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THE NATIONAL ASSEMBLY



TWELFTH PARLIAMENT-SECOND SESSION

DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND
COOPERATIVES

REPORT ON THE KENYA ACCREDITATION SERVICE BILL, 2018

(NATIONAL ASSEMBLY BILL NO. 17)

Directorate of Committee Services
The National Assembly,
Parliament Buildings, Continental House, Room 402
NAIROBI **DECEMBER 2018**

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CHAIRPERSON'S FOREWORD

On behalf of the Departmental Committee on Trade, Industry and Cooperatives in pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Kenya Accreditation Service Bill, 2018.

This report contains the Committee's proceedings of the consideration of the Sacco Societies (Amendment) Kenya Accreditation Service Bill, 2018, National Assembly Bills No. 17 that was published on 7th June, 2018 and read a First Time on 26th June, 2018. In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation on Friday 6th July, 2018 pursuant to Article 118 of the Constitution. Stakeholders made oral and written submission for consideration by the Committee. The Committee has since adopted the stakeholders' amendments for introduction into the Bill during the Committee Stage of the Bill.

In considering the Bill, the Committee noted that the Bill seeks to establish the Kenya National Accreditation Service as an internationally recognized and effective accreditation system. The Bill shall establish the Service as the sole recognized body for accreditation in Kenya. The Bill shall also repeal the Kenyan Accreditation Service Order, 2009, which was made under the State Corporations Act (Cap. 466 of the Law of Kenya). The Bill gives powers to the responsible Cabinet Secretary to make regulations; however, it does not limit fundamentals rights and freedoms. The Bill does not concern county governments in terms of Articles 110(1)(a) of the Constitution. The Bill is a money Bill for the purposes of Article 114 of the Constitution and that the enactment of the Bill will occasion additional expenditure of public funds as it seeks to set an Authority. The Bill has 34 clauses, three Schedules and divided into seven parts.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee wishes to thank the stakeholders for their participation in scrutinizing the Bill.

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

HON. KANINI KEGA, M.P (CHAIRPERSON)

DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVE

EXECUTIVE SUMMARY

The Accreditation Service Bill, 2018 (hereinafter referred to as the Bill) seeks to establish the Kenya National Accreditation Service and repeal the Kenya Accreditation Service Order, 2009, which was made under the State Corporation Act (Cap. 446 of the Laws of Kenya).

The Committee placed an advert in the dailies on Friday 6th July, 2018, calling for memoranda from the public on. The Committee received written memoranda and oral submissions from several stakeholders. The Committee deliberated on and considered the views of the stakeholders and some were adopted by the committee.

The Committee recommends that the proposed Kenya Accreditation Service Bill, 2018 be passed by the House with the proposed Committee stage amendments.

1.0 INTRODUCTION

1.1 Establishment of the Committee

The Departmental Committee on Trade, Industry and Cooperatives is one of the fifteen Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) To study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- c) To study and review all legislation referred to it;
- d) To study, access and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objective;
- e) To investigate and inquire into all matters relating to the assigned ministries and departments as they may be deemed necessary, and as may be referred to the House;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments); and
- g) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

1.2 Mandate of the Committee

In accordance with Second Schedule of the Standing Orders, the Committee is mandated to oversee:-

Trade, securities exchange, consumer protection, pricing policies, commerce, industrialization including special economic zones, enterprise promotion and development including small and medium-size enterprises, intellectual property, industrial standards, anti-counterfeit policies and co-operatives development.

In executing its mandate, the Committee oversees the Ministry of Industry, Trade and Cooperatives.

1.3 Committee Membership

The Committee on Trade, Industry and Cooperatives was constituted by the House on Thursday 14th December, 2017 and comprises of the following Members:-

Chairperson	Hon. Kanini Kega, MP
Vice Chairperson	Hon. Cornelly Serem, MP
Members	Hon. Alexander Kimutai Kigen Kosgey, MP
	Hon. Alois Musa Lentoimaga, MP
	Hon. Anab Mohamed Gure, MP
	Hon. Andrew Mwadime, MP
	Hon. Bunyasi John Sakwa, MP
	Hon. Daniel Maanzo, MP
	Hon. Wanyonyi Ferdinand, MP
	Hon. James Mukwe, MP
	Hon. Jones Mlolwa, MP
	Hon. Kipruto Moi, MP
	Hon. Murungi Kathuri, MP
	Hon. Gichimu Robert, MP
	Hon. Kimani Patrick Wainaina Jungle, MP
	Hon. Korir Generali Nixon Kiprotich, MP
	Hon. Nduati Joseph Ngugi, MP
	Hon. Wachira Rahab Mukami, MP
	Hon. (Dr.) Wilberforce Oundo, Phd, MP

2.0 CONSIDERATION OF THE BILL

2.1 Background

The Kenya Accreditation Service Bill, 2018 was introduced in the National Assembly on 26th June, 2018 as National Assembly Bills No.17 of 2018 through Kenya Gazette Supplement No. 70 of 2018. Following the First reading, of the Bill stood committed to the Departmental Committee on Trade, Industry and Co-operatives pursuant to the National Assembly Standing Orders.

The Bill seeks to establish the Kenya National Accreditation Service as an internationally recognized and effective accreditation system. The Bill shall establish the Service as the sole recognized body for accreditation in Kenya. The Bill shall also repeal the Kenyan Accreditation Service Order, 2009, which was made under the State Corporations Act (Cap. 466 of the Law of Kenya). The Bill gives powers to the responsible Cabinet Secretary to make regulations; however, it does not limit fundamentals rights and freedoms. The Bill does not concern county governments in terms of Articles 110(1)(a) of the Constitution. The Bill is a money Bill for the purposes of Article 114 of the Constitution and that the enactment of the Bill will occasion additional expenditure of public funds as it seeks to set an Authority. The Bill has 34 clauses, three Schedules and divided into seven parts.

Pursuant to Article 118 of the Constitution and Standing Order 130(1) the Committee during its fourth sitting considered the Bill and resolved to subject it to public participation. The Committee sought for submission of memoranda from the public/stakeholders through an advert that appeared in the local dailies on Friday 6th July, 2018.

2.2 Clause by Clause Analysis

PART I. PRELIMINARY

1. This Act may be cited as the Kenya Accreditation Service Act, 2018.

2. In this Act unless the context otherwise requires-

“accreditation” means in relation to a Conformity Assessment Body, an attestation by the Service that the conformity assessment body is competent to carry out specific conformity assessment tasks;

“accredited body” means an organisation or facility that has been accredited by the Service;

“accreditation certificate” means a document or set of documents that states that accreditation has been granted to the conformity assessment body named in the

documents, the conditions under which the accreditation has been granted and the scope of the accreditation;

“accreditation committee” means the accreditation committee established under section 9;

“accreditation mark” means the mark issued by the Service to be used by an accredited body to indicate that body’s accreditation status;

“assessment” means the process undertaken by the Service to evaluate the competence of a conformity assessment body based on particular standards or other normative documents for a defined scope of accreditation;

“Board” means the Board of Directors of the Service established under section 7;

“conformity assessment” means demonstration that specified requirements relating to a product, process, system, person or body have been fulfilled;

“conformity assessment body” means an organization or a facility that carries out conformity assessment services including testing, calibration, inspection, certification of management systems, certification of persons, certification of processes, or registration;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters related to accreditation;

“Chief Executive Officer” means the Chief Executive Officer of the Service appointed under section 13;

“scope of accreditation” means the specific conformity assessment services that may be offered by a conformity assessment body for which accreditation has been granted by the Service; and

“Service” means the Kenya Accreditation Service established under section 4.

3. The objects of this Act shall be to-

(a) Establish the Service;

(b) Recognise the Service as the sole body responsible for carrying out the accreditation of conformity assessment bodies;

(c) Establish an internationally recognised accreditation system;

(d) Promote accreditation for the facilitation of trade and the enhancement of health, safety, environmental protection, economic performance and transformation of Kenya; and

(e) Promote the competence and equivalence of accredited bodies.

PART II- ESTABLISHMENT POWERS AND FUNCTIONS OF THE SERVICE

4. (1) There shall be established a service to be known as the Kenya Accreditation Service.

(2) The Service shall be the successor to the Kenya Accreditation Service established in accordance with the Kenya Accreditation Service Order, 2009.

(3) The Service shall be a body corporate, with perpetual succession and a common seal and shall, in its corporate name, be capable of-

(a) Entering into contracts;

(b) Siting and being sued;

(c) Taking, purchasing or otherwise acquiring, holding or disposing of movable and immovable property;

(d) Borrowing and lending money;

(e) Charging fees for its services; and

(f) Doing or performing all acts necessary for the proper execution of its functions under this Act which may lawfully be done by a body corporate.

5. The headquarters of the Service shall be in Nairobi.

6. The functions of the Service shall be-

(a) To accredit conformity assessment bodies;

(b) To promote accreditation in Kenya;

(c) To promote the competence and equivalence of accredited bodies;

(d) To promote recognition of accredited bodies by users of conformity assessments;

(e) To establish and nurture relations and cooperation with regional and international accreditation bodies, persons, associations and organizations that the Service may consider desirable or appropriate in furtherance of the objectives of this Act;

(f) To participate in the formulation and monitoring of national, regional and international guidelines and standards to facilitate the accreditation process;

(g) To raise public awareness on the importance and purpose of accreditation through stakeholder engagements and training;

- (h) To initiate, negotiate, conclude and maintain international mutual recognition agreements relating to accreditation;
- (i) To support the Government in activities on mutual recognition agreements relating to accreditation;
- (j) To co-ordinate in liaison with regulators in respect of any matter related to accreditation;
- (k) To obtain and maintain membership to national, regional or international organizations that may assist the Service to achieve its objects and actively participate in such organizations;
- (l) To promote recognition and protect the use of the Service's logo and marks;
- (m) To promote and protect regional and international arrangement marks;
- (n) To establish appropriate specialist technical committees;
- (o) To develop, regulate and review the criteria or requirements for accreditation of conformity assessment bodies;
- (p) To formulate and implement national guidelines and standards to facilitate the accreditation process;
- (q) To assess conformity assessment bodies for competence and advise for designation by regulatory authorities;
- (r) To compel accredited bodies to take appropriate actions related to their conformity assessments;
- (s) To establish and maintain a register of accreditation status of all conformity assessment bodies in the prescribed manner;
- (t) To design and issue accreditation certificates to accredited conformity assessment bodies in the prescribed manner;
- (u) To publish in the Gazette and on its website all conformity assessment bodies that have been accredited at least quarterly in the prescribed manner;
- (v) To promote use of accreditation marks on certificates issued by conformity assessment bodies; and
- (w) To perform any other function necessary for the achievement of the objectives of this Act.

PART III- THE BOARD AND THE MANAGEMENT OF THE SERVICE

7. (1) The management of the Service shall vest in a Board of Directors which shall consist of –

(a) A non- executive chairperson appointed by the President on the recommendation of the Cabinet Secretary;

(b) The Principal Secretary in the ministry for the time being responsible for matters related to accreditation or a designated representative;

(c) The Principal Secretary in the ministry for the time being responsible for matters related to finance or a designated representative;

(d) Six other members appointed by the Cabinet Secretary being –

(i) One representative of consumer organizations;

(ii) One expert in health and safety;

(iii) One registered engineer;

(iv) One expert in laboratory practice;

(v) One expert in environmental science; and

(vi) One who shall be an expert in trade or manufacturing; and

(e) The Chief Executive Officer, who shall be an *ex officio* member.

(2) The office of a member of the Board may fall vacant if-

(a) The member resigns in writing-

(i) In the case of the chairperson, to the President;

Or

(ii) In the case of any other member, other than an *ex officio* member, to the Cabinet Secretary;

(b) The member dies;

(c) The member is adjudged bankrupt;

(d) The member is convicted of an offence and is sentenced to a term of imprisonment for a period of at least six months without an option of fine;

(e) The member has been absent from three consecutive meetings of the Board without reasonable cause; or

(f) The member is incapacitated by mental or physical illness and is unable to discharge the functions of the office.

(3) The chairperson shall preside at every meeting of the Board and where the chairperson is absent, the members present shall appoint one from their number to preside at that meeting.

(4) The quorum for the meetings of the Board shall be five members.

(5) The conduct of the business of the Board shall be as provided for in the First Schedule and, except as provided in the First Schedule, the Board shall regulate its own procedure.

(6) The members of the Board shall be appointed by notice in the Gazette and shall serve for a term of three years which may be renewed for one further term of three years.

8. (1) The Board may establish committees, including specialist technical committees, to deal with any matter that may arise out of or be connected with any of the functions of the Board.

(2) The Board may co-opt any person to a committee established by the Board.

(3) Where the Board establishes a committee under this section, it shall determine the composition of the committee and the rules and procedures that shall be adopted by the Committee.

9. (1) There is established a committee to be known as the Accreditation Committee.

(2) The Accreditation Committee shall consist of not less than five members who shall be drawn from specialist technical committees and appointed by the Chief Executive Officer.

(3) The appointment of the Accreditation Committee shall be in the manner prescribed by Regulations.

(4) The conduct of the business of the Accreditation Committee shall be as provided for in the Second Schedule and, except as provided in the Second Schedule, the Accreditation Committee shall regulate its own procedure.

10. (1) The Accreditation Committee shall grant, renew, extend, suspend or withdraw accreditation to a conformity assessment body.

(2) In the performance of its functions, the Accreditation Committee shall be objective, independent and impartial.

(3) The Accreditation Committee may withdraw an accreditation from a conformity assessment body, without having first suspended the accreditation, if-

(a) The accreditation was obtained by fraud;

(b) The conformity assessment body becomes insolvent, goes into liquidation or is ordered to be wound up by a court of competent jurisdiction; or

(c) There has been a complete breakdown of the conformity assessment body's management system or the conformity assessment body's competence.

(4) The Accreditation Committee may delegate to the Chief Executive Office the function of -

(a) Suspecting or withdrawing the accreditation of a conformity assessment body in the case of a breach of administrative procedures; or

(b) The renewal of the accreditation of a conformity assessment body.

