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MINISTRY OF AGRICULTURE

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DIRECTORATE OF LEGAL SERVICES
NATIONAL ASSEMBLY
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P.O. Box 41842 - 00100

**THE NATIONAL TRANSPORT AND SAFETY
AUTHORITY (AMENDMENT) BILL, 2024**

A Bill for

AN ACT of Parliament to amend the National Transport and Safety Authority Act, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the National Transport and Safety Authority (Amendment) Act, 2024 and shall come into force upon notice in the Gazette.

Short title and commencement.

2. The National Transport and Safety Authority Act (hereinafter referred to as “the principal Act”) is amended in section 1 by deleting the word “Transport” and substituting therefor the word “Transportation”.

Amendment of section 1 of Cap. 404.

3. Section 2 of the principal Act is amended—

Amendment of section 2 of Cap. 404.

(a) in the definition of the term “Authority”, by deleting the word “Transport” and substituting therefor the word “Transportation”;

(b) by inserting the following new definitions in their proper alphabetical sequence—

“internal waters” has the meaning assigned to it in the Merchant Shipping Act;

Cap. 389

“investigator” means a person appointed as such by the Authority on the basis of his or her qualifications and experience and charged with the responsibility for the organisation, conduct and control of an investigation into an accident or incident;

“railway” has the meaning assigned to it in the Kenya Railways Corporation Act;

Cap. 397

“transportation” includes air transport, road transport, rail transport, transport by pipeline and other forms of underground and land surface transport.

4. Section 3 of the principal Act is amended by deleting the word “Transport” appearing in subsection (1) and substituting therefor the word “Transportation”.

Amendment of section 3 of No. 33 of 2012.

5. Section 4 of the principal Act is amended—

Amendment of section 4 of Cap. 404.

(a) in subsection (1), by—

- (i) deleting the phrase “road transport and safety” appearing in paragraph (a), and substituting therefor the phrase “transportation safety”;
- (ii) deleting the phrase “road transport and safety” appearing in paragraph (b), and substituting therefor the phrase “transportation safety”;
- (iii) deleting the phrase “road transport” appearing in paragraph (d), and substituting therefor the word “transportation”;

(iv) inserting the following new paragraphs immediately after paragraph (d)—

“(da) co-ordinate transportation safety activities;

(db) investigate or cause to be investigated, in such detail as it shall prescribe, and determine the facts, conditions and circumstances and the cause or probable cause of any—

- (i) aircraft accident;
- (ii) road accident;
- (iii) railway accident;
- (iv) marine accident occurring in Kenya’s internal waters;
- (v) pipeline accident in which there is a fatality or substantial property damage;
- (vi) other accident relating to the transportation of people or property which, in the opinion of the Authority, is catastrophic or involves problems of a recurring character,

and recommend actions or measures to be undertaken to avoid occurrences of accidents in future;

(dc) monitor and report on the safety of the transportation sector”;

(b) in subsection (2), by—

(i) deleting paragraph (d) and substituting therefor the following new paragraph (d)—

“(d) in consultation with the relevant transportation regulatory agencies stakeholders, advise the national and county governments on all matters relating to transportation safety”;

(i) deleting the word “road” appearing in paragraph (e) and substituting therefor the word “transportation”;

(ii) deleting the words “road” appearing in paragraph (f) and substituting therefor the word “transportation”;

(iii) deleting paragraph (g) and substituting therefor the following new paragraph (g)—

“(g) conduct research and audits on the various modes of transportation and develop and disseminate information on matters relating to transportation safety”;

(iv) inserting the following new paragraphs immediately after paragraph (g)—

“(ga) protect consumer interests in the safety, cost, quality and standards of transportation services;

(gb) create civic awareness on transportation safety and other related matters;

- (gc) ensure safety and efficiency of the various forms of transportation in collaboration with the regulatory agencies responsible for transport by air, rail, transport by pipeline and relevant stakeholders;
- (gd) perform any other function relating to transportation safety.”

6. Section 22 of the principal Act is amended by—

Amendment of section 22 of Cap. 404.

