | Sen. Hamida Ali Kibwana, MP | - Member |
| 3. | Sen. Catherine Muyeka Mumma, MP | - Member |
| 4. | Sen. Veronica W. Maina, MP | - Member |
| 5. | Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | | |
|----|---|--------------|
| 1. | Sen. Raphael Chimera Mwinzagu, MP | - Vice-Chair |
| 2. | Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 3. | Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 4. | Sen. Karen Njeri Nyamu, MP | - Member |

SECRETARIAT

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

MIN. NO. 56/2024

PRELIMINARIES

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

MIN. NO. 57/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Hamida Ali Kibwana, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

MIN. NO. 58/2024

**REPORT ON THE STATUTORY INSTRUMENTS
(AMENDMENT) BILL (NATIONAL ASSEMBLY
BILLS NO. 2 OF 2023)**

The Committee was taken through and considered the draft Report on the Statutory Instruments (Amendment) Bill (National Assembly Bills No. 2 of 2023) 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. Catherine Muyeka Mumma, MP and seconded by Sen. Veronica W. Maina, MP.

MIN. NO. 59/2024

**LEGISLATIVE PROPOSAL: THE ADVOCATES
(AMENDMENT) BILL, 2024 BY SEN. MOGENI
ERICK OKONG'O, SC, MP**

The Committee commenced consideration of the legislative proposal on the Advocates (Amendment) Bill, 2024 by Sen. Mogeni Erick Okong'o SC, MP and was taken through the Legal Brief.

Members noted that the legislative proposal sought to amend section 81(3) of the Advocates Act, Cap 221 to include Senators and the Speaker of the Senate who hold a practising certificate in the exemption from undertaking continuing legal education.

Thereafter, the Committee resolved that the comments and observations of the Committee be transmitted to the Honourable Speaker of the Senate, pursuant to Standing Order 130(3) of the Senate Standing Order.

MIN. NO. 60/2024

**THE CONFLICT OF INTEREST BILL (NATIONAL
ASSEMBLY BILLS NO. 12 OF 2023)**

The Committee resumed consideration of the submissions received on the Conflict of Interest Bill (National Assembly Bills No. 12 of 2023).

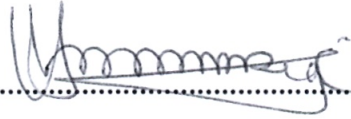
Due to lapse of time, the Committee resolved to resume consideration of the matrix at a later date.

MIN. NO. 61/2024

ADJOURNMENT

The Chairperson adjourned the meeting at thirty-four minutes past nine O'clock. The next meeting was scheduled to be held on Thursday, 21st March, 2024 at nine O'clock.

SIGNED:

A handwritten signature in black ink, appearing to be "W. Hammed", written over a horizontal dotted line.

DATE:

04/05/2024



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 Odhwa | - 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, 2023 (National Assembly Bills No. 2 of 2023)
Bill as passed by the National Assembly Bill



REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS

(Bill No. 2 of 2023)

**THE STATUTORY INSTRUMENTS (AMENDMENT)
BILL, 2023**

(A Bill published in the Kenya Gazette Supplement No. 14 of 2023 and passed by the National Assembly, with amendments, on November 28th, 2023)

N.A./B/No. 14/2023

**THE STATUTORY INSTRUMENTS (AMENDMENT)
BILL, 2023**

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, 2023.

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 two newspapers of wide circulation and 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 18 of the principal Act is amended by—

Amendment of section 18 of No. 23 of 2013.

(a) renumbering the existing provision as subsection (1);

(b) inserting the following new subsection immediately after subsection (1)—

“(2) The Clerk of the relevant House of Parliament shall, by notice in the *Gazette* and the Parliamentary website, publish the annulment of a

statutory instrument by Parliament.”

5. Section 19 of the principal Act is amended by—

Amendment of
section 19 of No.
23 of 2013.

- (a) renumbering the existing provision as subsection (1); and
- (b) inserting the following new subsection immediately after subsection (1)—

“(2) The Clerk of the relevant House of Parliament shall, by notice in the *Gazette* and the Parliamentary website, publish the revocation of a statutory instrument by Parliament.”

6. Section 23 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection—

Amendment of
section 23 of No.
23 of 2013.

“(1) A statutory instrument issued or made under any written law shall not come into effect until the statutory instrument is considered in accordance with this Act and the Standing Orders.”

7. 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 five hundred thousand shillings or such term of imprisonment not exceeding two years”.

Amendment of
section 24 of No.
23 of 2013.

The Statutory Instruments (Amendment) Bill, 2023

I certify that this printed impression is a true copy of the Bill passed by the National Assembly on Tuesday, 28th November, 2023



Clerk of the National Assembly

Endorsed for presentation to the Senate in accordance with the provisions of Standing Order 142 of the National Assembly.