11. (1) There is established a committee to be known as the Appeals Committee which shall hear and determine appeals relating to decisions of the Accreditation Committee.

(2) The Appeals Committee shall be an ad hoc committee consisting of three persons appointed by the Chief Executive Officer to hear and determine an appeal relating to a decision of the Accreditation Committee.

(3) The members of an Appeals Committee shall be experts in matters related to the accreditation of conformity assessment bodies.

(4) A member of the Appeals Committee shall not be or have been a person who participated in the making of the decision of the Accreditation Committee that is being appealed against.

12. (1) The conduct of the business and affairs of an Appeals Committee shall be as set out in the Third Schedule to this Act.

(2) Except as provided in the Third Schedule, an Appeals Committee shall regulate its own procedure.

13. (1) There shall be a Chief Executive Officer of the Service appointed by the Cabinet Secretary on the recommendation of the Board.

(2) A person qualifies to be appointed as the Chief Executive Officer if that person -

(a) Has a post graduate degree in -

(i) Science;

(ii) Information technology; or

(iii) Business administration;

(b) Has at least ten years' relevant professional experience of which five shall have been in a senior management position;

(c) Satisfies the requirements of Chapter six of the Constitution;

(d) Does not hold a public office; and

(e) Is otherwise not disqualified by any other written law.

(3) The Chief Executive Officer shall hold office for a term of three years and may be eligible for re-appointment to one further term of three years.

(4) The Chief Executive Officer shall, subject to the general directions of the Board, be responsible for the day to day management of the Service, the exercise of its powers and the discharge and performance of its functions.

(5) The Cabinet Secretary, on the written recommendation of the Board and for reasonable cause, may revoke the appointment of the Chief Executive Officer at any time.

(6) Where the Board recommends the revocation of the appointment of the Chief Executive Officer, the recommendation shall be valid if it is supported by at least two-thirds of the members of the Board.

14. (1) The Service may appoint such other staff as it considers necessary for the exercise of its powers and discharge of its functions.

(2) The Staff of the Service shall be appointed on such terms and conditions as shall be determined by the Board on the recommendations of the Salaries and Remuneration Commission.

15. (1) Any person who is or who has been involved in the performance of any function of the Service, the Accreditation Committee or the Appeals Committee, shall not disclose any information in the performance of that function except –

(a) To a person authorised to have that information for the performance of a function under this Act

(b) Where that person is authorised under this Act to disclose that information;

(c) Where that person discloses that information in accordance with a provision of any written law or an order of a court of competent jurisdiction; or

(d) Where the information is disclosed by r on the authority of the Cabinet Secretary, the Board or the Chief Executive Officer.

(2) A member of the Board, or an officer or agent of the Service shall, in the performance of any function or exercise of any power under this Act, preserve the confidentiality of any matter coming to the knowledge of that member, officer or agent.

(3) A member of the Board, or an officer or agent of the Service shall not, without any reasonable cause –

(a) Disclose any confidential information to any person; or

(b) Permit an unauthorised person to gain access to any information in the possession, custody or control of the Service.

(4) Any person who contravenes the provisions of this section commits an offence.

16. No Matter or thing done or omitted to be done by a member of the Board, or an officer or agent of the Service, if the matter or thing is done or omitted in good faith in the execution of the powers and the performance of the functions of the Service, shall render the member, officer or agent, or any other person's action on the member's, officer's or agent's direction, personally liable to any action, claim or demand whatsoever.

17. (1) The common seal of the Service shall be kept in the custody of the Chief Executive Officer and shall not be affixed to any instrument or document except as the Chief Executive Officer may authorise.

(2) The common seal of the Service shall be authenticated by the signature of the Chief Executive Officer.

PART IV- ACCREDITATION

18. (1) A conformity assessment body that seeks to be accredited shall apply to the Service for accreditation in the prescribed manner.

(2) The Service shall receive an application for accreditation and –

(a) Evaluate the application in accordance with this Act and any relevant national, regional or international standards;

(b) Progress an approved application to assessment or inform the conformity assessment body, in writing, that the application has not been progressed to assessment and give its reasons for not progressing the application; and

(c) Recommend for the granting, retention, renewal, suspension or withdrawal of accreditation to the conformity assessment body.

(3) Where the Accreditation Committee grants accreditation to a conformity assessment body, the Service shall notify the conformity assessment body within fourteen days and issue the conformity assessment body with an accreditation certificate and impose on the conformity assessment body such conditions as may be necessary.

(4) Where the Accreditation Committee denies a conformity assessment body accreditation, the Service shall notify the body within fourteen days of the decision.

(5) The Service may publish guidelines or criteria, in accordance with the provisions of this Act, and any matter necessary or expedient for the proper administration of this Act including-

- (a) The different categories of accreditation;
- (b) The fees applicable to different categories of accreditation;
- (c) The fees applicable for training or other projects undertaken by the Service;
- (d) The proper use of the logo and any accreditation mark of the Service; and
- (e) The proper use of regional or international marks of accreditation.

19. (1) An accreditation certificate issued under this Act shall be valid for the period prescribed in the certificate.

(2) An accreditation certificate shall be sealed with the common seal of the Service and shall be authenticated by the signature of the Chief Executive Officer.

(3) The accreditation certificate shall remain the property of the Service and shall be surrendered to the Service whenever required to do so by the Service.

(4) The Service may impose such reasonable conditions as it deems fit before issuing conformity assessment body with an accreditation certificate.

20. (1) A conformity assessment body that has been issued with accreditation certificate shall comply at all times with the provisions of this Act and any conditions that may have been imposed by the Accreditation Committee on the conformity assessment body.

(2) A conformity assessment body that has been issued with an accreditation certificate who misuses its accreditation status including the misrepresentation of date of accreditation or misuses an accreditation mark commits an offence.

21. (1) The Service, on the recommendation of the accreditation committee, may suspend an accredited conformity assessment body from offering accreditation services for the period specified in the notice of suspension or until such earlier time as the Service may determine;

Provided that a suspension shall not last for a period exceeding six months.

- (2) The Service, on the recommendation of the accreditation committee, may suspend an accredited conformity assessment body from offering accreditation services where conformity assessment body –

- (a) Has contravened or failed to comply with the conditions imposed by the Service;
- (b) Has failed to comply with the directions of the Service;
- (c) Has provided false or misleading information to the Service;
- (d) Is no longer a fit or proper to hold an accreditation certificate;
- (e) Has contravened any of the provisions of this Act;

Or

- (f) Has failed to pay any prescribed fee under this Act.

(3) Where a certificate of accreditation is suspended on account of non-payment of accreditation prescribed fee, the suspension shall be imposed by the Service without reference to the accreditation committee and shall be lifted if the fee is paid within thirty days of the notice of suspension being issued to the holder of the certificate.

(4) A certificate of accreditation shall be withdrawn by the Service where the conformity assessment body has been suspended for non-payment of the prescribed fee and fails to pay the fee within the period specified in sub-section (3).

(5) The Service may suspend or withdraw an accreditation certificate without referring the suspension or withdrawal to the Accreditation Committee upon the request of a holder of the certificate.

(6) Where the Service has suspended or withdrawn an accreditation certificate, it shall, within fourteen days of the suspension or withdrawal, publish on its website the status of the accreditation of the conformity assessment body as suspended or withdrawn.

22. The Service shall pay out of the funds of the Service, the chairperson and members of the Board, members of the Accreditation Committee and members of the Appeals

Committees such allowances as the Salaries and Remuneration Commission may recommend.

23. (1) A conformity assessment body that is aggrieved by a decision of the Accreditation Committee may, by notice in writing to the Chief Executive Officer and upon payment of the prescribe fee, file an appeal with the Chief Executive Officer against the decision within twenty one days of being notified of the decision.
- (2) A notice of appeal under this section shall set out the grounds of the appeal.
- (3) Within fourteen days of receiving a notice of appeal, the Chief Executive Officer shall appoint an Appeals Committee to hear and determine the appeal.
- (4) Within seven days of being appointed by the Chief Executive Officer, the Appeals Committee shall serve the Accreditation Committee with a copy of the notice of Appeal.
- (5) Where the Accreditation Committee has been served with a notice of appeal by An Appeals Committee, the Accreditation Committee shall file its response within seven days.
24. (1) The Appeals Committee shall consider the notice of appeal and the response of the Accreditation Committee before making an award.
- (2) An award of the Appeals Committee may –
- (a) Confirm the decision of the Accreditation Committee;
 - (b) Direct the Service to conduct a re-assessment of the conformity assessment body; or
 - (c) Give some other direction or order including an order as to costs.
- (3) Where an appeal has been filed against a decision of the Accreditation Committee and the Accreditation Committee has been served with a copy of the notice of appeal, the decision of the Accreditation Committee shall stand until the appeal has been heard and determined by the Appeals Committee.
- (4) The Appeals Committee may direct the taxing of costs in accordance with a prescribed scale under this Act.
- (5) Where the Appeals Committee grants a party costs, that party may apply to the Appeals Committee for a certificate of costs.
- (6) A party to an appeal who has been issued with a certificate of costs under this section may file the certificate in the High Court and it shall be deemed to be a decree of the High Court and executed as such.

25. (1) A party who is aggrieved by an award of the Appeals Committee may, within thirty days of being notified of the award, appeal against the award to the High Court.
- (2) An award of the Appeals Committee shall not be enforced where an appeal against the award has been made to the High Court.
- (3) The High Court may, after hearing an appeal under this section –
- (a) Confirm the award;
 - (b) Revise the award;
 - (c) Remit the proceedings of the appeal to the Appeals Committee and direct that the Appeals Committee shall revise the award as the court may deem fit and proper; or
 - (d) Make any other order as it may consider just, including an order on costs.

PART V – FINANCIAL PROVISIONS

26. (1) There is established a fund of the Service to be known as the General Fund.
- (2) The Fund shall be the successor of the General Fund established under the Kenya Accreditation Service Order, 2009.
- (3) The fund shall vest in the Service.
- (4) The Fund shall consist of such monies as –
- (a) Were held by the former Fund;
 - (b) May accrue or vest to the Service in the exercise of its powers or the performance of its functions under this Act;
 - (c) May be prescribed as fees or charges payable to the Service under the Act;
 - (d) May be received as grants, gifts or donations;
 - (e) May be appropriated for the purposes of the Service; and
 - (f) May be borrowed or raised by the Service for the purpose of meeting any of its obligations or discharging any of its duties.
- (5) The service may invest any of its funds not immediately required for its purpose-
- a) the service may be directed by the cabinet secretary for the national treasury;
 - or

b) In such manner as may be approved by the cabinet secretary.

27. The financial year of the service shall be the period of twelve months ending on the 30th June.
28. (1) the Board shall, before the commencement of each financial year, causes to be prepared and shall approve the estimates of revenues and expenditures of the service for that financial year.
- (2) The estimates of revenues and expenditures of the service shall, in particular, provide for the-
- a) Payment of salaries, allowances and other charges in respect of the staff of the service;
 - b) Payment of pensions, gratuities and other retirement benefits which shall be payable out of the funds of the service;
 - c) Training, research, investor education, and securities industry development of the service;
 - d) Acquisition, maintenance, repair and replacement of equipment and other movable and immovable property of the service;
 - e) Creation of reserve funds to meet the future or contingent liabilities of the service; and
 - f) Expenditure incurred by the service in the exercise of its powers and the performance of its functions.
- (3) The service shall submit the estimates of revenues and expenditures of the service to the cabinet secretary for approval.
29. (1) the Board of the service shall cause to be kept proper books of account of the income, expenditure, assets, liabilities and financial transaction of the service.
- (2) The Board shall submit to the Auditor-General within three months of the end of the financial year, the financial statement of the service.
- (3) The Auditor-General shall audit the financial statement of the service in accordance with the provisions of the Public Audit Act, 2003.
30. No duty shall be chargeable under the Stamp Duty Act in respect of any instrument executed by or on behalf of the service for which the service would ordinarily be liable to pay.
31. A person commits an offence if that person contravenes any provision of this Act and where convicted of an offence under this Act, shall be liable to imprisonment for a term

not exceeding two years or to a fine not exceeding five hundred thousand shillings or to both.

PART VI- PROVISION ON DELEGATED POWERS

32. (1) The Cabinet Secretary may make regulations for better carrying into effect the provisions of this Act and without prejudice to the generality of the foregoing, for all or of the following purposes-

- a) The scope of activity for which the service may grant accreditation;
- b) The functions of accredited conformity assessment bodies; and
- c) Any other matter necessary for the proper administration of this Act.

(2) For the purposes of Article 94(6) of the constitution-

- a) The purpose and objective of the delegation under this section is to enable the cabinet secretary to make regulations for better carrying into effects the provisions of this Act;
- b) The authorities of the cabinet secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section;
- c) The principles and standards applicable to the delegated powers are those found in –
 - I. The Statutory Instrument Act, 2013;
 - II. The Interpretation and General Provision Act,
 - III. The general rules of international law as specified under Article 2 (5) of the Constitution; and
 - IV. Any treaty and convention ratified by Kenya under Article 2 (6) of the Constitution.

PART VII – REPEAL AND TRANSITIONAL PROVISIONS

33. (1) The members of the Board of Directors of the Service appointed under the Kenya Accreditation Service Order, 2009, hereinafter referred to as the “former Service”, shall continue to hold office as members of the Board under this Act until the expiry of the remainder of their terms of office.

(3) Any Regulation made or other instrument issued under the Kenya Accreditation Service Order, 2009, shall continue to have effect as if the Regulation or instrument were made or issued under this Act.

(4) All the property, assets, rights, liabilities, obligations or agreements vested in, considered, incurred or entered into by the Service under this Act.

(5) All persons who, before the commencement of this Act, were employees of the former Service shall, at the commencement of this Act, be considered to be the staff of the Service under this Act.

(6) Any waiver, exemption or no objection granted or any enforcement action taken against any person under the Kenya Accreditation Service Order, 2009, shall continue to have effect as if that waiver, exemption or no objection granted or any enforcement action taken against any person was given or imposed under this Act.

(7) Any accreditation certificate granted under the Kenya Accreditation Service Order, 2009, shall continue to be valid under this Act until the expiry of its validity period.