- (a) deleting the phrase “road transport” appearing in paragraph (a) and substituting therefor the word “transportation”;
- (b) deleting the phrase “road transport” appearing in paragraph (b) and substituting therefor the word “transportation”;
- (c) deleting the phrase “road transport” appearing in paragraph (c) and substituting therefor the word “transportation”.

7. The principal Act is amended by inserting the following new Part immediately after section 44—

Insertion of new Part IVA in Cap. 404.

PART IVA—INVESTIGATION OF ACCIDENTS AND INCIDENTS

Appointment of investigators of accidents.

44A. (1) For the purposes of carrying out responsibilities under section 4(1) (db), the Authority shall appoint, by notice in the *Gazette*, investigators of accidents.

(2) The investigation of an accident or incident under this Act shall be conducted to determine the facts, conditions, circumstances and safety factors, and where possible the probable cause of the accident, with the sole objective of prevention of future accidents and incidents and not to apportion blame or liability.

(3) The Cabinet Secretary shall prescribe the qualifications for appointment as an investigator under this section.

(4) The Authority may appoint in writing any persons with special skills or knowledge in a specialized area in an advisory capacity in any case where it appears to the Authority that such special skills or knowledge are required for proper completion of an investigation.

44B. (1) Where the whole or any part of an investigation is carried out in Kenya, an investigator shall have—

Accident
investigation
procedure.

- (a) free and unhindered access to the site of the accident or incident as well as to the aircraft, vehicle, train, vessel or pipeline, their contents or wreckages;
- (b) powers to secure and preserve the scene of the accident; and
- (c) free access to any relevant information or records held by the owner, the operator, the operator's maintenance contractors and subcontractors, the hirer, the designer or the manufacturer of the aircraft vehicle, train, vessel or pipeline, as the case may be, and by such other authorities as the Authority may consider necessary.

(2) The Cabinet Secretary shall establish an incident reporting system to facilitate collection of information on actual and potential safety deficiencies

(3) Upon completion of the accident investigation, the Authority shall publish the final report of the findings in the *Gazette*.

(4) The final report referred to in subsection (3), or part of such report, shall not be admissible as evidence in a court of law or used in any suit or action for damages arising out of any matter mentioned in such reports.

(5) An investigator may, at any stage of an investigation—

- (a) recommend to the appropriate authorities any preventive action that the investigator considers necessary to be taken promptly to enhance transportation safety; and
- (b) communicate to the relevant person or authorities in Kenya, the recommendations referred above.

(6) Any person or authority in Kenya to whom a recommendation has been communicated under subsection (5), shall take that recommendation into consideration and, where appropriate, act upon it or provide a full explanation as to why no measures shall be taken to implement the recommendation.

(7) Information gathered in the course of an accident investigation and through the incident reporting system shall not be put to inappropriate use.

(8) Where an investigator has reasons to believe that a person is capable of supplying information, producing a document or giving evidence that may assist in the performance of an investigation, the investigator may by summons signed by himself or herself and served on that person, require the person to—

- (a) furnish the information in writing signed by the person served, and in the case of a body corporate, signed by a competent officer of the body corporate;
- (b) produce documents; and
- (c) give evidence.

(9) A summon made under subsection (8) shall specify the required time and manner of compliance.

(10) A person shall not be excused from complying with summons under this section on the grounds that compliance may incriminate the person or make the person liable to a penalty, but such information, documents or evidence shall not be admissible against that person for purposes other than proceedings under this Act.

(11) A person who, without lawful excuse, refuses or fails to comply with a summon under this section commits an offence and is liable on conviction to a fine of not less than fifty thousand shillings or to imprisonment for a term not less than six months or to both.

(12) Where an investigator has reason to believe that a person is in possession or control of any information or document which may assist in the performance of an investigation and that person has refused or failed to supply such information or document, the chief investigator may apply to a competent court for issuance of a warrant authorising a police officer to enter into any premises believed to contain or into which a document is kept or hidden and conduct search and make copies or take extracts of documents therein.

(13) A person who, knowingly gives false or misleading information or evidence in purported compliance with a summons under this section, commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months.

8. Section 47 of the principal Act is amended—

- (a) in subsection (1), by deleting the phrase “National Road Transport and Safety Fund” and substituting therefor the phrase “National Transportation Safety Fund”; and

Amendment of
Cap. 404.