Speaker of the National Assembly

PRINTED BY THE CLERK OF THE NATIONAL ASSEMBLY

ANNEX 3: Message from the Speaker of the National
Assembly



**THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK**

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

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

07 DEC 2023

06 DEC 2023

When replying, please quote:

NA/DLP/TBO/MTS/2023/(018)

07 DEC 2023

6th December 2023

Mr. Jeremiah Nyegenye, CBS
Clerk of the Senate
Parliament Buildings
P.O. Box 41842-00100
NAIROBI

07 DEC 2023
DIRECTOR GENERAL OF PARLIAMENTARY AND LEGISLATIVE SERVICES

② DLPs
Please process
[Signature]
7/12/23

① DC (MA)
Please deal.
[Signature]
06/12/23

Dear Sir,

**RE: PASSAGE OF THE STATUTORY INSTRUMENTS (AMENDMENT)
BILL (NATIONAL ASSEMBLY BILL NO. 2 OF 2023)**

The above mentioned subject matter refers.

Attached herewith, please find a Message in respect of the **passage** by the National Assembly of the Statutory Instruments (Amendment) Bill (National Assembly Bill No. 2 of 2023) on Tuesday, 28th November 2023.

I have also enclosed a copy of the Bill in the form passed by the House, copies of the respective Order Papers, the Votes and Proceedings and Hansard Reports for your reference.

Yours sincerely,

Samuel Njoroge
CLERK OF THE NATIONAL ASSEMBLY

//:Encls.

⑥ Ms. Zehida (AM)
Please file
I-Mbaga
07.12.2023

③ Mr. Mager (COO LTPS)

ps deal.

[Signature]
7/12/23

④ Mr. Mager, DOLPS

please process

201
07.12.23

⑤ Mr. I. Mbayi (CA)
please deal
07/12/2023



**REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT - SECOND SESSION**

**THE NATIONAL ASSEMBLY
MESSAGES**

MESSAGE TO THE SENATE

_____ (No. 024 of 2023) _____

**PASSAGE OF THE STATUTORY INSTRUMENTS (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO. 2 OF 2023)**

PURSUANT to the provisions of Standing Order 41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly—

WHEREAS, the Statutory Instruments (Amendment) Bill (National Assembly Bill No. 2 of 2023) was published *vide* Kenya Gazette Supplement No. 14 of 15th February 2023 as a Bill seeking to amend the provisions of the Statutory Instruments Act, 2013 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 Bill 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;

AND WHEREAS, on Wednesday, 8th November 2023 and Tuesday, 28th November 2023, the National Assembly considered the Statutory Instruments (Amendment) Bill (National Assembly Bill No. 2 of 2023) and passed it **with amendments** and in the form attached herewith;

NOW THEREFORE, in accordance with the provisions of Article 110 of the Constitution and Standing Orders 41(1) and 142 of the National Assembly Standing Orders, I hereby **refer** the Bill to the Senate for consideration.


THE RT. HON. (DR.) MOSES F. M. WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Wednesday, 6th December 2023

ANNEX 4: Copy of the Statutory Instruments (Amendment)
Bill, 2024 (National Assembly Bills No. 3 of 2024)
Bill as passed by the National Assembly Bill



REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS

(Bill No. 3 of 2024)

THE STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2024

(A Bill published in the Kenya Gazette Supplement No. 27 of 2024 and passed by the National Assembly, with amendments, on March 21st, 2024)

N.A. /B/No. 3/2024



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

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 (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 Cap. 2A.

“(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.

(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 the words “rules, regulations and” appearing in subsection (3).

Amendment of section 12 of Cap. 2A.

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

Amendment of section 19 of Cap. 2A.

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.

5. 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 Cap. 2A..

“PART V –PURPOSE FOR REVIEW OF STATUTORY INSTRUMENTS”

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

Amendment of section 21 of Cap. 2A.

7. 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 Cap. 2A.

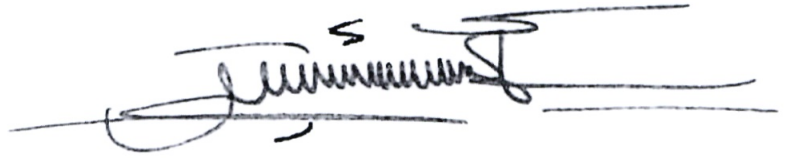
8. Section 27 of the principal Act is amended by inserting the following new subsection immediately after subsection (2) —

Amendment of section 27 of Cap. 2A.

“(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.”

The Statutory Instruments (Amendment) Act, 2024

I certify that this printed impression is a true copy of the Bill passed by the National Assembly on 21st March, 2024.