PART VIII – CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD

34. (1) Where a member is directly or indirectly interested in any matter before the Board and is present at a meeting of the Board at which the matter shall be considered, deliberation or voted on, that member shall, at the meeting as soon as is predictable after the meeting has commenced, but before any deliberations have occurred, disclose that interest and shall not take part in the consideration, deliberations or votes on the matter and shall not be counted in the quorum of the meeting during the consideration, deliberation or vote on that matter.

(2) A disclosure of interest under this section shall be recorded in the minutes of the meeting at which the disclosure is made.

3.0 PUBLIC PARTICIPATION

Following the call for memoranda from the public on Friday 6th July, 2018, the Committee received written memoranda from several stakeholders and further held a stakeholders forum as listed below. All their proposals were deliberated on and considered by the Committee. Below are the views of the stakeholders:

3.1 Kenya medical laboratory Technician and Technologist Board (KMLTTB)

The Kenya Medical Laboratory Technician and Technologist Board submitted as follows, that:-

PART I. PRELIMINARY

(i) Page 736

Item No 2.

Definition of Conformity Assessment Bodies (CAB) has left out Proficiency Testing Providers

PART II. ESTABLISHMENT, POWERS AND FUNCTION OF THE SERVICE

(ii) Page 737

Item No 4, 3(d)

Lack of clarity or justification on item on lending money as a function of the service.

PART III- THE BOARD AND THE MANAGEMENT OF THE SERVICE.

(iii) Page 739

Item No. 7(d)

The number of members appointed by the cabinet should be increased from 6 to 7 to include the registrar from his representative from Kenya Medical Laboratory Technicians and Technologist Board in line with Mwongozo policy guidelines.

Item No. 7(d) (iv)

“ one expert in laboratory practice “ SHOULD READ” one medical laboratory expert registered by Kenya Medical Laboratory Technologist and Technicians Board (KMLTTB)”

Item No 8. (1)

SHOULD READ: “ The board may establish committees including specialists registered by the relevant regulatory bodies, onto technical committees, to deal with any matters that may arise out or be connected to any functions of the board”

Item No 8(2)

SHOULD READ “ The board may co-opt any person of relevant expertise and qualifications and registered by relevant regulatory bodies to a committee established by the Board”.

(iv) Page 740

Item No. 9. (2)

SHOULD READ:” The accreditation committee shall consist of not less than five members who shall be drawn from specialist technical committees of persons registered by the relevant regulatory bodies and appointed by the CEO.

(v) Page 741

Item No. 11.(3)

SHOULD READ: “ The members of an Appeals committee I matters related to the accreditation of conformity assessment bodies shall be experts registered by the relevant regulatory bodies.”

(vi) Page 742

Item No. 13.2(a)

SHOULD READ: A person qualifies to be appointed as the Chief Executive Officer if that Person:-

- (a) Has a post -graduate degree in-
 - i. Science: or
 - ii. Information technology: or
 - iii. Business Administration:

Propose addition of part (f). stating:

(f) “The CEO must be registered by the relevant regulatory body”

PART IV: ACCREDITATION

Page 744

Item No. 18.(1)

SHOULD READ: A conformity assessment body that seeks to be accredited must be registered and licensed by the relevant regulatory body and shall apply to the service for accreditation in the prescribed manner.

Item No. 18.(2) (d)

ADDITIONAL SHOULD READ: Evaluation in (a) above progress approval in (b) above and recommendation in (c) above shall be undertaken by persons who are qualified and registered and are relevant to the Conformity Assessment Body (CAB)

PART VII: REPEAL AND TRANSITIONAL PROVISIONS

Page 751

Item No. 33. (1)

SHOULD READ: “ The members of the Board of Directors of the service appointed under the Kenya Accreditation Service Order, 2009, hereinafter referred to as the “former service” shall be vetted before continuing to hold office as members of the board under this Act until the expiry of the remainder of their term of office”

Item No. 33.(5)

SHOULD READ : “All persons who, before the commencement of this Act, were employees of the former service shall, at the commencement of the Act, be vetted to be considered the staff of the service under this Act.”

Item No. 33.(6)

SHOULD READ: “Any waiver , exception or no objection granted or any enforcement action taken against any person under the Kenya Accreditation Service Order, 2009 shall be reviewed to continue having effect as if that waiver, exception, or no objection granted or any enforcement action taken against any person was given or imposed under this Act.”

3.2 Kenya Association of Bus Manufacturers

The Kenya Association of Bus Manufacturers (KABM) submitted as follows, that:-

KABM is a Conformance Assessment Body (CAB) accredited in line with requirements of ISO/IEC 17020 whose scope covers:-

1. Review and approval of passenger bus body designs; and
2. In-process inspection of passenger bus body manufacturing

Accreditation process is crucial in ensuring Conformance Assessment Bodies establish, implement and maintain credible processes and procedures for their Quality Management System (QMS) that are effectively responsive to their respective fields of inspections. Yearly surveillance audits prompt these organizations to continuously improve, implement and maintain their QMS’

In the field of passenger vehicle body construction, the following benefits have been realized by the sector

1 Order and sanity in the sector;

Through accreditation, KABM has been designated by NTSA to work with licensed bodybuilders to ensure effective implementation of KS372 standard on passenger vehicle body construction. This has brought immense benefit to the industry

The process requires physical audit of a body builders' facilities to establish if they have requisite capacity to demonstrate ability to produce quality bus bodies that are safe and comfortable for the public. We evaluate their capacity in terms of space, equipment, personnel, systems and controls to ensure they are capable of supporting bodybuilding process to required quality levels. This has caused bodybuilders to invest adequately in capacity building for sustainable quality of bus bodies

2 Level playing field for sector players; with an accredited CAB overseeing operations of the sector, unfair and unethical practices by some players who could undercut their competition on price but lower quality of bus bodies by lowering quality of material has been eliminated. Every bus has to be inspected by the CAB to ensure set standards are observed. Elimination of these malpractices has seen an upsurge of heavy investment by credible players in the field. Several massive facilities have been put up in the last year with a couple of others in the pipeline

3 Safe and comfortable buses for passengers and the public

Through accreditation, the bodybuilding sector has a formal platform for implementation of KS372 standard on passenger bus body construction. The standard, developed by input from the industry, is a noble effort by the Government to ensure that buses produced for our markets and beyond meet set safety standards.

Implementation of this standard has been a crucial milestone for the industry, a feat achieved through accreditation process.

4 Sustainable growth

The sector is upbeat about prospects for growth. Our inspection process provides for impartiality, independence and objectivity. It provides the sector with a firm basis for sustainable innovation and creativity with focus on environment, comfort and safety for passengers and the general public.

Therefore on behalf of the automotive sector, and in particular the passenger vehicle body manufacturing, its import that;

- i. The establishment of the Kenya Accreditation Service by an Act of parliament will go a long way in bolstering the service to further accelerate stability and growth and trade in our sector and other manufacturing sectors.
- ii. The emboldened service will be a crucial national infrastructure that will provide various Government regulatory bodies with a platform to fulfill their regulatory functions and obligations by working closely with both private and public sectors in performing conformity assessment activities that the latter are well placed to invest in. This will in turn spur confidence, efficiency and consequently sustained growth in the various sectors of our economy.

3.3 Stakeholders Engagement Forum

The Committee held a stakeholders forum in Mombasa from the 15th to 18th November, 2018 to get their input on the Bill.

The following stakeholders attended the forum and offered submissions as annexed in the report. (Annex 3)

1. Pathologist Lancet Kenya
2. University of Nairobi, Lighting Laboratory Institute of Nuclear Science and Technology
3. SGS Kenya Limited
4. Kenya Bureau of standards
5. Energy Regulatory Commission (ERC)
6. National Transport and Safety Authority (NTSA)
7. Intertek Testing Services (E.A)
8. Kenya Revenue Authority

3.4 Ministry of Industry, Trade and Cooperatives

The Principal Secretary for Industry and Investment, Ms. Betty Maina, EBS and the CEO for Kenya National Accreditation Service Mr. Martin Cherise submitted as follows, that:-

Modify 7(1)(d) as follows:

- (d) six other members appointed by the Cabinet Secretary—
 - i) three persons who have knowledge, experience or qualifications relating to the functions of Service and the responsibilities of the Board in particular, persons who have distinguished themselves in the fields of science, technology, education, trade, business and industry related to the use of accreditation, conformity assessment, standardization and regulatory matters.

- ii) two persons whom shall have knowledge and experience on matters relating to finance while the other shall have experience in law or human resource management.
- iii) one who shall represent consumer organizations;

Modify 8(1) as follows:

The Board may, for the effective discharge of its functions under this Act, establish committees and the following committees—

- a) Accreditation Committee as set out in section 9;
- b) Appeals Committee section 11;

Modify 9(2), 9(3) and 9(4) as follows:

9 (2) The Accreditation Committee shall consist of not less than five members who shall be drawn from technical advisory committees and appointed by the Board.

9(3) The appointment of, and the conduct of the business of the Accreditation Committee and shall be in the manner prescribed by Regulations.

s) who have knowledge, experience or qualifications relating to the

Modify 11(2) as follows:

11 (2) The Appeals Committee shall be an ad hoc committee consisting of three persons appointed by the Board to hear and determine an appeal relating to a decision of the Accreditation Committee

Modify 12(1) as follows:

The conduct of the business and affairs of an Appeals Committee shall be in the manner prescribed by Regulations.

4.0 COMMITTEE STAGE AMENDMENTS

The Committee adopts the Kenya Accreditation Service Bill, 2018 with the following proposed Committee stage amendments as follows:-

Clause 1

Agreed to

Clause 2

THAT, that clause 2 of the Bill be amended by inserting the following new definitions in proper alphabetical sequence—

“Accreditation Advisory Committee” means an advisory committee established under section 15;

“accreditation scheme” means the rules, processes and other requirements established by the Service relating to specific conformity assessment activities to which the same accreditation standard is applied;

“accreditation symbol” means the symbol issued by the Service to be used by a conformity assessment body to indicate their accredited status;

“conformity assessment body” means an organisation or a facility that carries out conformity assessment services including testing, calibration, inspection, certification of management systems, certification of persons, certification of products or processes, or registration, proficiency testing providers and reference materials producers;

“Corporation Secretary” means a person appointed under section 10;

“Tribunal” means the Accreditation Appeals Tribunal set up under section 22.

Justification

To provide clarity on the terms used in the Bill which are unique to the accreditation sector and to be consistent with international terminologies.

Clause 3

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

Objects of the
Act.

3. The objects of this Act shall be to—

- (a) establish the Service;
- (b) recognise the Service as the sole national body responsible for carrying out the accreditation of conformity assessment bodies;
- (c) establish an internationally recognized and nationally unified accreditation system;
- (d) promote accreditation for the facilitation of trade and the enhancement of health, safety, environmental protection, economic performance and transformation of Kenya; and
- (e) promote mutual recognition of the competence and equivalence of accreditation and uphold the cross-frontier accreditation cooperation principles.

Justification

To provide for recognition of the Service as the sole national body responsible for accreditation and to make provision for mutual recognition and upholding of cross-frontier accreditation cooperation principles.

Clause 4

That, clause 4 of the Bill be amended in sub clause (3) by deleting paragraph (d) and renumbering the remaining provisions

Justification

To remove inconsistency with the functions of the Service in line with the Public Financial Management Act, 2012 on capacity to lend money.

Clause 5

That, clause 5 of the Bill be amended by deleting the word "Nairobi" and substituting therefor the words "Kenya, at a place gazetted by the Cabinet Secretary."

Justification

To provide for flexibility on the location of the headquarters of the Service.

Clause 6

That, the Bill be amended by deleting clause 6 and substituting therefor the following—

- | | |
|------------------------------|---|
| Functions of
the Service. | 6. The functions of the Service shall be— |
| | (a) to assess and accredit conformity assessment bodies; |
| | (b) to promote accreditation in Kenya; |
| | (c) to promote mutual recognition of the competence of accredited bodies, and equivalence of accreditation schemes; |
| | (d) to establish and nurture relations and cooperation with regional and international accreditation bodies, persons, associations and organizations that the Service may consider desirable or appropriate in furtherance of the objectives of this Act; |
| | (e) to participate in the formulation and monitoring of national, regional and international guidelines and standards to facilitate the accreditation process; |
| | (f) to raise public awareness, collect and disseminate information on the accreditation and conformity assessment matters through advocacy programmes, publication of reports, pamphlets, books, journals, |

and other publications;

- (g) to provide training, other related services and promote research in respect of accreditation and conformity assessment matters;
- (h) to initiate, negotiate, conclude and maintain international mutual recognition agreements relating to its accreditation schemes;
- (i) to support Government in activities on mutual recognition agreements relating to accreditation;
- (j) to co-ordinate in liaison with regulators in respect of any matter related to accreditation;
- (k) to obtain and maintain membership to national, regional or international organizations that may assist the Service to achieve its objects and actively participate in such organizations;
- (l) to promote recognition and protect the use of the Service's logo and symbols;
- (m) to promote and protect regional and international mutual recognition arrangement symbols;
- (n) to establish appropriate accreditation advisory committees;
- (o) to establish, review, and maintain accreditation scheme for conformity assessment bodies that is consistent with international practice, facilitates trade and addresses identified needs of industry, consumers, or regulators;
- (p) to formulate and implement national guidelines and standards to facilitate the accreditation process;
- (q) to advise Government on designation by regulatory authorities;
- (r) to require accredited bodies to take appropriate

- actions related to their conformity assessments;
- (s) to establish and maintain a register on the status of accredited conformity assessment bodies in the prescribed manner;
 - (t) to design and issue accreditation certificates and symbols to its accredited conformity assessment bodies in the prescribed manner;
 - (u) to publish quarterly in the Gazette and on its website all accredited conformity assessment bodies in the prescribed manner;
 - (v) to promote use of accreditation symbols on certificates or reports issued by conformity assessment bodies; and
 - (w) to perform any other function necessary for the achievement of the objectives of this Act.

