SPECIAL ISSUE

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REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2024

NAIROBI, 1st February, 2024

CONTENT

Bill for Introduction into the National Assembly—

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THE STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2024

A Bill for

AN ACT of Parliament to amend the Statutory Instruments Act

ENACTED by the Parliament of Kenya as follows—

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

2. Section 11 of the Statutory Instruments Act, 2013 (in this Act referred to as the "principal Act") is amended by inserting the following new subsections immediately after subsection (4)— Amendment of section 11 of No. 23 of 2013.

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

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

3. Section 12 of the principal Act is amended by deleting subsection (3). Amendment of section 12 of No. 23 of 2013.

4. Section 14 of the principal Act is amended by inserting the words "recommend to the House to" immediately after the words" the Committee may". Amendment of section 14 of No. 23 of 2013.

5. The principal Act is amended by deleting section 19 and substituting therefor the following new section— Amendment of section 19 of No. 23 of 2013.

Requirements for publishing an annulment.

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

(a) the instrument shall stand annulled; and

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

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

6. The principal Act is amended by deleting the heading to Part V and substituting therefor the following new heading — Amendment of title of PART V of No. 23 of 2013.

"PART V –PURPOSE FOR REVIEW OF STATUTORY INSTRUMENTS"

7. The principal Act is amended by repealing section 21. Amendment of section 21 of No. 23 of 2013

8. Section 24 of the principal Act is amended in subsection (5) by deleting the words "not exceeding twenty thousand shillings or such term of imprisonment not exceeding six months" and substituting therefor the words "not exceeding one million shillings or such term of imprisonment not exceeding five years". Amendment of section 24 of No. 23 of 2013.

9. Section 27 of the principal Act is amended by inserting the following new subsection immediately after subsection (2) — Amendment of section 27 of No. 23 of 2013.

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

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons for the Bill

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated the 30th January, 2024.

KIMANI ICHUNG'WAH,
Leader of Majority Party.

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

11. Laying of statutory instruments before Parliament

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

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

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

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

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

12. Referral to the Committee

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

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

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

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

19. Revocation

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

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

PART V – STAGED AUTOMATIC EXPIRY OF STATUTORY INSTRUMENTS

21. Automatic revocation of statutory instruments

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

(a) it is sooner repealed or expires; or

(b) a regulation is made exempting it from expiry.

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

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

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

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

24. Exercise of powers

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

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

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

(4) Where any enactment power is conferred on any person to make a statutory instrument or to do anything for any general purpose, and also for any special purposes incidental thereto, the enumeration of the special purposes shall not derogate from the generality of the general purpose.

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

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

27. Transition and saving

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

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