Clerk of the National Assembly

Endorsed for presentation to the Senate in accordance with the provisions of Standing Order 142 of the National Assembly Standing Orders.

Wetangila
Speaker of the National Assembly



ANNEX 5: Message from the Speaker of the National
Assembly



5 APR 2024

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT - THIRD SESSION

THE NATIONAL ASSEMBLY
MESSAGES



MESSAGE TO THE SENATE

(No. 009 of 2024)

DIRECTOR LEGISLATIVE AND

PROCEDURAL SERVICES

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

PURSUANT to the provisions of Standing Order 41(1) and 142 of the National Assembly Standing Orders, I hereby convey the following Message from the National Assembly—

WHEREAS, the Statutory Instruments (Amendment) Bill (National Assembly Bill No. 3 of 2024) was published *vide* Kenya Gazette Supplement No. 27 on 1st February 2024 as a Bill seeking to amend the provisions of the Statutory Instruments Act, 2013 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, and to further obligate 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;

AND WHEREAS, on Thursday, 21st March 2024, the National Assembly considered the Statutory Instruments (Amendment) Bill (National Assembly Bill No. 3 of 2024) and passed it with amendments in the form attached hereto;

FURTHER NOTING THAT, the National Assembly referred the Statutory Instruments (Amendment) Bill (National Assembly Bill No. 2 of 2023) to the Senate for consideration on 6th December 2023, the processing of the Statutory Instruments (Amendment) Bill (National Assembly Bill No. 3 of 2024) be undertaken alongside the earlier Bill with a view to harmonizing the two Bills;

NOW THEREFORE, in accordance with the provisions of Article 110 of the Constitution and Standing Orders 41(1) and 142 of the National Assembly Standing Orders, I hereby refer the said Bill to the Senate for consideration.

THE RT. HON. (DR.) MOSES F.M. WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Thursday, 4th April 2024

ANNEX 6: Advertisement on the Statutory Instruments
(Amendment) Bill, 2023 (National Assembly Bills
No. 2 of 2023) Published in the *Daily Nation* and
Standard Newspapers on Saturday, 9th December,
2023

REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT | SECOND SESSION THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

At the sitting of the Senate held on Thursday, 7th December, 2023, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committees now invite 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 the email addresses of the respective Committee indicated at the fourth column below, to be received on or before **Friday, 22nd December, 2023 at 5.00 p.m.**

	Bill	Committee Referred To	Email Address
a)	The Public Service (Values and Principles) (Amendment) Bill (National Assembly Bill No. 46 of 2022)	Standing Committee on Labour and Social Welfare	laboursocialwelfarecomm.senate@parliament.go.ke
b)	The National Construction Authority (Amendment) Bill (National Assembly Bill No. 59 of 2022)	Standing Committee on Roads, Transportation and Housing	roadstranshousingcomm.senate@parliament.go.ke
c)	The Statutory Instruments (Amendment) Bill (National Assembly Bill No. 2 of 2023)	Standing Committee on Justice, Legal Affairs and Human Rights	senatejlahrc@parliament.go.ke

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 7: Advertisement on the Statutory Instruments
(Amendment) Bill, 2024 (National Assembly Bills
No. 3 of 2024) Published in the *Daily Nation* and
Standard Newspapers on Friday, 26th April, 2024

REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT | THIRD SESSION

THE SENATE

The Statutory Instruments (Amendment) Bill, 2024 (National Assembly Bills No. 3 of 2024)

INVITATION FOR SUBMISSION OF MEMORANDA

The Statutory Instruments (Amendment) Bill, 2024 (National Assembly Bills No. 3 of 2024) was read a First Time in the Senate on Wednesday, 17th April, 2024 and thereafter stood committed to the Standing Committee on Justice, Legal Affairs and Human Rights.

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 Bill 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 **Thursday, 9th May, 2024 at 5.00 p.m.**

The Bill 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 8(a): Kenya Law Reform Commission

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

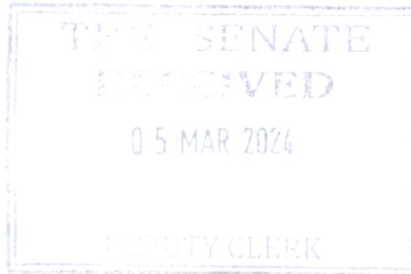
Ref. No. KLRC/B/86(27).....
 and Date



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

4th March, 2024 20.....

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



D DGAC
 DG

Kindly deal.