Justification

To provide clarity in the functions set out in the Bill in particular, providing an express requirement for assessment of conformity assessment bodies and mutual recognition of the competence of accredited bodies.

To provide a requirement for the Service to establish, review, and maintain accreditation schemes for conformity assessment bodies that is consistent with international practice, facilitates trade and addresses identified needs of industry, consumers, or regulators.

Further, to provide for the participation of the Service in the formulation and monitoring of the relevant national, regional and international guidelines and standards applicable to the Accreditation sector.

Finally, to make provision for the Service to undertake awareness raising and advocacy programmes on accreditation including collecting and disseminating information on accreditation as well as related research and other services.

Clause 7

That, clause 7 of the Bill be amended—

(a) in sub clause (1) by deleting paragraph (d), (i), (ii), (iii), (iv), (v) and (vi) and substituting therefor the following—

(a) five other members appointed by the Cabinet Secretary as follows —

(i) two persons who have knowledge, experience or qualifications relating to the functions of Service and who have distinguished themselves in the fields of science, technology, education, trade, business and industry relating to accreditation, conformity assessment, standardization and regulations;

(ii) two persons, one who shall have knowledge and experience on matters relating to finance, and another who shall have experience in law or human resource management; and

(iii) one person who shall have knowledge and experience on matters relating to consumer and public interest.

(b) by inserting the following new sub clause immediately after sub clause 1 and renumbering the existing provisions—

“(2) In appointing the Board members under subsection 1 (d) the Cabinet Secretary shall take into account the recommendations of relevant professional bodies in Kenya, gender and regional balance.”

Justification

To provide a criterion for the appointment of the five other members of the Board taking into account recommendation of relevant professional bodies, gender and regional balance.

Clause 8

That, clause 8 of the Bill be amended—

(a) by deleting sub clause (1) and substituting therefor the following—

“(1) The Board may, establish such committees as it may deem appropriate for the effective discharge of its functions under this Act.”

(b) in sub clause (2) by inserting the words “whose knowledge and skills are necessary for performance of the functions of the Service” immediately after the words “established by the Board”.

(c) by inserting the following new sub clause immediately after sub clause (3)—

“(4) A person co-opted under this sub section (2) shall have no right to vote at a meeting of the Committee.”

Justification

To provide that the Board may establish committees to deal with specific matters of the Service and make provision for the Board to co-opt other persons whose knowledge and skills are necessary for the performance of the functions of the Service. To provide that persons co-opted by the Board shall not have a right to vote at a meeting of the Board.

Clause 9

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

The Chief
Executive
Officer.

9. (1) There shall be a Chief Executive Officer of the Service appointed by the Cabinet Secretary on the recommendation of the Board.

(2) A person qualifies to be appointed as the Chief Executive Officer if that person—

(a) has a post-graduate degree in—

(i) science;

(ii) information technology; or

(iii) business administration;

(b) has at least ten years’ relevant professional experience of which five shall have been in a senior management position;

(c) satisfies the requirements of Chapter Six of the Constitution;

(d) does not hold a public office; and

(e) is otherwise not disqualified by any other written law.

(3) The Chief Executive Officer shall hold office for a term of three years and may be eligible for re-appointment to one other term of three years.

(4) The Chief Executive Officer shall, subject to the general directions of the Board, be responsible for the day to day management of the Service, the exercise of its powers and the discharge and performance of its functions.

(5) The Cabinet Secretary, on the written recommendation of the Board and for reasonable cause, may revoke the appointment of the Chief Executive Officer at any time.

(6) Where the Board recommends the revocation of the appointment of the Chief Executive officer, the recommendation shall be valid if it is supported by at least two-thirds of the members of the Board.

Justification

To reposition the provision on appointment of the Chief Executive Officer following deleting of the provision establishing an Accreditation Committee.

Clause 10

That, the Bill be amended by deleting clause 10 and substituting therefor the following—

The Corporation Secretary

10. (1) There shall be a Corporation Secretary who shall be appointed competitively on such terms and conditions as the Board may determine.

(2) A person shall be qualified for appointment as a Corporation Secretary if such person holds a university degree in law recognized in Kenya and is a registered certified public secretary with at least seven years relevant experience.

(3) The Corporation Secretary shall—

- (a) be the Secretary to the Board;
- (b) record and keep minutes and other records of the Board;
- (c) keep custody of the seal of the Board; and
- (d) carry out such other functions as the Service or the Chief Executive Officer may, from time to time, assign.

(4) In the performance of his duties under this Act, the Corporation Secretary shall be responsible to the Chief Executive Officer

Justification

To provide for the appointment and functions of a Corporation Secretary.

Clause 11

That, the Bill be amended by deleting clause 11 and substituting therefor the following—

Staff of the Service.

11. (1) The Service may appoint such other staff as it considers necessary for the exercise of its powers and discharge of its functions.

(2) The Staff of the Service shall be appointed on such terms and conditions as shall be determined by the Board on the recommendations of the Salaries and Remuneration Commission.

Justification

To reposition the provision on appointment of the staff of the Service.

Clause 12

That, the Bill be amended by deleting clause 12 and substituting therefor the following—

Confidentiality.

12. (1) Any person who is or who has been involved

in the performance of any function of the Service, shall not disclose any information in the performance of that function except—

- (a) to a person authorised to have that information for the performance of a function under this Act;
- (b) where that person is authorised under this Act to disclose that information;
- (c) where that person discloses that information in accordance with a provision of any written law or an order of a court of competent jurisdiction; or
- (d) where the information is disclosed by or on the authority of the Cabinet Secretary, the Board or the Chief Executive Officer.

(2) A member of the Board, or an officer or agent of the Service shall, in the performance of any function or exercise of any power under this Act, preserve the confidentiality of any matter coming to the knowledge of that member, officer or agent.

(3) A member of the Board, or an officer or agent of the Service shall not, without any reasonable cause—

- (a) disclose any confidential information to any person; or
 - (b) permit an unauthorized person to gain access to any information in the possession, custody or control of the Service.
- (4) Any person who contravenes the provisions of this section commits an offence.

Justification

To reposition the provision on confidentiality.

Clause 13

That, the Bill be amended by deleting clause 13 and substituting therefor the following—

Protection from personal liability.

13. No matter or thing done or omitted to be done by a member of the Board, or an officer or agent of the Service, if the matter or thing is done or omitted in good faith in the execution of the powers and the performance of the functions of the Service, shall render the member, officer or agent, or any other person's action on the member's, officer's, staff or agent's direction, personally liable to any action, claim or demand whatsoever.

Justification

To reposition the provision on protection from personal liability.

Clause 14

That, the Bill be amended by deleting clause 14 and substituting therefor the following—

Common seal of the service and execution of documents.

14. (1) The common seal of the Service shall be kept in the custody of the Corporation Secretary and shall not be affixed to any instrument or document except as the Board may authorise.

(2) The common seal of the Service shall be authenticated by the signature of the Chief Executive Officer.

Justification

To make provision for the custody of common seal of the Service to be with the Corporation Secretary and for authentication of the seal by the Chief Executive Officer.

Insertion of a New Part

That, the bill be amended by inserting the following new Part immediately before Clause 15—

“PART IV – ACCREDITATION”

Clause 15

That, the Bill be amended by deleting clause 15 and substituting therefor the following—

Accreditation Advisory Committees.

15. (1) The Service may, subject to the directions of the Board, establish Accreditation Advisory Committees to—

(a) advise on technical and scientific matters for the

operation of the accreditation schemes established by the Service under Section 16.

- (b) guide on interpretation of technical requirements of international standards and regulatory requirements of specific accreditation schemes;
 - (c) formulate or review the technical criteria or other sector application requirements related to accreditation schemes;
 - (d) develop or review technical criteria adopted or adapted by the Service for specific accreditation activities;
 - (e) advise on the competence criteria for accreditation assessors and technical experts including identifying relevant proficiency testing programmes applicable to specific accreditation schemes; and
 - (f) offer advisory support activities including accreditation assessment reviews, research and other matters as may be required by Service.
- (2) An Accreditation Advisory Committee shall consist of not less than three members, and not more than nine members.
- (3) The members of the Accreditation Advisory Committee shall possess academic, scientific or technical expertise and relevant experience in the specific areas of interest required by Service.
- (4) The Chairperson and members of an Accreditation Advisory Committee shall be appointed competitively by the Service.
- (5) A member of an Accreditation Advisory Committee shall be appointed by the Service in writing, on such terms and conditions as may be prescribed by the Board.

Justification

To provide for the establishment of Accreditation Advisory Committees and their functions to be consistent with practices in other jurisdictions, namely Singapore, New Zealand, United Kingdom; Mauritius and South Africa amongst others, and the requirements contained in the revised International Standard for the operation of Accreditation bodies ISO/IEC 17011, edition 2017 under clause 4.6.2.

To provide for participatory process in development of accreditation schemes by persons possessing the necessary competence and any other interested parties in the Service.

Clause 16

That, the Bill be amended by deleting clause 16 and substituting therefore the following—

Accreditation
Schemes.

16. (1) The Service may, establish and maintain such accreditation schemes consistent with national, regional and international practices to take into account the needs of industry, consumers, or regulators

(2) the Service shall maintain on its website, relevant information on each accreditation scheme including applicable requirements or conditions of accreditation.

(3) The Service may in accordance with the provisions of this Act publish regulations specifying standards and other guidelines necessary for the proper administration of this Act including—

- (a) accreditation scheme requirements;
- (b) fees applicable to each accreditation scheme;
- (c) fees applicable to accreditation related training, and any other activities undertaken by the Service; and
- (d) conditions on the use of the logo and accreditation symbols of the Service, including symbols of regional or international accreditation bodies.

Justification

To provide for the establishment of accreditation schemes consistent with international practice as required by International Standard for the operation of Accreditation bodies ISO/IEC 17011,

edition 2017 under clause 4.6.1, and that address the needs of industry, consumers and regulators.

Clause 17

That, the Bill be amended by deleting clause 17 and substituting therefore the following—

Application for accreditation. 17. (1) A conformity assessment body that seeks to be accredited shall apply to the Service for accreditation in the prescribed manner.

(2) The Service shall evaluate an application submitted under subsection (1) within sixty days from the date of receipt.

(3) Where the Service approves the application for accreditation, the Service shall inform the applicant in writing, and undertake an accreditation assessment in accordance with the relevant accreditation scheme requirements.

(4) Where Service declines an application submitted under subsection (1) the Service shall notify the applicant in writing upon conclusion of the evaluation exercise.

Justification

To provide for clear process and requirement for handling applications for accreditation. To provide for measurable time limit for evaluation and review of applications by the Service. To remove the provision of Common Seal of the Service and execution of documents which is catered for under Clause14 of this Amendments.

Deletion of Part IV on Accreditation

That, the bill be amended by deleting the expression “PART IV – ACCREDITATION” appearing immediately before Clause 18.

Clause 18

That, the Bill be amended by deleting clause 18 and substituting therefor the following—

Accreditation (1) The Service may, subject to the general directions of the

Decisions of
the Service

Board, set rules and guidelines for granting, renewing, maintaining, reducing, extending, suspending or withdrawing accreditation.

(2) Where the Service is satisfied with the outcome of an accreditation assessment and upon payment of prescribed fees, the Service may grant, renew, maintain, reduce or extend accreditation to a conformity assessment body.

(3) Where the Service grants, renews, maintains, reduces or extends accreditation of a conformity assessment body, the Service shall notify the conformity assessment body within fourteen days, and issue the conformity assessment body with an accreditation certificate,

(4) A certificate issued under subsection (3) shall be accompanied by a schedule specifying the scope of accreditation and prescribing conditions on the use of accreditation symbols and claims of accreditation, and other terms as may be necessary.

(5) Where the Service declines, suspends or withdraws accreditation to a conformity assessment body, the Service shall notify, the conformity assessment body in writing within fourteen days outlining the reasons for its decision.

(6) The Service may withdraw an accreditation from a conformity assessment body, without having first suspended the accreditation, if—

(a) the accreditation was obtained by fraud;

- (b) the conformity assessment body becomes insolvent, goes into liquidation or is ordered to be wound up by a court of competent jurisdiction; or
- (c) there has been a complete breakdown of the management system of the conformity assessment body.

(7) The Service may also suspend or withdraw the accreditation of a conformity assessment body in case of a breach of administrative procedures of the Service.

Justification

To provide for criteria and guidelines for accreditation decision making. To make provision for measurable time limits for responses on accreditation decisions by the Service.

Clause 19

That, the Bill be amended by deleting clause 19 and substituting therefore the following—

- Accreditation status, certificates, symbols and claims
19. (1) The accreditation status of a conformity assessment body, and claims made and representational statements thereof, for which accreditation has been granted under this Act shall be confirmed only through –
- (a) the Accreditation Certificate and accompanying schedule issued by the Service;
 - (b) the register of accredited bodies published in the Gazette and maintained on the website of the Service; and
 - (c) the accreditation symbol issued by the Service as

displayed on certificates or reports issued by an accredited body.

(2) An accreditation certificate issued under this Act shall be valid for the period prescribed in the certificate.

(3) An accreditation certificate shall be sealed with the common seal of the Service and shall be authenticated by the signature of the Chief Executive Officer.

(4) The accreditation certificate shall remain the property of the Service and shall be surrendered to the Service whenever required to do so by the Service.

(5) The Service may impose such conditions as it deems necessary, on the use of the accreditation certificate, accreditation symbols, and claims of accreditation status thereof on an accredited body.

(6) The accredited body may use the accreditation symbol provided by the Service, for so long as the accreditation granted under section 18 is in force, and in relation to scope of accreditation specified in the relevant schedule.

(7) An accredited body under section 18 that misuses its accreditation status, including such misrepresentation of the entry or expiry date of accreditation or claims made outside the specified scope of accreditation, the location of the accredited body's facility or other misrepresentation on its accreditation status commits an offence under this Act.

Justification

To provide for all forms of attestation of accreditation status and claims of accreditation consistent with international practice as required by clause 7.7 of ISO/IEC 17011, edition 2017.
To make it an offense for false representation and claims of accreditation.

Clause 20

That, the Bill be amended by deleting clause 20 and substituting therefor the following—

Maintenance
of
accreditation.