(b) in subsection (3) by—

- (i) deleting the phrase “road transport” appearing in paragraph (a) and substituting therefor the word “transportation”;
- (ii) deleting the word “road” appearing in paragraph (b) and substituting therefor the word “transportation”;
- (iii) deleting the word “road” appearing in paragraph (c) and substituting therefor the word “transportation”.

9. The laws specified in the first column of the Schedule are amended in the provisions respectively specified in the second column, in the manner respectively specified in the third column.

Consequential amendments.

10.(1) Any inquiry into or investigation of a transportation accident or incident which, on the commencement date of this Act, is ongoing and being carried out by a relevant authority under any written law in force at that moment shall continue being carried out by that authority until its conclusion, and the findings thereof shall be reported in the manner contemplated in that written law.

Transition and saving.

(2) A person appointed as an investigator under the repealed section 53 of the Civil Aviation Act shall, on the commencement date of this Act, be deemed to have been appointed as an investigator under section 44A of the principal Act, and shall henceforth be deemed to be an investigator of accidents under the principal Act.

Cap. 394

SCHEDULE

<i>Written Law</i>	<i>Provision</i>	<i>Amendment</i>
Kenya Maritime Authority Act (Cap. 370)	s.5(1)(m)	Delete.
Shipping Act (Cap. 389)	Act New	<p>Insert the following new section immediately after section 10—</p> <p>10A. (1) Notwithstanding any other provision to the contrary, a marine accident or safety-related incident under this Act shall be inquired into or investigated by the National Transportation and Safety Authority established under the National Transportation and Safety Authority Act.</p> <p>(2) Any power to inquire into or investigate a marine accident or safety-related incident conferred on the Director-General under this Act shall be exercised by the National Transportation Safety Authority as if the same were conferred on, and exercisable by, the National Transportation and Safety Authority.</p>
Civil Aviation Act (Cap. 394)	s. 2	Delete the definition of “chief investigator”.
		Delete the definition of “investigator-in-charge”.
		In the definition of “safety recommendation”, delete the expression “of the chief investigator or the investigator-in-charge”.
	s. 7(1) (g)	Delete the expression “conducted by the chief investigator”.
	s. 52	Delete paragraph (b).
	s. 53	Delete.
	s. 54	Delete.

MEMORANDUM OF OBJECTS AND REASONS

The principal objective of this Bill is to amend the National Transport and Safety Authority Act (Cap. 404) to assign the function of overall responsibility for safety of land transport including transport by road, railway, pipeline and any other form of land transport to the National Transport and Safety Authority. It seeks to have an integrated and unified approach towards regulation of safety of various modes of transportation, unlike the current fragmented approach where different regulatory agencies regulates different modes of transportation, in order to promote transportation safety and enhance transportation efficiency.

This is in keeping with the best practices elsewhere where regulation of various forms of transportation is integrated under one regulatory agency. The current legal framework does not provide for a co-ordinated approach to transportation safety, which has created a scenario where each of the regulatory agencies in the transportation sector handles their safety issues independent of each other.

The Bill also seeks to provide a mechanism for safeguarding transportation safety and investigating transportation accidents, and making appropriate recommendations to forestall future occurrence of such accidents.

The Bill further seeks to make consequential amendments to the Kenya Maritime Authority Act (Cap. 370), the Merchant Shipping Act (Cap. 389) and the Civil Aviation Act (Cap. 394) to confer the powers of investigating marine and aviation accidents and incidents upon the proposed National Transportation and Safety Authority. The Bill also provides for transition and savings provisions, occasioned by the consequential amendments.

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

The Bill does not delegate legislative powers and does not limit fundamental rights and freedoms.

Statement on whether the Bill concerns county governments

The Bill concerns county governments in terms of Article 110(1)(a) of the Constitution.

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

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

Dated the 21st March, 2024.

JOHN KIRAGU CHEGE,
Member of Parliament.

Section 5 of Cap. 370 which it is proposed to amend—

Functions of the Authority.