Handwritten: HOD-Governance Lead CLERK - JLAHRC

Handwritten: kindly deal & 25/03/2024 E 25/03/2024

Dear

RE: INVITATION TO SUBMIT COMMENTS ON THE STATUTORY INSTRUMENTS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO 2 OF 2023)

Your letter Ref SEN/DGAC/DGACC/JLAHRC/2024/(6) dated 19th 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	A statutory instrument which has not

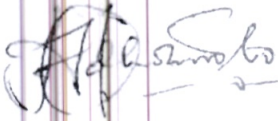
05 MAR 2024

of section of Cap 2A	Committee to the statutory-making authority under the proposed subsection (5) should be accompanied by a requirement to re-publish the statutory instrument.	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.
3-Amendment of section 12 of Cap 2A	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.	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.
4-Amendment of section 18 of Cap 2A	No comments	It is proper to publish the annulment of a statutory instrument for record and information purposes.
5- Amendment of section 19 of Cap 2A	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.	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.
6-Amendment of section 23 of Cap 2A	The proposed amendment to section 23 may occasion difficulties in interpretation of the exact date of commencement of a statutory instrument since the date of consideration by Parliament is not exact.	The current provision that a statutory instrument comes into operation on the date specified in that statutory instrument or, if no date is so specified, then, on the date of its publication in the Gazette is intended to provide with the exact date of commencement. This date is important especially for time-bound events, revenue collection and

		determination of the date of automatic revocation.
7-Amendment of section 24 of Cap 2A	No comment	Review of limitations for penal clauses for breach of statutory instruments is welcome. 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.

As always, we thank you for your continued cooperation.

Yours sincerely,



Joash Dache, MBS
SECRETARY/CEO

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

ANNEX 8(b): The Senate Select Committee on Delegated
Legislation



REPUBLIC OF KENYA
PARLIAMENT

Sen. Mwenda Gataya Mo Fire, MP
Tharaka Nithi County
Chairperson – Committee on Delegated Legislation

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

Mobile: +254 721 717 184
Email: Mwendajulius0784@gmail.com

Ref No: CORR/GEN/2024(1)

29th February, 2024

Sen. Wakili Hillary Kiprotich Sigei, MP,
Chairperson – Standing Committee on Justice,
Legal Affairs and Human Rights,
Parliament Buildings,
NAIROBI.

Dear Sir,

**RE: COMMITTEE ON DELEGATED LEGISLATION SUBMISSIONS ON THE
STATUTORY INSTRUMENTS BILL, 2023 (NATIONAL ASSEMBLY BILLS
NO. 2 OF 2023)**

The Senate Select Committee on Delegated Legislation is established under standing order 195(1) of the Senate Standing Orders and is mandated to scrutinize statutory instruments laid before the Senate.

The National Assembly has referred to the Senate the Statutory Instruments (Amendment) Bill, 2023 (National Assembly Bills No. 2 of 2023). The purpose of this Bill is to amend various sections of the Statutory Instruments Act, (Chapter 2A, Laws of Kenya) to streamline the processes relating to the consideration of statutory instruments in Parliament. It further seeks to provide a mechanism through which members of the public and the respective State agencies are informed of decisions made after Parliament considers statutory instruments.

The Bill, was considered by the National Assembly and passed, with amendments, on 28th November, 2023. It was thereafter transmitted to the Senate for consideration. The Bill was read a First Time in the Senate on 7th December, 2023, and committed to the Standing Committee on Justice, Legal Affairs and Human Rights for public participation before the Standing Committee on Justice, Legal Affairs and Human Rights.

The Committee met with the Standing Committee on Justice, Legal Affairs and Human Rights on 22nd February, 2024 and now wishes to make the following submissions as the Bill will affect the scrutiny of statutory instruments by the Committee-

Clause	Consequence of the Bill and Committee's concerns
<p>Clause 2 amends section 11 of the Act by inserting two new subsections to provide —</p> <p>(a) the Committee to require a regulation making authority to submit a statutory instrument within seven days where it has failed to do so within the required timeline; and</p> <p>(b) for Parliament to publish a notice in the parliamentary website and two newspapers of wide circulation that a statutory instrument which failed to be submitted for scrutiny within the required timelines is a nullity</p>	<p>Currently, there is no mechanism through which the public is notified of any revocation or annulment of a statutory instrument. Publication of decisions to annul or revoke an instrument therefore ensures greater transparency and keeps the public informed on what regulations are in force and those that have been revoked or annulled.</p> <p>However, it is unclear why the Committee would require a regulation making authority to submit a statutory instrument within seven days where it has failed to do so. Is it for purposes of scrutiny and if so, doesn't this contradict section 11(4) of the Act which provides for automatic annulment where the regulation making body fails to submit instruments for scrutiny within the stipulated time.</p> <p>The committee proposes an amendment to this clause to require the regulation making authority to republish the instrument prior to tabling it before Parliament.</p>
<p>Clause 3 of the Bill deletes section 12(3) of the Act which exempts rules, regulations and orders emanating from Kenyan courts from scrutiny by Parliament.</p>	<p>This clause is likely to interfere with the independence of the Judiciary. The current provision exempts rules, regulations and orders emanating from a court of competent jurisdiction in Kenya. Court orders should not be made subject to parliamentary scrutiny.</p> <p>The Committee proposes an amendment to this clause to retain court orders under the exemption from parliamentary scrutiny. However, all other rules and regulations made by the Court should be subject to parliamentary scrutiny.</p>
<p>Clause 4 amends section 18 to provide for publication, by the Clerk of the relevant House, of a decision to annul a statutory instrument in the Kenya Gazette and the parliamentary website.</p>	<p>Publication of decisions to annul or revoke an instrument ensures greater transparency and keeps the public informed on what regulations are in force and those that have been revoked or annulled.</p> <p>The Committee endorses this proposed amendment.</p>