(1) An accredited body shall comply at all times with the provisions of this Act, and other conditions prescribed by the Service.

(2) It shall be the duty of an accredited body to promptly inform the Service, of any changes that may affect its accreditation status or the operations of the accredited body.

Justification

To provide for the duty of an accredited body to dutifully inform the Service on any changes that affect its operations that may affect their accreditation status.

Clause 21

That, the Bill be amended in clause 21 by—

- (a) deleting the words “without reference to the accreditation committee” appearing in sub clause (3); and
- (b) deleting the words “without referring the suspension or withdrawal to the accreditation committee” appearing in sub clause (5).

Justification

To delete the reference to the Accreditation Committee which was expunged from the Bill.

Insertion of a New Part

That, the bill be amended by inserting the following new Part immediately before Clause 22—

“PART V – ACCREDITATION APPEALS TRIBUNAL”

Clause 22

That, the Bill be amended by deleting clause 22 and substituting therefor the following—

Accreditation Appeals Tribunal. 22. (1) There is established a Tribunal to be known as the Accreditation Appeals Tribunal which shall hear and determine appeals emanating from the accreditation decisions made by the Service.

(2) The Accreditation Appeals Tribunal shall be comprised of five members as follows—

- (a) A Chairperson appointed by the Cabinet Secretary, in consultation with the Judicial Service Commission from among persons qualified to be judges of the High Court;
- (b) three other persons possessing expert knowledge on accreditation, conformity assessment, standardization or regulatory activities,
- (c) the members under paragraph (b) shall be appointed by the Cabinet Secretary in consultation with the Attorney-General
- (d) members appointed under paragraph (c) and (d) shall be persons who holds a university degree in law, science or information technology and not less than seven years relevant experience

(3) The conduct of the business and affairs of the Accreditation Appeals Tribunal shall be as set out in the Second Schedule to this Act.

(4) Except as provided in the Second Schedule, the Accreditation Appeals Tribunal shall regulate its own procedure.

Justification

To make provision for establishment of Accreditation Appeal Tribunal which shall be appointed by Cabinet Secretary in consultation with the Judicial Service Commission for impartiality of decisions and independent of the Service. Further to provide for conduct of Accreditation Appeal Tribunal as set out in the Second Schedule.

Clause 23

That, the Bill be amended by deleting clause 23 and substituting therefor the following—

Appeals to
the
Accreditation
Appeal
Tribunal

23. (1) An accredited body that is aggrieved by a decision of the Service may, by notice in writing to the Chief Executive Officer, upon the payment of the prescribe fee, appeal against the decision within twenty-one days of being notified of the decision.

(2) A notice of appeal under this section shall set out the grounds of the appeal.

(3) The Chief Executive Officer shall forward the notice of appeal to the Accreditation Appeal Tribunal within seven days of receipt of the notice.

Justification

To make provision for the processing of appeals emanating from the accreditation decisions of the service.

Clause 24

That, the Bill be amended by deleting clause 24 and substituting therefor the following—

Award by the

(1) The Accreditation Appeal Tribunal shall consider

Accreditation
Appeal
Tribunal

the notice of appeal and the response of the Service before making an award.

(2) An award of the Accreditation Appeal Tribunal may—

- (a) confirm the decision of the Service;
- (b) direct the Service to carry out a fresh evaluation of the application or undertake a fresh assessment of the conformity assessment body; or
- (c) issue other orders including an order as to costs.

(3) Where an appeal has been filed against a decision of the Service, the decision of the Service shall stand until the appeal has been heard and determined by the Accreditation Appeals Tribunal.

(4) The Appeal Tribunal may direct the taxing of costs as maybe prescribed under this Act.

Justification

To make provision on the types of awards that the Accreditation Appeal Tribunal may issue.

Clause 25

That, the Bill be amended by deleting clause 25 and substituting therefor the following—

Appeals
against
awards by the
Accreditation
Appeals
Tribunal

25. (1) A party who is aggrieved by an award of the Accreditation Appeal Tribunal may, within thirty days of being notified of the award, appeal against the award to the High Court.

(2) An award of the Accreditation Appeal Tribunal

shall not be enforced where an appeal against the award has been made to the High Court.

Justification

To provide for Appeals from the Tribunal to be made to the High Court.

Insertion of a New Clause

That, the bill be amended by inserting the following new clause immediately after clause 25 and renumbering the existing provisions.

Clause 26

That, the Bill be amended by inserting the following new clause immediately after clause 25—

Remuneration of members of the Board, Committees, and the Tribunal	26. The Service shall pay, out of its funds such remuneration and allowances to the Chairperson and members of the Board, Committees, and the Chairperson and members of Accreditation Appeals Tribunal as may be approved by the Cabinet Secretary and recommended by the Salaries and Remuneration Commission.
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Justification

To provide for remuneration of members of the Board, Committees, and the Accreditation Appeals Tribunal.

Clause 27

Agreed to

Clause 28

Agreed to

Clause 29

That, the Bill be amended by deleting clause 29 and substituting therefor the following—

Accounts and
audit.
No. 18 of
2012.

29. (1) The Chief Executive Officer shall under the directions of the Board shall keep proper books and records of account of the income, expenditure, assets and liabilities of the Service in accordance with the Public Financial Management Act, 2012.

(2) Within a period of three months from the end of the financial year, the Board shall submit to the Auditor-General, the accounts of the Service to be audited and reported on.

No. 34 of
2015.

(3) The accounts of the Service shall be audited and reported on in accordance with the provision of Article 226 and 229 of the Constitution and the Public Audit Act, 2015.

Justification

To provide for proper book keeping of account and auditing of the Service and correcting the cross-referencing error.

Clause 30

Agreed to

Clause 31

THAT, the Bill be amended by deleting clause 31 and substituting therefor the following—

General
offence and
penalty.

31. (1) A conformity assessment body that is not accredited by the Service that makes any claim or uses any accreditation symbol in relation to any goods, processes, services, or facilities that gives or is likely to give an impression of accreditation when it is not accredited, commits an offence under this Act, and shall be liable upon conviction to a fine not exceeding five hundred thousand shillings.

(2) A person commits an offence if that person

contravenes any provision of this Act and, where convicted of an offence under this Act, shall be liable upon conviction to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred thousand shillings or to both.

Justification

To provide for general offence and penalties.

Clause 32

Agreed to

Clause 33

That, the Bill be amended in sub clause (1) by—

- (a) inserting the words “who qualify under this Act” immediately after the expression “former Service”; and
- (b) deleting the words “under this Act” appearing immediately after the words “Board under this”.

Justification

To provide for Transitioning of Board members qualified under the new regime.

Deletion of the Second Schedule

That, the Bill be amended by deleting the Second Schedule and renumbering the existing schedule.

Justification

To expunge reference to the Accreditation Committee

Deletion of the Third Schedule and Insertion of a New Schedule

That, the Bill be amended by deleting the Third Schedule and substituting therefor the following—

SECOND SCHEDULE

PROCEEDINGS BEFORE THE ACCREDITATION APPEALS TRIBUNAL

1. The Accreditation Appeals Tribunal may, to avoid delay or unnecessary expense or for any other justifiable reason, receive evidence by affidavit and may specify the period within which it may hear evidence in person from witnesses.

2. The Accreditation Appeals Tribunal, when making an award under the Act, may consider any evidence which it considers relevant to the matter before it:

Provided that the evidence shall not otherwise be inadmissible under the Evidence Act.

3. A party to an appeal before the Accreditation Appeals Tribunal may be represented by an Advocate or any other suitable person as permitted by the Tribunal.

4. All summonses, notices or other documents issued under the hand of the chairperson of the Accreditation Appeals Tribunal shall be deemed to have been issued by the Tribunal.

5. The Accreditation Appeals Tribunal shall sit at a place and at a time that it may appoint.

6. The proceedings of the Accreditation Appeals Tribunal shall be open to the public except where the Tribunal, for good cause, otherwise directs.

7. The quorum of an Accreditation Appeals Tribunal shall be the chairperson and two other members.

8. (1) Where a member is directly or indirectly interested in any appeal before the Accreditation Appeals Tribunal and is present at a meeting of the Tribunal at which the appeal shall be determined, that member shall, at that meeting as soon as is practicable after the meeting has commenced, but before any deliberations have occurred, disclose that interest and shall not take part in the determination of the appeal and shall not be counted in the quorum of the meeting during the determination of that appeal.

(2) A disclosure of interest under this section shall be recorded in the minutes of the meeting at which the disclosure is made.

9. Where the Accreditation Appeals Tribunal has made an award, it shall notify the parties in writing within seven days the making of the award.

Justification

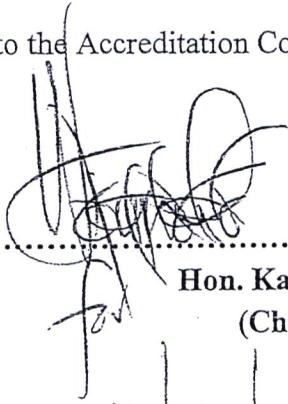
To expunged reference to the Accreditation Committee

Deletion of the Second Schedule

That, the Bill be amended by deleting the Second Schedule

Justification

To expunge reference to the Accreditation Committee



SIGNED.....

Hon. Kanini Kega, MP
(Chairperson)

DATE.....

4/12/2018

ANNEXTURE I

DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY & COOPERATIVES

ATTENDANCE SCHEDULE/PAYMENT SCHEDULE

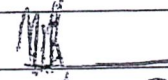
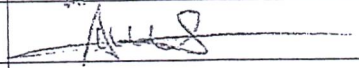
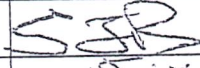


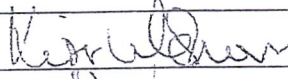
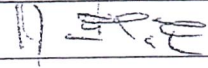


Clerk's Chambers
National Assembly
NAIROBI

The Finance & Accounts Department
National Assembly

Agenda: Adoption of the report on the Kenya Accreditation Service Bill, 2018

Date: 4th December, 2018

Time: 11.00 am

NO.	NAME	SIGNATURE
1.	Hon. Kanini Kega, M.P. – Chairperson	
2.	Hon. Cornelly Serem, M.P. – Vice Chairman	
3.	Hon. Alexander Kimutai Kigen Kosgey, MP	
4.	Hon. Alois Musa Lentoimaga, MP	
5.	Hon. Anab Mohamed Gure, MP	
6.	Hon. Andrew Mwadime, MP	
7.	Hon. Bunyasi Sakwa John, MP	
8.	Hon. Daniel Maanzo, MP	
9.	Hon. Gideon Sitetu Konchella, MP	
10.	Hon. James Mukwe, MP	
11.	Hon. Jones Mlolwa, MP	
12.	Hon. Kipruto Moi, MP	
13.	Hon. Jeremiah Ekamais Lomorukai, MP	
14.	Hon. Gichimu Robert, MP	
15.	Hon. Kimani Patrick Wainaina Jungle, MP	
16.	Hon. Korir Generali Nixon Kiprotich, MP	
17.	Hon. Nduati Joseph Ngugi, MP	
18.	Hon. Wachira Rahab Mukami, MP	
19.	Hon. Dr. Wilberforce Oundo, Phd, MP	

ERIC NYAMBATI
FOR: CLERK OF THE NATIONAL ASSEMBLY

ANNEXTURE II

MINUTES OF THE 32ND SITTING OF THE DEPARTMENTAL COMMITTEE ON
TRADE, INDUSTRY AND COOPERATIVES HELD ON TUESDAY 4TH DECEMBER,
2018 IN THE COMMITTEE ROOM12, NEW PARLIAMENT WING, AT 1.00 PM.

PRESENT

1. Hon. (Dr.) Wilberforce Oundo, Phd, MP (Chairing)
2. Hon. Kipruto Moi, MP
3. Hon. Alois Musa Lentoimaga, MP
4. Hon. Anab Mohamed Gure, MP
5. Hon. Gideon Konchela, MP
6. Hon. James Mukwe, MP
7. Hon. Bunyasi John Sakwa, MP
8. Hon. Andrew Mwadime, MP
9. Hon. Kimani Patrick Wainaina Jungle, MP
10. Hon. Jeremiah Ekamais Lomorukai, MP
11. Hon. Daniel Maanzo, MP

APOLOGIES

1. Hon. Kanini Kega, MP – Chairperson
2. Hon. Cornelly Serem, MP – Vice Chairperson
3. Hon. Jones Mlolwa, MP
4. Hon. Nduati Joseph Ngugi, MP
5. Hon. Gichimu Robert, MP
6. Hon. Wachira Rahab Mukami, MP
7. Hon. Korir Generali Nixon Kiprotich, MP

ABSENT

1. Hon. Alexander Kimutai Kigen Kosgey, MP

IN ATTENDANCE

National Assembly

- | | | |
|-----------------------|---|----------------------|
| 1. Ms. Nuri K. Nataan | - | Clerk Assistant III |
| 2. Mr. Peter Mwaura | - | Senior Legal Counsel |
| 3. Mr. Chelanga Maiyo | - | Research Officer III |
| 4. Mr. Yaqub Ahmed | - | Media Officer |

The Chairperson called the meeting to order at 1.00 pm and proceeded to say the prayer.

**CONSIDERATION AND ADOPTION OF THE
REPORT ON KENYA ACCREDITATION SERVICE
BILL, 2018**

The Committee considered and adopted the report on the Kenya Accreditation Service Bill, 2018 with the following proposed Committee stage amendments:-

Clause 1

Agreed to

Clause 2

THAT, that clause 2 of the Bill be amended by inserting the following new definitions in proper alphabetical sequence—

“Accreditation Advisory Committee” means an advisory committee established under section 15;

“accreditation scheme” means the rules, processes and other requirements established by the Service relating to specific conformity assessment activities to which the same accreditation standard is applied;

“accreditation symbol” means the symbol issued by the Service to be used by a conformity assessment body to indicate their accredited status;

“conformity assessment body” means an organisation or a facility that carries out conformity assessment services including testing, calibration, inspection, certification of management systems, certification of persons, certification of products or processes, or registration, proficiency testing providers and reference materials producers;

“Corporation Secretary” means a person appointed under section 10;

“Tribunal” means the Accreditation Appeals Tribunal set up under section 22.