5. (1) The functions of the Authority are to carry out such functions as may be necessary to give effect to the objects of this Act and without prejudice to the generality of the foregoing, the Authority shall have the duty to—

- (a) administer and enforce the provisions of the Merchant Shipping Act (Cap. 389) and any other legislation relating to the maritime sector for the time being in force;
- (b) co-ordinate the implementation of policies relating to maritime affairs and promote the integration of such policies into the national development plan;
- (c) advise government on legislative and other measures necessary for the implementation of relevant international conventions, treaties, and agreements to which Kenya is a party;
- (ca) liaise with the National Electronic Window System established under section 3 of the National Electronic Single Window System Act (Cap. 485D) to establish digital and electronic platforms and facilitate collaboration with other agencies to promote trade;
- (d) undertake and co-ordinate research, investigation, and surveys in the maritime field;
- (e) discharge flag State and port State responsibilities in an efficient and effective manner having regard to international maritime conventions, treaties, agreements and other instruments to which Kenya is a party;
- (f) develop, co-ordinate and manage a national oil spill contingency plan for both coastal and inland waters and shall in the discharge of this responsibility be designated as the “competent oil spill authority”;
- (g) maintain and administer a ship register;
- (h) deal with matters pertaining to maritime search and rescue and coordinate the activities of the Kenya Ports Authority, the Kenya Navy and any

- other body engaged during search and rescue operations;
- (i) enforce safety of shipping, including compliance with construction regulations, maintenance of safety standards and safety navigation rules;
 - (j) conduct regular inspection of ships to ensure maritime safety and prevention of marine pollution;
 - (k) oversee matters pertaining to the training, recruitment and welfare of seafarers;
 - (l) plan, monitor and evaluate training programmes to ensure conformity with standards laid down in international maritime conventions;
 - (m) conduct investigations into maritime casualties including wreck;
 - (n) undertake enquiries with respect to charges of incompetence and misconduct on the part of seafarers;
 - (o) ensure, in collaboration with such other public agencies and institutions, the prevention of marine source pollution, protection of the marine environment and response to marine environment incidents;
 - (p) regulate activities with regard to shipping in the inland waterways including the safety of navigation;
 - (pp) implement and undertake co-ordination in maritime security; and
 - (q) undertake any other business which is incidental to the performance of any of the foregoing functions.

(2) For the purpose of the performance of its functions under this Act, the Authority may do anything and enter into any transaction which, in the opinion of the Authority is necessary or incidental to its functions, and in Particular and without prejudice to the generality of the foregoing, the Authority may impose fees or charges for the use of any service provided by the Authority.

Section 52 of Cap. 394 which it is proposed to amend—

International obligations.

52. The Cabinet Secretary shall be responsible for—

- (a) civil aviation policies;
- (b) investigation of civil aircraft accidents and incidents for the sole purpose of prevention of further occurrence of similar accidents and incidents;
- (c) establishment of incident reporting systems to facilitate collection of information on actual and potential safety deficiencies;
- (d) establishment and review of air services agreement in an open and transparent manner;
- (e) submission of variations to the Chicago Convention, any Annex to the Convention relating to international standards and recommended practices and any amendment thereto, or other international conventions and protocols, relating to civil aviation that Kenya is party to.

Section 53 of Cap. 394 which it is proposed to delete—

Appointment of investigators of accidents.

53. (1) For the purposes of carrying out responsibilities under section 52(b) and (c), the Cabinet Secretary shall appoint, by way of Gazette notice, investigators of accidents from whom he or she shall appoint a chief investigator of air accidents and his or her Deputy.

(2) The investigation of an accident or incident under this Act shall be conducted to determine the facts, conditions, circumstances and safety factors, and where possible the probable cause of the accident, with the sole objective of prevention of future accidents and incidents and not to apportion blame or liability.

(3) Investigators appointed under subsection (1) shall have a professional pilot's background, or an aeronautical engineering qualification, or air traffic control qualification or, as appropriate, experience in specialized areas of aviation such as operations, aerodynamics and aircraft design.

(4) The Cabinet Secretary may appoint in writing any persons with special skills or knowledge in specialized areas of aviation in an advisory capacity in any case where

it appears to the Cabinet Secretary that such special skills or knowledge are required for proper completion of the investigation.

Section 54 of Cap. 394 which it is proposed to delete—

Accident
Investigation
procedure.