<p>Clause 5 amends section 19 of the Act to provide for publication, by the Clerk of the relevant House, of a decision to revoke a statutory instrument in the Kenya Gazette and the parliamentary website.</p>	<p>Publication of decisions to annul or revoke an instrument therefore ensures greater transparency and keeps the public informed on what regulations are in force and those that have been revoked or annulled.</p> <p>The Committee endorses this proposed amendment.</p>
<p>Clause 6 amends section 23(1) of the Act to provide that a statutory instrument shall not come into effect until considered in accordance with the Act. Currently, a statutory instrument comes into effect on the date stated in the statutory instrument or if none is stated, upon publication in the Gazette.</p>	<p>This is a major amendment to the Act as it amounts to change the entire way statutory instruments are scrutinized in Kenya. The Bill proposes to change the procedure of scrutinising instruments from a negative/annulment resolution procedure where the Committee only needs to issue a resolution that a certain instrument be revoked thus making the instrument valid and operational until revoked, to an affirmative resolution procedure where instruments do not come into force until approved by the Committee.</p> <p>There are certain factors to be taken into consideration when considering the method of scrutiny. The following factors favour an affirmative resolution procedure—</p> <ul style="list-style-type: none"> ○ where an instrument grants significant powers; ○ where an instrument imposes or increases taxation or other significant financial burden on the public; ○ where a statute confers unusual powers of entry, examination or inspection; ○ where an instrument creates unusual criminal provisions or unusual penalties; and ○ where an instrument imposes onerous duties on the public such as lodging of large amounts of security. <p>The factors that support a negative resolution procedure include—</p> <ul style="list-style-type: none"> ○ where the subject-matter of the instrument is relatively minor or is technical; ○ where it may be appropriate to update the subject-matter of the subordinate legislation on a regular basis; and ○ where it may be appropriate to legislate swiftly for

reasons such as protection or preservation of life for instance during the Covid-19 pandemic;

Therefore, a purely affirmative procedure is not always desirable. Many Common law jurisdictions adopt a hybrid approach that strikes a balance between the need to scrutinise instruments, the significance of the provisions in question and the need to make legislation in the most efficacious manner. In Kenya, some statutes require that instruments made under powers conferred should be approved by Parliament before taking effect. This is actually currently being practiced in some statutes such as the National Construction Authority Act (Chapter 118, Laws of Kenya), the Public Finance and Management Act, the Public Procurement and Asset Disposal Act the Salaries and Remuneration Act (Chapters 412A, 412C and 412D respectively) which provides that instruments made under it shall be approved by Parliament before taking effect.

While the Committee has acknowledged the need to retain parliamentary oversight over statutory instruments, it is worth noting that there is a need to legislate with urgency in certain circumstances failing which the purpose of the legislation could be defeated. For example, when there is a threat to life due to natural calamity or a disease outbreak, statutory instruments should take effect immediately post publication. The Committee therefore endorses this amendment but proposes an exception for statutory instruments that seek to preserve life.

Clause 7 amends section 24(5) of the Act to enhance the maximum penalty that may be provided for in a statutory instrument from an amount not exceeding Kshs. 20,000 and imprisonment for a term of not more than six months to an amount not exceeding Kshs. 500,000 and imprisonment for a term of not more than two years.

The Bill proposes to increase the fine to Kshs 500,000 and imprisonment to a term of not more than two years. There has been concern that the current penalties under the Act are not punitive to deter infractions.

While the increased fine is reasonable, it is noted that deprivation of liberty is a severe sanction and such a long custodial sentence should ideally be imposed through primary legislation. The propriety of a fine or the sentence should be looked at on a case by case basis.

The Committee proposes that the imprisonment should remain the same as in the Act i.e. six months but the fine

should be enhanced to Kshs. 500,000/=.