Justification

To provide clarity on the terms used in the Bill which are unique to the accreditation sector and to be consistent with international terminologies.

Clause 3

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

- Objects of the Act.
3. The objects of this Act shall be to—
- (a) establish the Service;
 - (b) recognise the Service as the sole national body responsible for carrying out the accreditation of conformity assessment bodies;
 - (c) establish an internationally recognized and nationally unified accreditation system;
 - (d) promote accreditation for the facilitation of trade and the enhancement of health, safety, environmental protection, economic performance and transformation of Kenya; and
 - (e) promote mutual recognition of the competence and equivalence of accreditation and uphold the cross-frontier accreditation cooperation principles.

Justification

To provide for recognition of the Service as the sole national body responsible for accreditation and to make provision for mutual recognition and upholding of cross-frontier accreditation cooperation principles.

Clause 4

That, clause 4 of the Bill be amended in sub clause (3) by deleting paragraph (d) and renumbering the remaining provisions

Justification

To remove inconsistency with the functions of the Service in line with the Public Financial Management Act, 2012 on capacity to lend money.

Clause 5

That, clause 5 of the Bill be amended by deleting the word “Nairobi” and substituting therefor the words “Kenya, at a place gazetted by the Cabinet Secretary.”

Justification

To provide for flexibility on the location of the headquarters of the Service.

Clause 6

That, the Bill be amended by deleting clause 6 and substituting therefor the following—

- Functions of the Service.
6. The functions of the Service shall be—
- (a) to assess and accredit conformity assessment bodies;
 - (b) to promote accreditation in Kenya;
 - (c) to promote mutual recognition of the competence of accredited bodies, and equivalence of accreditation schemes;
 - (d) to establish and nurture relations and cooperation with regional and international accreditation bodies, persons, associations and organizations that the Service may consider desirable or appropriate in furtherance of the objectives of this Act;
 - (e) to participate in the formulation and monitoring of national, regional and international guidelines and standards to facilitate the accreditation process;
 - (f) to raise public awareness, collect and disseminate information on the accreditation and conformity assessment matters through advocacy programmes, publication of reports, pamphlets, books, journals, and other publications;
 - (g) to provide training, other related services and promote research in respect of accreditation and conformity assessment matters;
 - (h) to initiate, negotiate, conclude and maintain international mutual recognition agreements relating

- to its accreditation schemes;
- (i) to support Government in activities on mutual recognition agreements relating to accreditation;
 - (j) to co-ordinate in liaison with regulators in respect of any matter related to accreditation;
 - (k) to obtain and maintain membership to national, regional or international organizations that may assist the Service to achieve its objects and actively participate in such organizations;
 - (l) to promote recognition and protect the use of the Service's logo and symbols;
 - (m) to promote and protect regional and international mutual recognition arrangement symbols;
 - (n) to establish appropriate accreditation advisory committees;
 - (o) to establish, review, and maintain accreditation scheme for conformity assessment bodies that is consistent with international practice, facilitates trade and addresses identified needs of industry, consumers, or regulators;
 - (p) to formulate and implement national guidelines and standards to facilitate the accreditation process;
 - (q) to advise Government on designation by regulatory authorities;
 - (r) to require accredited bodies to take appropriate actions related to their conformity assessments;
 - (s) to establish and maintain a register on the status of accredited conformity assessment bodies in the prescribed manner;
 - (t) to design and issue accreditation certificates and symbols to its accredited conformity assessment bodies in the prescribed manner;
 - (u) to publish quarterly in the Gazette and on its website

all accredited conformity assessment bodies in the prescribed manner;

(v) to promote use of accreditation symbols on certificates or reports issued by conformity assessment bodies; and

(w) to perform any other function necessary for the achievement of the objectives of this Act.

Justification

To provide clarity in the functions set out in the Bill in particular, providing an express requirement for assessment of conformity assessment bodies and mutual recognition of the competence of accredited bodies.

To provide a requirement for the Service to establish, review, and maintain accreditation schemes for conformity assessment bodies that is consistent with international practice, facilitates trade and addresses identified needs of industry, consumers, or regulators.

Further, to provide for the participation of the Service in the formulation and monitoring of the relevant national, regional and international guidelines and standards applicable to the Accreditation sector.

Finally, to make provision for the Service to undertake awareness raising and advocacy programmes on accreditation including collecting and disseminating information on accreditation as well as related research and other services.

Clause 7

That, clause 7 of the Bill be amended—

(a) in sub clause (1) by deleting paragraph (d), (i), (ii), (iii), (iv), (v) and (vi) and substituting therefor the following—

(a) five other members appointed by the Cabinet Secretary as follows —

(i) two persons who have knowledge, experience or qualifications relating to the functions of Service and who have distinguished themselves in the fields of science, technology, education, trade, business and industry relating to accreditation, conformity assessment, standardization and regulations;

- (ii) two persons, one who shall have knowledge and experience on matters relating to finance, and another who shall have experience in law or human resource management; and
- (iii) one person who shall have knowledge and experience on matters relating to consumer and public interest.

(b) by inserting the following new sub clause immediately after sub clause 1 and renumbering the existing provisions—

“(2) In appointing the Board members under subsection 1 (d) the Cabinet Secretary shall take into account the recommendations of relevant professional bodies in Kenya, gender and regional balance.”

Justification

To provide a criterion for the appointment of the five other members of the Board taking into account recommendation of relevant professional bodies, gender and regional balance.

Clause 8

That, clause 8 of the Bill be amended—

- (a) by deleting sub clause (1) and substituting therefor the following—

“(1) The Board may, establish such committees as it may deem appropriate for the effective discharge of its functions under this Act.”

- (b) in sub clause (2) by inserting the words “whose knowledge and skills are necessary for performance of the functions of the Service” immediately after the words “established by the Board”.

- (c) by inserting the following new sub clause immediately after sub clause (3)—

“(4) A person co-opted under this sub section (2) shall have no right to vote at a meeting of the Committee.”

Justification

To provide that the Board may establish committees to deal with specific matters of the Service and make provision for the Board to co-opt other persons whose knowledge and skills are necessary for the performance of the functions of the Service. To provide that persons co-opted by the Board shall not have a right to vote at a meeting of the Board.

Clause 9

That, the Bill be amended by deleting clause 9 and substituting therefor the following—.

The Chief
Executive
Officer.

9. (1) There shall be a Chief Executive Officer of the Service appointed by the Cabinet Secretary on the recommendation of the Board.

(2) A person qualifies to be appointed as the Chief Executive Officer if that person—

(a) has a post-graduate degree in—

(i) science;

(ii) information technology; or

(iii) business administration;

(b) has at least ten years' relevant professional experience of which five shall have been in a senior management position;

(c) satisfies the requirements of Chapter Six of the Constitution;

(d) does not hold a public office; and

(e) is otherwise not disqualified by any other written law.

(3) The Chief Executive Officer shall hold office for a term of three years and may be eligible for re-appointment to one other term of three years.

(4) The Chief Executive Officer shall, subject to the general directions of the Board, be responsible for the day to day management of the Service, the exercise of its powers and the discharge and performance of its functions.

(5) The Cabinet Secretary, on the written recommendation of the Board and for reasonable cause, may revoke the appointment of the Chief Executive Officer at any time.

(6) Where the Board recommends the revocation of the appointment of the Chief Executive officer, the recommendation shall be valid if it is supported by at least two-thirds of the members of the Board.

Justification

To reposition the provision on appointment of the Chief Executive Officer following deleting of the provision establishing an Accreditation Committee.

Clause 10

That, the Bill be amended by deleting clause 10 and substituting therefor the following—

The
Corporation
Secretary

10. (1) There shall be a Corporation Secretary who shall be appointed competitively on such terms and conditions as the Board may determine.

(2) A person shall be qualified for appointment as a Corporation Secretary if such person holds a university degree in law recognized in Kenya and is a registered certified public secretary with at least seven years relevant experience.

(3) The Corporation Secretary shall—

(a) be the Secretary to the Board;

(b) record and keep minutes and other records of the Board;

(c) keep custody of the seal of the Board; and

(d) carry out such other functions as the Service or the Chief Executive Officer may, from time to time, assign.

(4) In the performance of his duties under this Act, the Corporation Secretary shall be responsible to the Chief Executive Officer

Justification

To provide for the appointment and functions of a Corporation Secretary.

Clause 11

That, the Bill be amended by deleting clause 11 and substituting therefor the following—

Staff of the Service.

11. (1) The Service may appoint such other staff as it considers necessary for the exercise of its powers and discharge of its functions.

(2) The Staff of the Service shall be appointed on such terms and conditions as shall be determined by the Board on the recommendations of the Salaries and Remuneration Commission.

Justification

To reposition the provision on appointment of the staff of the Service.

Clause 12

That, the Bill be amended by deleting clause 12 and substituting therefor the following—

Confidentiality. 12. (1) Any person who is or who has been involved in the performance of any function of the Service, shall not disclose any information in the performance of that function except—

- (a) to a person authorised to have that information for the performance of a function under this Act;
- (b) where that person is authorised under this Act to disclose that information;
- (c) where that person discloses that information in accordance with a provision of any written law or an order of a court of competent jurisdiction; or
- (d) where the information is disclosed by or on the authority of the Cabinet Secretary, the Board or the Chief Executive Officer.

(2) A member of the Board, or an officer or agent of the Service shall, in the performance of any function or exercise of any power under this Act, preserve the confidentiality of any matter coming to the knowledge of that member, officer or agent.

(3) A member of the Board, or an officer or agent of the Service shall not, without any reasonable cause—

- (a) disclose any confidential information to any person; or

(b) permit an unauthorized person to gain access to any information in the possession, custody or control of the Service.

(4) Any person who contravenes the provisions of this section commits an offence.

Justification

To reposition the provision on confidentiality.

Clause 13

That, the Bill be amended by deleting clause 13 and substituting therefor the following—

Protection
from personal
liability.

13. No matter or thing done or omitted to be done by a member of the Board, or an officer or agent of the Service, if the matter or thing is done or omitted in good faith in the execution of the powers and the performance of the functions of the Service, shall render the member, officer or agent, or any other person's action on the member's, officer's, staff or agent's direction, personally liable to any action, claim or demand whatsoever.

Justification

To reposition the provision on protection from personal liability.

Clause 14

That, the Bill be amended by deleting clause 14 and substituting therefor the following—

Common seal
of the service
and execution
of documents.

14. (1) The common seal of the Service shall be kept in the custody of the Corporation Secretary and shall not be affixed to any instrument or document except as the Board may authorise.

(2) The common seal of the Service shall be authenticated by the signature of the Chief Executive Officer.

Justification

To make provision for the custody of common seal of the Service to be with the Corporation Secretary and for authentication of the seal by the Chief Executive Officer.

Insertion of a New Part

That, the bill be amended by inserting the following new Part immediately before Clause 15—

“PART IV – ACCREDITATION”

Clause 15

That, the Bill be amended by deleting clause 15 and substituting therefor the following—

- Accreditation
Advisory
Committees.
15. (1) The Service may, subject to the directions of the Board, establish Accreditation Advisory Committees to—
- (a) advise on technical and scientific matters for the operation of the accreditation schemes established by the Service under Section 16.
 - (b) guide on interpretation of technical requirements of international standards and regulatory requirements of specific accreditation schemes;
 - (c) formulate or review the technical criteria or other sector application requirements related to accreditation schemes;
 - (d) develop or review technical criteria adopted or adapted by the Service for specific accreditation activities;
 - (e) advise on the competence criteria for accreditation assessors and technical experts including identifying relevant proficiency testing programmes applicable to specific accreditation schemes; and
 - (f) offer advisory support activities including accreditation assessment reviews, research and other matters as may be required by Service.
- (2) An Accreditation Advisory Committee shall consist of not less than three members, and not more than nine members.
- (3) The members of the Accreditation Advisory Committee shall possess academic, scientific or technical expertise and relevant experience in the specific areas of interest required by Service.
- (4) The Chairperson and members of an Accreditation

Advisory Committee shall be appointed competitively by the Service.

- (5) A member of an Accreditation Advisory Committee shall be appointed by the Service in writing, on such terms and conditions as may be prescribed by the Board.

Justification

To provide for the establishment of Accreditation Advisory Committees and their functions to be consistent with practices in other jurisdictions, namely Singapore, New Zealand, United Kingdom; Mauritius and South Africa amongst others, and the requirements contained in the revised International Standard for the operation of Accreditation bodies ISO/IEC 17011, edition 2017 under clause 4.6.2.

To provide for participatory process in development of accreditation schemes by persons possessing the necessary competence and any other interested parties in the Service.

Clause 16

That, the Bill be amended by deleting clause 16 and substituting therefore the following—

- Accreditation Schemes.
16. (1) The Service may, establish and maintain such accreditation schemes consistent with national, regional and international practices to take into account the needs of industry, consumers, or regulators
- (2) the Service shall maintain on its website, relevant information on each accreditation scheme including applicable requirements or conditions of accreditation.
- (3) The Service may in accordance with the provisions of this Act publish regulations specifying standards and other guidelines necessary for the proper administration of this Act including—
- (a) accreditation scheme requirements;
 - (b) fees applicable to each accreditation scheme;
 - (c) fees applicable to accreditation related training, and any other activities undertaken by the Service; and
 - (d) conditions on the use of the logo and accreditation symbols of the Service, including symbols of regional or international accreditation bodies.

Justification

To provide for the establishment of accreditation schemes consistent with international practice as required by International Standard for the operation of Accreditation bodies ISO/IEC 17011, edition 2017 under clause 4.6.1, and that address the needs of industry, consumers and regulators.

Clause 17

That, the Bill be amended by deleting clause 17 and substituting therefore the following—

Application for accreditation. 17. (1) A conformity assessment body that seeks to be accredited shall apply to the Service for accreditation in the prescribed manner.

(2) The Service shall evaluate an application submitted under subsection (1) within sixty days from the date of receipt.

