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REPUBLIC OF KENYA  
THIRTEENTH PARLIAMENT | THIRD SESSION

THE SENATE

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND  
HUMAN RIGHTS

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

APPROVED  
RT. HON. SEN  
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## LIST OF ABBREVIATIONS/ACRONYMS

KLRC	Kenya Law Reform Commission
SEN	Senator

## PRELIMINARIES

### Establishment and Mandate of the Committee

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

### Membership of the Committee

The Committee is comprised of –

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

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

## FOREWORD BY THE CHAIRPERSON

**Hon. Speaker,**

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

**Hon. Speaker,**

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

**Hon. Speaker**

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

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

**Hon. Speaker,**

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

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

**Hon. Speaker,**


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

Signed .....  ..... Date... 14/05/2024 .....

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

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

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

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

## CHAPTER ONE: INTRODUCTION

### 1.1 Introduction

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

### 1.2 Objects of the Bill

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

### 1.3 Overview of the Bill

5. The Bill proposes the following amendments –

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



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

#### **1.4 Consequences of the Bill**

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

## CHAPTER TWO: PUBLIC PARTICIPATION ON THE BILL

### 2.1 Introduction

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

### 2.2 Overview of Stakeholder Submissions on the Bill

#### (a) The Kenya Law Reform Commission

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

#### (b) The Attorney General

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

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

**(c) The Political Parties Liaison Committee**

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

## CHAPTER THREE: COMMITTEE OBSERVATIONS

### 3.1 Committee Observations

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

## CHAPTER FOUR: COMMITTEE RECOMMENDATION

### 4.1 Committee Recommendation

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