If it appears in the primary legislation that a longer jail term is necessary, the parent statute could prescribe a more punitive sentence.

Yours Sincerely,

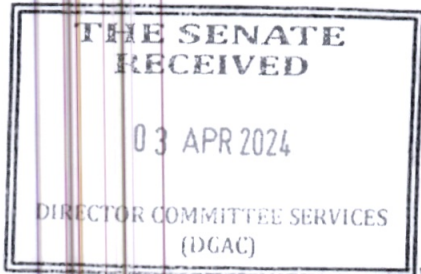


SEN. MWENDA GATAYA MO FIRE, MP
CHAIRPERSON,
SELECT COMMITTEE ON DELEGATED LEGISLATION

Copy to:

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

ANNEX 8(c): The Office of the Attorney General



OFFICE OF THE ATTORNEY-GENERAL & DEPARTMENT OF JUSTICE

① DGAC
② HOD - Government SCA - JLAHR DLS
Kindly deal
Kindly deal
03/04/2024
26th March, 2024

Our Ref: AG/LDD/32/1/6

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



RE: INVITATION TO SUBMIT COMMENTS ON THE STATUTORY INSTRUMENTS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO.2 OF 2023)

This has reference to your letter dated the 19th February, 2024, under Ref. SEN/DGAC/DGC/JLAHRC/2024/ (5) and the invitation to submit comments on the Statutory Instruments (Amendment) Bill (National Assembly Bills No. 2 of 2023).

Having reviewed the Statutory Instruments (Amendment) Bill, 2023 in light of the Constitution and the Statutory Instruments Act (Cap. 2A) our considered views on the draft Bill are as follows: -

Clause 2 of the Bill seeks to amend section 11(1) of the Statutory Instruments Act, 2013 which requires the Cabinet Secretary responsible for a regulation making authority to lay the statutory instrument before Parliament within seven sitting days after it has been published in the *Gazette*. Subsection (4) states that the statutory instrument ceases 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 that has become void.

The Bill proposes to insert a new subsection (5) in order to provide for the regulation making authority which failed to submit a statutory instrument to Parliament to submit the statutory instrument within seven days from the date of the resolution of the Committee.

The proposal to insert a new subsection (5) should be harmonized with the existing subsection (4) which deems a statutory instrument to have ceased to have effect immediately after the last day when it was required to be laid. 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 moto* 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.state.law.office@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 2224 029/ 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

ISO 9001:2008 Certified




In view of the foregoing, we recommend the deletion of 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 Committee, require the Cabinet Secretary to submit the statutory instrument to Parliament within seven days from the date of the resolution.

Save as for the foregoing concerns, we confirm that Bill does not offend the Constitution or the existing Acts of Parliament.

We trust this is in order.


HON. STATRACK L. MOSE
SOLICITOR-GENERAL

Copy to: Hon. J. B. N. Muturi, EGH
ATTORNEY GENERAL

Ms. L. M. Murila
Chief State Counsel

ANNEX 8(d): Kenya Law Reform Commission

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,


for J. DASH 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			<p>Review of limitations for penal clauses for breach of statutory instruments is welcome.</p> <p>Rationale:</p> <p>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.</p>
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		<p>We welcome this proposed amendment.</p> <p>Rationale:</p> <p>Timelines help ensure that new statutory instruments are aligned with existing laws and policies. This promotes consistency and coherence within the legal</p>

					<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 9 (a): Matrix on the Committee's Consideration of the Stakeholder Submissions on the Statutory Instruments (Amendment) Bill, 2023 (National Assembly Bills No. 2 of 2023).

THE SENATE



MATRIX

THE STATUTORY INSTRUMENT (AMENDMENT) BILL, 2023 (NATIONAL ASSEMBLY BILLS NO. 2 OF 2023)

Stakeholders:

1. Senate Select Committee on Delegated Legislation (CDL)
2. Kenya Law Reform Commission (KLRC)
3. Attorney General (AG)

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
2	CDL	Amendment the clause to require the regulation making authority to republish the instrument prior to tabling it before Parliament.	It is unclear in the Bill why the Delegated Committee would require a regulation making authority to submit a statutory instrument within seven days where it has failed to do so. It is not clear if this is for purposes of scrutiny or for notification that the instrument is a nullity under the Act. If for purposes of scrutiny, this would contradict section 11(4) of the Act which provides for automatic annulment where the regulation making body fails to submit	The clause should be amended to provide clarity on why the Delegated Committee is requiring the regulation making authority to submit the statutory instrument where it had failed to do so. Proposal partly accepted.