(3) Where the Service approves the application for accreditation, the Service shall inform the applicant in writing, and undertake an accreditation assessment in accordance with the relevant accreditation scheme requirements.

(4) Where Service declines an application submitted under subsection (1) the Service shall notify the applicant in writing upon conclusion of the evaluation exercise.

Justification

To provide for clear process and requirement for handling applications for accreditation. To provide for measurable time limit for evaluation and review of applications by the Service. To remove the provision of Common Seal of the Service and execution of documents which is catered for under Clause 14 of this Amendments.

Deletion of Part IV on Accreditation

That, the bill be amended by deleting the expression “PART IV – ACCREDITATION” appearing immediately before Clause 18.

Clause 18

That, the Bill be amended by deleting clause 18 and substituting therefor the following—

Accreditation (1) The Service may, subject to the general directions of the
Decisions of Board, set rules and guidelines for granting, renewing,

maintaining, reducing, extending, suspending or withdrawing accreditation.

- (2) Where the Service is satisfied with the outcome of an accreditation assessment and upon payment of prescribed fees, the Service may grant, renew, maintain, reduce or extend accreditation to a conformity assessment body.
- (3) Where the Service grants, renews, maintains, reduces or extends accreditation of a conformity assessment body, the Service shall notify the conformity assessment body within fourteen days, and issue the conformity assessment body with an accreditation certificate,
- (4) A certificate issued under subsection (3) shall be accompanied by a schedule specifying the scope of accreditation and prescribing conditions on the use of accreditation symbols and claims of accreditation, and other terms as may be necessary.
- (5) Where the Service declines, suspends or withdraws accreditation to a conformity assessment body, the Service shall notify, the conformity assessment body in writing within fourteen days outlining the reasons for its decision.
- (6) The Service may withdraw an accreditation from a conformity assessment body, without having first suspended the accreditation, if—
 - (a) the accreditation was obtained by fraud;
 - (b) the conformity assessment body becomes insolvent, goes into liquidation or is ordered to be wound up by a court of competent jurisdiction; or

(c) there has been a complete breakdown of the management system of the conformity assessment body.

(7) The Service may also suspend or withdraw the accreditation of a conformity assessment body in case of a breach of administrative procedures of the Service.

Justification

To provide for criteria and guidelines for accreditation decision making. To make provision for measurable time limits for responses on accreditation decisions by the Service.

Clause 19

That, the Bill be amended by deleting clause 19 and substituting therefore the following—

Accreditation status, certificates, symbols and claims	19. (1) The accreditation status of a conformity assessment body, and claims made and representational statements thereof, for which accreditation has been granted under this Act shall be confirmed only through –
--	--

(a) the Accreditation Certificate and accompanying schedule issued by the Service;

(b) the register of accredited bodies published in the Gazette and maintained on the website of the Service; and

(c) the accreditation symbol issued by the Service as displayed on certificates or reports issued by an accredited body.

(2) An accreditation certificate issued under this Act shall be valid for the period prescribed in the certificate.

(3) An accreditation certificate shall be sealed with the

common seal of the Service and shall be authenticated by the signature of the Chief Executive Officer.

(4) The accreditation certificate shall remain the property of the Service and shall be surrendered to the Service whenever required to do so by the Service.

(5) The Service may impose such conditions as it deems necessary, on the use of the accreditation certificate, accreditation symbols, and claims of accreditation status thereof on an accredited body.

(6) The accredited body may use the accreditation symbol provided by the Service, for so long as the accreditation granted under section 18 is in force, and in relation to scope of accreditation specified in the relevant schedule.

(7) An accredited body under section 18 that misuses its accreditation status, including such misrepresentation of the entry or expiry date of accreditation or claims made outside the specified scope of accreditation, the location of the accredited body's facility or other misrepresentation on its accreditation status commits an offence under this Act.

Justification

To provide for all forms of attestation of accreditation status and claims of accreditation consistent with international practice as required by clause 7.7 of ISO/IEC 17011, edition 2017. To make it an offence for false representation and claims of accreditation.

Clause 20

That, the Bill be amended by deleting clause 20 and substituting therefor the following—

Maintenance
of
accreditation.

(1) An accredited body shall comply at all times with the provisions of this Act, and other conditions prescribed by the Service.

(2) It shall be the duty of an accredited body to promptly inform the Service, of any changes that may affect its accreditation status or the operations of the accredited body.

Justification

To provide for the duty of an accredited body to dutifully inform the Service on any changes that affect its operations that may affect their accreditation status.

Clause 21

That, the Bill be amended in clause 21 by—

- (a) deleting the words “without reference to the accreditation committee” appearing in sub clause (3); and
- (b) deleting the words “without referring the suspension or withdrawal to the accreditation committee” appearing in sub clause (5).

Justification

To delete the reference to the Accreditation Committee which was expunged from the Bill.

Insertion of a New Part

That, the bill be amended by inserting the following new Part immediately before Clause 22—

“PART V – ACCREDITATION APPEALS TRIBUNAL”

Clause 22

That, the Bill be amended by deleting clause 22 and substituting therefor the following—

Accreditation Appeals Tribunal.	22. (1) There is established a Tribunal to be known as the Accreditation Appeals Tribunal which shall hear and determine appeals emanating from the accreditation decisions made by the Service.
---------------------------------------	--

(2) The Accreditation Appeals Tribunal shall be comprised of five members as follows—

- (a) A Chairperson appointed by the Cabinet Secretary, in consultation with the Judicial Service Commission from among persons

qualified to be judges of the High Court;

(b) three other persons possessing expert knowledge on accreditation, conformity assessment, standardization or regulatory activities,

(c) the members under paragraph (b) shall be appointed by the Cabinet Secretary in consultation with the Attorney-General

(d) members appointed under paragraph (c) and (d) shall be persons who holds a university degree in law, science or information technology and not less than seven years relevant experience

(3) The conduct of the business and affairs of the Accreditation Appeals Tribunal shall be as set out in the Second Schedule to this Act.

(4) Except as provided in the Second Schedule, the Accreditation Appeals Tribunal shall regulate its own procedure.

Justification

To make provision for establishment of Accreditation Appeal Tribunal which shall be appointed by Cabinet Secretary in consultation with the Judicial Service Commission for impartiality of decisions and independent of the Service. Further to provide for conduct of Accreditation Appeal Tribunal as set out in the Second Schedule.

Clause 23

That, the Bill be amended by deleting clause 23 and substituting therefor the following—

Appeals to
the
Accreditation
Appeal
Tribunal

23. (1) An accredited body that is aggrieved by a decision of the Service may, by notice in writing to the Chief Executive Officer, upon the payment of the prescribe fee, appeal against the decision within twenty-one days of being notified of the decision.

(2) A notice of appeal under this section shall set out the grounds of the appeal.

(3) The Chief Executive Officer shall forward the notice of appeal to the Accreditation Appeal Tribunal within seven days of receipt of the notice.

Justification

To make provision for the processing of appeals emanating from the accreditation decisions of the service.

Clause 24

That, the Bill be amended by deleting clause 24 and substituting therefor the following—

Award by the Accreditation Appeal Tribunal

(1) The Accreditation Appeal Tribunal shall consider the notice of appeal and the response of the Service before making an award.

(2) An award of the Accreditation Appeal Tribunal may—

(a) confirm the decision of the Service;

(b) direct the Service to carry out a fresh evaluation of the application or undertake a fresh assessment of the conformity assessment body; or

(c) issue other orders including an order as to costs.

(3) Where an appeal has been filed against a decision of the Service, the decision of the Service shall stand until the appeal has been heard and determined by the Accreditation Appeals Tribunal.

(4) The Appeal Tribunal may direct the taxing of costs as maybe prescribed under this Act.

Justification

To make provision on the types of awards that the Accreditation Appeal Tribunal may issue.

Clause 25

That, the Bill be amended by deleting clause 25 and substituting therefor the following—

Appeals 25. (1) A party who is aggrieved by an award of the
against Accreditation Appeal Tribunal may, within thirty
awards by the days of being notified of the award, appeal against the
Accreditation award to the High Court.
Appeals
Tribunal

(2) An award of the Accreditation Appeal Tribunal shall not be enforced where an appeal against the award has been made to the High Court.

Justification

To provide for Appeals from the Tribunal to be made to the High Court.

Insertion of a New Clause

That, the bill be amended by inserting the following new clause immediately after clause 25 and renumbering the existing provisions.

Clause 26

That, the Bill be amended by inserting the following new clause immediately after clause 25—

Remuneration 26. The Service shall pay, out of its funds such
of members remuneration and allowances to the Chairperson and
the Board, members of the Board, Committees, and the Chairperson
Committees, and members of Accreditation Appeals Tribunal as may
and the be approved by the Cabinet Secretary and recommended
Tribunal by the Salaries and Remuneration Commission.

Justification

To provide for remuneration of members of the Board, Committees, and the Accreditation Appeals Tribunal.

Clause 27

Agreed to

Clause 28

Agreed to

Clause 29

That, the Bill be amended by deleting clause 29 and substituting therefor the following—

Accounts and
audit.
No. 18 of
2012.

29. (1) The Chief Executive Officer shall under the directions of the Board shall keep proper books and records of account of the income, expenditure, assets and liabilities of the Service in accordance with the Public Financial Management Act, 2012.

(2) Within a period of three months from the end of the financial year, the Board shall submit to the Auditor-General, the accounts of the Service to be audited and reported on.

No. 34 of
2015.

(3) The accounts of the Service shall be audited and reported on in accordance with the provision of Article 226 and 229 of the Constitution and the Public Audit Act, 2015.

Justification

To provide for proper book keeping of account and auditing of the Service and correcting the cross-referencing error.

Clause 30

Agreed to

Clause 31

THAT, the Bill be amended by deleting clause 31 and substituting therefor the following—

General
offence and
penalty.

31. (1) A conformity assessment body that is not accredited by the Service that makes any claim or uses any accreditation symbol in relation to any goods, processes, services, or facilities that gives or is likely to give an impression of accreditation when it is not accredited, commits an offence under this Act, and shall be liable upon conviction to a fine not exceeding five

hundred thousand shillings.

(2) A person commits an offence if that person contravenes any provision of this Act and, where convicted of an offence under this Act, shall be liable upon conviction to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred thousand shillings or to both.

Justification

To provide for general offence and penalties.

Clause 32

Agreed to

Clause 33

That, the Bill be amended in sub clause (1) by—

- (a) inserting the words “who qualify under this Act” immediately after the expression “former Service”; and
- (b) deleting the words “under this Act” appearing immediately after the words “Board under this”.

Justification

To provide for Transitioning of Board members qualified under the new regime.

Deletion of the Second Schedule

That, the Bill be amended by deleting the Second Schedule and renumbering the existing schedule.

Justification

To expunge reference to the Accreditation Committee

Deletion of the Third Schedule and Insertion of a New Schedule

That, the Bill be amended by deleting the Third Schedule and substituting therefor the following—

SECOND SCHEDULE

PROCEEDINGS BEFORE THE ACCREDITATION APPEALS TRIBUNAL

1. The Accreditation Appeals Tribunal may, to avoid delay or unnecessary expense or for any other justifiable reason, receive evidence by affidavit and may specify the period within which it may hear evidence in person from witnesses.

2. The Accreditation Appeals Tribunal, when making an award under the Act, may consider any evidence which it considers relevant to the matter before it:

Provided that the evidence shall not otherwise be inadmissible under the Evidence Act.

3. A party to an appeal before the Accreditation Appeals Tribunal may be represented by an Advocate or any other suitable person as permitted by the Tribunal.

4. All summonses, notices or other documents issued under the hand of the chairperson of the Accreditation Appeals Tribunal shall be deemed to have been issued by the Tribunal.

5. The Accreditation Appeals Tribunal shall sit at a place and at a time that it may appoint.

6. The proceedings of the Accreditation Appeals Tribunal shall be open to the public except where the Tribunal, for good cause, otherwise directs.

7. The quorum of an Accreditation Appeals Tribunal shall be the chairperson and two other members.

8. (1) Where a member is directly or indirectly interested in any appeal before the Accreditation Appeals Tribunal and is present at a meeting of the Tribunal at which the appeal shall be determined, that member shall, at that meeting as soon as is practicable after the meeting has commenced, but before any deliberations have occurred, disclose that interest and shall not take part in the determination of the appeal and shall not be counted in the quorum of the meeting during the determination of that appeal.

(2) A disclosure of interest under this section shall be recorded in the minutes of the meeting at which the disclosure is made.