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			instruments for scrutiny within the stipulated time.	
	KLRC	The requirement by the committee to the statutory meeting authority under the proposed subsection 5 should be accompanied by a requirement to republish the statutory instrument	A statutory instrument which has 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.	Resolved as per above comment.
	AG	The proposed new subsection 5 should be deleted and substituted with the following— <i>(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.</i>	To harmonise with the existing subsection (4) which deems a statutory instrument to have ceased to have effect immediately after the last day when it was required to be laid, and 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 moto power of the Committee to pass a resolution regarding that failure.	Resolved as per above comment.
3	CDL	Amend to retain court orders under the exemption from parliamentary scrutiny. However, all other rules and regulations	This clause is likely to interfere with the independence of the Judiciary. The current provision exempts rules, regulations and orders emanating from a	The exemption is necessary so as to maintain the independence of the judiciary. Clause should be

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		made by the Court should be subject to parliamentary scrutiny.	court of competent jurisdiction in Kenya. Court orders should not be made subject to parliamentary scrutiny.	deleted so as to retain the exemption.
				Proposal accepted.
	KLRC	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.	Deletion of section 12(3) will mean that the Chief Justice will be required to lay rules of courts before Parliament. Rules of court govern procedures for the conduct of business in courts, nature of proceedings 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.	Resolved as per above comment.
4	CDL	The CDL endorses this proposed amendment.	Publication of decisions to annul or revoke an instrument ensures greater transparency and keeps the public informed on what regulations are in force and those that have been revoked or annulled.	Committee agrees with the stakeholder's view.
	KLRC	No comment	It is proper to publish the annulment of a statutory instrument for record and information purposes.	Committee agrees with the stakeholder's view.
5	CDL	The CDL endorses this proposed amendment.	Publication of decisions to annul or revoke an instrument ensures greater transparency and keeps the public informed on what regulations are in force and those that have been revoked or annulled.	Committee agrees with the stakeholder's view.

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
	KLRC	There is need to harmonize section 19 is it currently stands with the proposal to insert a new 19 to requiring publication of revocation of a statutory instrument by Parliament.	Section 19 already provides that the regulation making authority shall publish the revocation within 14 days the new proposal means that the revocation will be required to be published twice by two different agencies.	There is no harm in having both institutions publish the revocation. Publication by Parliament adds an extra layer of transparency and protection of public interest especially where the regulation making agency fails to publish the revocation as required. Proposal not accepted.
6	CDL	The CDL endorses this amendment but proposes an exception for statutory instruments that seek to preserve life from the requirement that an instrument only come into force once approved by the Parliament.	This amendment amounts to changing the entire way in which statutory instruments are scrutinized in Kenya from a negative resolution procedure to an affirmative resolution procedure where instruments do not come into force until approved. A purely affirmative procedure is not always desirable. Many Common law jurisdictions adopt a hybrid approach that strikes a balance between the need to scrutinise instruments, the significance of the provisions in question and the need to make legislation in the most efficacious manner. In Kenya, some statutes require that instruments made under powers	The CDL's proposal is contradictory in itself. The Act already has inbuilt mechanisms for sensitive instruments, in which case the parent Act can require them to be submitted prior to publication. Changing the procedure and commencement timeline without overhauling the entire timelines and submission process under the Act will only create more uncertainty as to when the instrument commenced.

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			<p>conferred should be approved by Parliament before taking effect.</p> <p>While the Delegated Legislation Committee has acknowledged the need to retain parliamentary oversight over statutory instruments, it is worth noting that there is a need to legislate with urgency in certain circumstances failing which the purpose of the legislation could be defeated.</p>	Proposal not accepted.
	KLRC	The proposed amendment to section 23 may occasionally difficulties in interpretation of the exact dates of commencement of a statutory instrument since the date of consideration by parliament is not exact.	The current provision that has touched her instrument comes into operation on the deed specified in that statutory instrument or if not it is so specified then on the date of its publication in the gazettes is intended to provide with the exact date of commencement this date is important especially for time bound events, revenue collection and determination of the date of automatic revocation.	The Committee agrees with this view for the reasons stated above.
7	CDL	Retain the term of imprisonment as provided for under the Act i.e. six months but enhance the fine to Kshs. 500,000/=.	<p>There has been concern that the current penalties under the Act are not punitive enough to deter infractions.</p> <p>While the increased fine is reasonable, it is noted that deprivation of liberty is a severe sanction and a long custodial sentence should ideally be imposed</p>	<p>Committee agrees with this view that if a longer imprisonment term is required, it should be imposed by Parliament itself through the Parent Act.</p> <p>Proposal accepted.</p>

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
			<p>through primary legislation. The propriety of a fine or the sentence should be looked at on a case by case basis.</p> <p>If it appears in the primary legislation that a longer jail term is necessary, the parent statute could prescribe a more punitive sentence.</p>	
	KLRC	No comment	Review of limitations for penal clauses for breach of statutory instruments is welcome. The current restriction of statutory instrument's penalty not exceeding 20,000 shillings or a term of imprisonment not exceeding six months is out of sync with the economic status and other penalties in the statute books.	Longer imprisonment sentences should be given in the Parent Act not in subsidiary legislation.