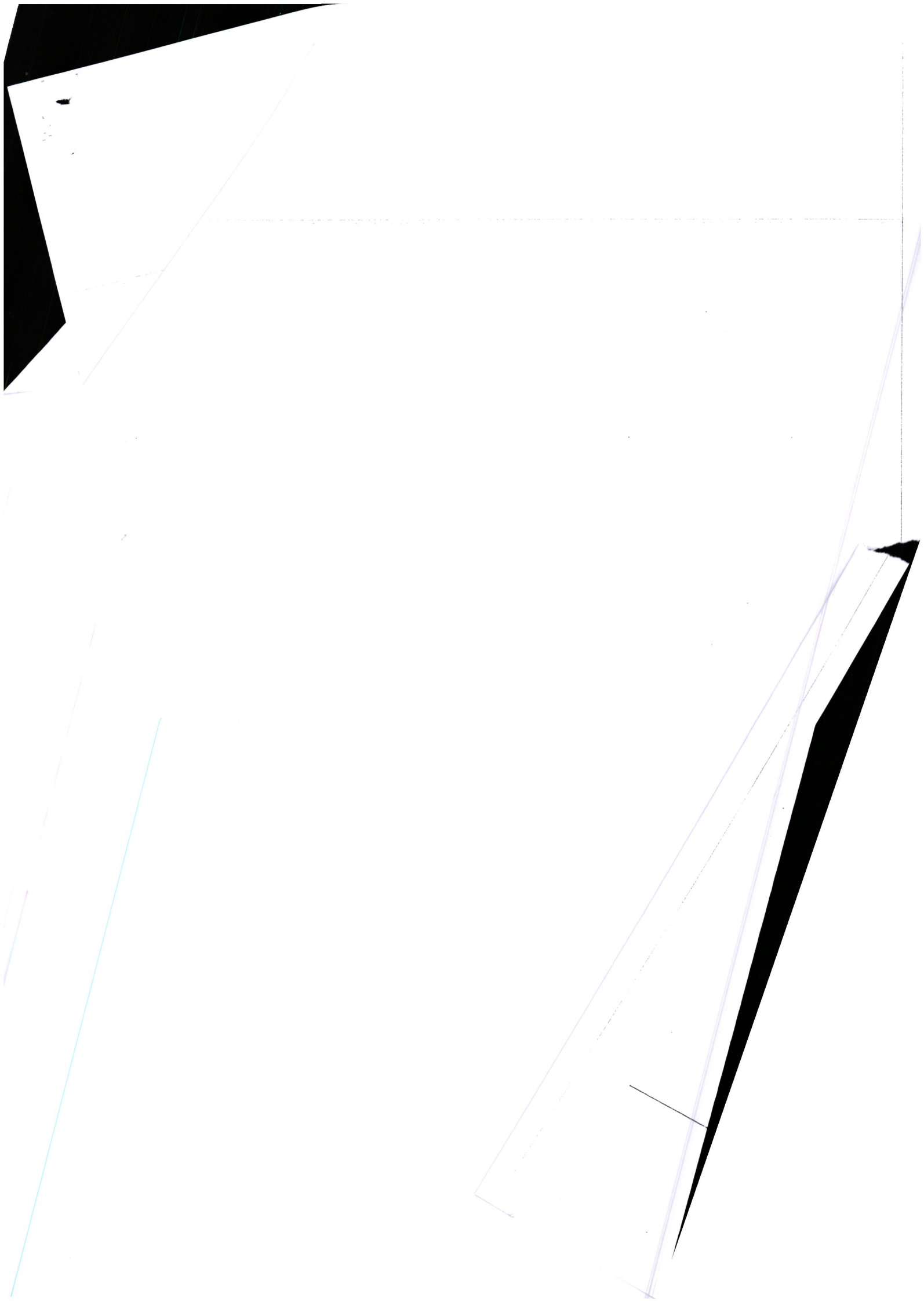
9. Where the Accreditation Appeals Tribunal has made an award, it shall notify the parties in writing within seven days the making of the award.

Justification

To expunge reference to the Accreditation Committee

Deletion of the Second Schedule

That, the Bill be amended by deleting the Second Schedule



Justification

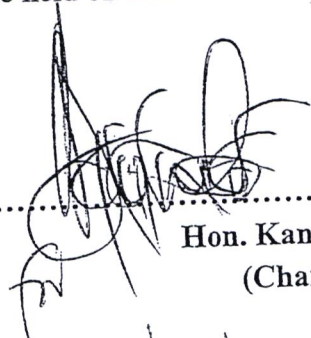
To expunge reference to the Accreditation Committee

MIN. NO.135/DC-N/2018

ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at 1.30 p.m. The next meeting will be held on notice.

SIGNED.....



Hon. Kanini Kega, MP
(Chairperson)

DATE.....

4/12/2018

MINUTES OF THE 24TH SITTING OF THE DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES HELD ON TUESDAY 2ND OCTOBER, 2018 IN THE COMMITTEE ROOM ON 5TH FLOOR CONTINENTAL HOUSE, AT 10.00 AM.

PRESENT

1. Hon. Cornelly Serem, MP –Vice Chairperson
2. Hon. Andrew Mwadime, MP
3. Hon. Daniel Maanzo, MP
4. Hon. Wanyonyi Ferdinand, MP
5. Hon. James Mukwe, MP
6. Hon. Jones Mlolwa, MP
7. Hon. Kipruto Moi, MP
8. Hon. Gichimu Robert, MP
9. Hon. Nduati Joseph Ngugi, MP
10. Hon. Korir Generali Nixon Kiprotich, MP
11. Hon. (Dr.) Wilberforce Oundo, Phd, MP

APOLOGIES

1. Hon. Kanini Kega, MP – Chairperson
2. Hon. Alexander Kimutai Kigen Kosgey, MP
3. Hon. Murungi Kathuri, MP
4. Hon. Bunyasi John Sakwa, MP
5. Hon. Alois Musa Lentoimaga, MP
6. Hon. Wachira Rahab Mukami, MP
7. Hon. Anab Mohamed Gure, MP
8. Hon. Kimani Patrick Wainaina Jungle, MP

IN ATTENDANCE

National Assembly

- | | | |
|-----------------------|---|----------------------|
| 1. Ms. Nuri K. Nataan | - | Clerk Assistant III |
| 2. Mr. Linnet Otieno | - | Legal Counsel II |
| 3. Mr. Chelanga Maiyo | - | Research Officer III |
| 4. Mr. Yaqub Ahmed | - | Media Officer |
| 5. Ms. Roseline Njuki | - | Sergeant at Arms |

MIN. NO.100/DC-N/2018

PRELIMINARIES

The Chairperson called the meeting to order at 10.00 am and proceeded to say the prayer.

MIN. NO.101/DC-N/2018

CONSIDERATION OF THE KENYA
ACCREDITATION SERVICE BILL, 2018

The Committee analyzed the proposed amendments clause by clause and observed the following, that:-

Under Clause 2

The phrase “scope of the accreditation” may be abused by the service to limit the functions of a “conformity assessment body”.

The proposed definition “conformity assessment body” is too broad and likely to affect numerous entities.

Under Clause 7 (1)

There was need to provide that the designated representative shall be appointed in writing and to make provision for the following amendment—

- (i) inserting the words “registered” immediately after the word “one” appearing in paragraph (ii);
- (ii) inserting the words “registered” immediately after the word “one” appearing in paragraph (iv);
- (iii) inserting the words “nominated by the National Environmental Management Authority” immediately after the words “environmental science” appearing in paragraph (v); and
- (iv) inserting the words “nominated by the Kenya Association of Manufacturers” immediately after the words “trade or manufacturing” appearing in paragraph (v);

Under Clause 9 (2)

There was need to provide for appointment of members of the Accreditation Committee through a competitive process.

Under Clause 21 (6)

There was need to provide for publication of the status in the gazette and two newspapers of national circulation.

General Observation

Kenya Accreditation Service (KENAS) is the only national accreditation body for Kenya that gives formal recognition that Certification Bodies (CBs), Inspection Bodies (IBs) and Laboratories (testing and calibration, medical, veterinary, pharmaceuticals, proficiency testing scheme providers) are competent to carry out specific conformity assessment tasks.

Committee Resolution

The Committee resolved to:-

1. To hold a public hearing for the Bill. This was due to the fact that it received only one response following the advert for call of memoranda placed in the major dailies.
2. To meet with the Kenya Accreditation Service on account of the provisions of clause 22, particularly the Accreditation Committee and the Appeals Tribunal.
3. To meet the Kenya Accreditation Service prior to proposing any amendment to clauses 10 and 11.

MIN. NO.102/DC-N/2018

ANY OTHER BUSINESS

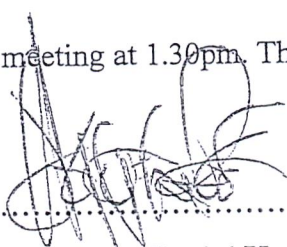
The Committee resolved to undertake a report writing retreat in Mombasa from 11th to 14th October, 2018. Members were urged to purpose to attend so as to deal with the pending business before the Committee.

MIN. NO.103/DC-N/2018

ADJOURNMENT

The Chairperson adjourned the meeting at 1.30pm. The next meeting will be called on notice.

SIGNED.....



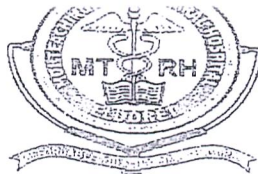
Hon. Kanini Kega, MP

(Chairperson)

DATE.....

4/12/2018

ANNEXTURE III



An ISO 9001:2015 Certified Hospital



1) 01/committee
8
19/11

MOI TEACHING AND REFERRAL HOSPITAL

Telephone: (+254)-0532033471/2/3/4
Fax: 0532061749
Email: ceo@mtrh.go.ke/directorsofficemtrh@gmail.com

NANDI ROAD
P.O. BOX 3-30100
ELDORET, KENYA

Ref: ELD/MTRH/ADMIN/1/9/VOL.III/2017

16th November, 2018

Clerk of the National Assembly
Clerk's Assembly
Parliament Buildings
P.O Box 41842 - 00100
NAIROBI

2) Ericks
pls deep
FA
20/11

Attn: Jeremiah W. Ndombi

Dear

MEETING WITH THE DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES REGARDING THE KENYA ACCREDITATION SERVICE BILL, 2018

This is to acknowledge receipt of your letter, Ref. NA/DCS/TIC/2018/35 dated 9th November, 2018.

Moi Teaching and Referral Hospital (MTRH) appreciates the opportunity given to us as a stakeholder offering accredited Medical Laboratory services to give input to The Kenya Accreditation Service Bill, 2018.

Attached, herein is a Memorandum prepared by MTRH as our input to be discussed during the meeting with Departmental Committee on Trade, Industry and Cooperatives Committee – National Assembly.

Kindly note that my first name is Wilson, and not William as indicated in your correspondence to me. I would appreciate if you amend my name and designation (Chief Executive Officer) in your future communication.

Yours

DR. Wilson K. Aruasa
DR. WILSON K. ARUASA, MBS
CHIEF EXECUTIVE OFFICER



Encl.

All correspondence should be addressed to the Chief Executive Officer

Visit our website: www.mtrh.go.ke

TO BE A LEADING MULTI-SPECIALTY HOSPITAL FOR HEALTHCARE, TRAINING AND RESEARCH IN AFRICA

MEMORANDUM ON INPUT TO THE KENYA ACCREDITATION
SERVICE BILL, 2018

TO BE DISCUSSED DURING THE MEETING WITH THE
DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND
COOPERATIVES COMMITTEE-NATIONAL ASSEMBLY

PART II: Establishment, Powers and Functions of the Service

To include registration of personnel performing conformity assessment in the country and regulate consultancy and trainers (Standardized trainings).

(13) An eligible candidate for appointment for the position of Chief Executive Officer could as well be from the pool of serving public officers since there are lots of investments in them on capacity building and have a wealth of experience.

PART III- Board of Management of the Kenya Accreditation Services

1. In Section 7, qualification for Board membership left out e.g., fulfilment of Chapter Six of The Kenya Constitution requirements, be in good standing with respective professional body, experience in senior management positions, must not be an employee of the accrediting body.
2. Reference to members of the Board being selected on basis of being experts is vague. There is no prescription of how 'expertise' shall be determined. The following can be proposed:
 - i. Holds a degree in the relevant field from a university recognized in Kenya; or
 - ii. Has knowledge and at least ten years' experience in matters relating to either: -
 - iii. Include an expert Registered in Medical Laboratory practice to safeguard the interests of health care facilities.

This applies *mutatis mutandis* to the CEO, Accrediting Committee Members and Appeals Committee Members.

Details should be provided on qualification, appointment process and revocation/disqualification process.

3. The Governance Structure for the Service is not well enumerated, particularly on the powers held by the Board vs the Accrediting Committee, Accrediting Committee vs CEO, e.g. Having an Accrediting Committee appointed by the CEO and at the same time delegating powers to the CEO will pose governance challenges.
4. There is no mention of the other key staff of the Service.
5. The Bill lacks provisions on monitoring Conformity Assessment Bodies (CABs). This should be done by the Service as one of its functions. The Bill should also contain some mention on the qualifications/eligibility criteria for Conformity Assessment Bodies & reporting requirements to the Service, general guiding principles for CAB's in their operations, monitoring by CAB's, accreditations issued, costing of their services etc.
 - (a). The Bill should state in general terms the mandatory requirements which CABs must meet for initial and continuing registration. Regular monitoring by KENAS to ensure they are meeting the minimum requirements. Suspension/ De-registration and Re-registration of Suspended or Deregistered CABs.
 - (b). The need for KENAS Board to come up with more detailed Guidelines and Regulations (that must be gazetted) to be used in overseeing the registration, working and other issues to do with the CABs
6. Offences section is severely watered down.

7. (16) Protection of personal Liability-Board members should not be cushioned from liabilities because they make critical decisions that could affect interests of the Service either way.

PART IV- Accreditation

8. This process should have defined timelines from assessment to when feedback is given to the Auditee for bodies conducting conformity assessment.

9. Accreditation Committee

- a. Committee secretary and their appointment procedure is not captured. Alternatively, Secretariat services can be provided by the Service.
- b. Second Schedule Paragraph 4; Meetings of the Accreditation Committee are to be held at the headquarters, approval to hold it outside the headquarters should be done by a person other than the Secretary of the committee e.g. the CEO or the Board Chair. (Apply *mutatis mutandis* to the Board meeting outside the headquarters and approval to be done by Cabinet Secretary)

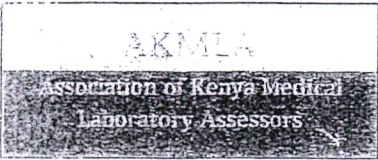
Prepared by;

By *D. Wilson* 16/11/12

DR. WILSON K. ARUASA, MBS

CHIEF EXECUTIVE OFFICER, MTRH- ELDORET





C/O Dept of human pathology, UON/KNH Grounds,
Upper hill Box 2362-00202 Nairobi Kenya

EMAIL: infoakmla@gmail.com

19th November, 2018

The Clerk,

Kenya national assembly

Parliament building

Nairobi

Dear Sir,

RE: Kenya Accreditation service bill 2018 submissions

Ours is an association of medical laboratory assessors in Kenya that is concerned with assessment for accreditation of medical laboratories locally and abroad.

We, wish to find out as stakeholders about the consideration of our comments on the above bill.

We would be most obliged to appear before the parliamentary committee of trade, industry and cooperatives and present our proposals as major stakeholders that operate in the medical world.

Thank you for your consideration.

Wakungwi Sakwa J.R.(SMLT)

Secretary General

AKMLA

① D Controller
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ple note
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FA
21/11/18