ANNEX 9 (b): Matrix on the Committee's Consideration of the Stakeholder Submissions on the Statutory Instruments (Amendment) Bill, 2024 (National Assembly Bills No. 3 of 2024).

THE SENATE



MATRIX

THE STATUTORY INSTRUMENT (AMENDMENT) BILL, 2024 (NATIONAL ASSEMBLY BILLS NO. 3 OF 2024)

Stakeholders:

1. Kenya Law Reform Commission (KLRC)

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
2	KLRC	The requirement by the committee to the statutory instrument making authority under the proposed subsection 5 should be accompanied by a requirement to republish the statutory instrument.	A statutory instrument which has 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.	Not accepted. The clause is clear on what the CS in charge of the regulation making authority should do once the Committee makes a resolution, i.e. to publish a notice that the instrument is a nullity.
3	KLRC	It is not necessary to amend or delete section 12(3) of Cap 2A since it is intended to ensure	Deletion of section 12(3) will mean that the Chief Justice will be required to lay rules of courts before Parliament. Rules	The exemption is necessary so as to maintain the independence of the

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
		separation of powers between judiciary and the Legislature. It is proposed to retain the section as is.	of court govern procedures for the conduct of business in courts, nature of proceedings 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.	judiciary. Clause should be deleted so as to retain the exemption. Proposal accepted.
Heading in Part V	KLRC	Not necessary to amend the heading in Part V.	It is not clear what the proposed amendment is intended to achieve.	Committee agrees with the Stakeholder's view.
6	KLRC	Section 21 that is sought to be repealed is already expunged from the statute book (through an amendment contained in the Finance Act, 2023, which was declared to be unconstitutional) and that there are cases in court regarding the repeal of this section. However, it ought not to be repealed due to the value of sunseting statutory instruments.	Automatic expiration ensures that statutory instruments are regularly reviewed to assess their continued relevance, effectiveness and alignment with current conditions. This process helps to keep the legal framework updated and responsive to changing societal needs.	Committee agrees with the Stakeholder's view and resolves that the clause be deleted.
7	KLRC	Review of limitations for penal clauses for breach of statutory instruments is welcome.	The current restriction of statutory instrument's penalty not exceeding 20,000 shillings or a term of imprisonment not exceeding six months is out of sync with the economic status and other penalties in the statute books.	Committee agrees with this view that there has been concern that the current penalties under the Act are not punitive enough to deter infractions. While the increased fine is reasonable, it is noted that

CLAUSE	STAKEHOLDER	PROPOSAL	REASONS	RESOLUTION
				<p>deprivation of liberty is a severe sanction and a long custodial sentence should ideally be imposed through primary legislation. The propriety of a fine or the sentence should be looked at on a case by case, and if a longer imprisonment term is required, it should be imposed by Parliament itself through the Parent Act.</p> <p>Proposal partly accepted.</p>
8	KLRC	Does not concur with the proposed amendment.	KLRC adopts its views on clause 6 on the value of automatic expiry of statutory instruments.	Committee agrees with the Stakeholder's view and resolves that the clause be deleted.

ANNEX 10: Text of proposed Committee stage amendments to
the Bill

13th May, 2024

The Clerk of the Senate
Parliament Buildings
NAIROBI

**RE: COMMITTEE STAGE AMENDMENTS TO THE STATUTORY INSTRUMENTS
(AMENDMENT) BILL, NATIONAL ASSEMBLY BILLS NO. 2 OF 2023**

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, National Assembly Bills No. 2 of 2023, at the Committee Stage —

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 —

- (a) 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
- (b) submit the published notice to Parliament.

CLAUSE 3

THAT the Bill be amended by deleting clause 3.

CLAUSE 4

THAT the Bill be amended by deleting clause 4.

CLAUSE 5

THAT the Bill be amended by deleting clause 5 and substituting therefor the following new clause 5—

Amendment
of section 19
of Cap 2A.

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

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.

CLAUSE 6

THAT the Bill be amended by deleting clause 6.

CLAUSE 7

THAT the Bill be amended by deleting clause 7 and substituting therefor the following new clause—

Amendment of section 11 of Cap 2A.

7. Section 24 of the principal Act is amended in subsection (5) by deleting the words “twenty thousand shillings” appearing immediately after the words “penalty not exceeding” and substituting therefor the words “one million shillings”.

Dated  14/5/24, 2024.

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