54. (1) Where the whole or any part of the investigation is carried out in Kenya, the chief investigator, the investigator-in-charge shall have—

- (a) free and unhindered access to the site of the accident or incident as well as to the aircraft, its contents or its wreckage;
- (b) powers to secure and preserve the scene of the accident; and
- (c) free access to any relevant information or records held by the owner, the operator, the operator's maintenance contractors and subcontractors, the hirer, the designer or the manufacturer of the aircraft and by the authorities for civil aviation or airport operation or Air Traffic Service.

(2) The Cabinet Secretary shall establish an incident reporting system to facilitate collection of information on actual and potential safety deficiencies.

(3) Upon completion of the accident investigation, the investigator-in-charge shall submit a final report of the findings to the Cabinet Secretary for publication in the Gazette.

(3A) No part of the final report referred to under subsection (3) shall be admissible as evidence in a court of law or used in any suit or action for damages arising out of any matter mentioned in such reports.

(4) The investigator-in-charge may, at any stage of an investigation—

- (a) recommend to the appropriate authorities, including those in other Contracting States, any preventive action that he or she considers necessary to be taken promptly to enhance aviation safety; and
- (b) communicate to the relevant person or authorities in Kenya, the recommendations referred above or those received from another Contracting State.

(5) Any person or authority in Kenya to whom a recommendation has been communicated under subsection (4), shall take that recommendation into consideration and, where appropriate, act upon it or provide a full explanation as to why no measures shall be taken to implement the recommendation.

(6) Information gathered in the course of an accident investigation and through the incident reporting system shall not be put to inappropriate use.

(7) Where the chief investigator has reasons to believe that a person is capable of supplying information, producing a document or giving evidence that may assist in the performance of an investigation, the chief investigator may by summons signed by himself or herself or the investigator-in-charge and served on that person, require the person—

- (a) to furnish the information in writing signed by the person served, and in the case of a body corporate, signed by a competent officer of the body corporate;
- (b) to produce documents; and
- (c) to give evidence.

(8) A summon made under subsection (7) shall specify the required time and manner of compliance.

(9) A person shall not be excused from complying with summons under this section on the grounds that compliance may incriminate the person or make the person liable to a penalty:

Provided that such information, documents or evidence shall not be admissible against that person other than proceedings under this Act.

(10) A person who, without lawful excuse, refuses or fails to comply with a summon under this section commits an offence and is liable on conviction to a fine of not less than fifty thousand shillings or to imprisonment for a term not less than six months or to both.

(11) Where the chief investigator has reason to believe that a person is in possession or control of any information or document which may assist in the performance of an

investigation and that person has refused or failed to supply such information or document, the chief investigator may apply to the Tribunal for issuance of a warrant authorising a police officer to enter into any premises believed to contain or into which a document is kept or hidden and conduct search and make copies or take extracts of documents therein.

(12) Any person, who knowingly gives false or misleading information or evidence in purported compliance with a summons under this section, commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months.

Section 2 of Cap. 404 which it is proposed to amend—

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“Authority” means the National Transport and Safety Authority established under section 3;

“authorized person” means a person authorized the Authority to carry out duties and functions under this Act;

“Board” means the Board of Directors of the Authority constituted under section 8;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to transport;

“Chairperson” means the Chairperson of the Board appointed under Section 8;

“driver” means a person who drives or guides or is in the physical control of any vehicle on the road;

“driving licence” means a licence to drive a motor vehicle issued under the Traffic Act (Cap. 403), and any document deemed to be a driving licence under the Act;

“levy” means the national transport and safety levy established under Section 46;

“motor vehicle” has the meaning assigned to it under the Traffic Act (Cap. 403);

“public service vehicle” has the meaning assigned to it under the Traffic Act (Cap. 403).

(2) Notwithstanding subsection (1), until after the first

elections under the Constitution, references in this Act to the expressions “Cabinet Secretary” and “Principal Secretary” shall be construed to mean “Minister” and “Permanent Secretary” respectively.

Section 4 of Cap. 404 which it is proposed to amend—

Functions of the Authority

4. (1) The functions of the Authority shall be to—
 - (a) advise and make recommendations to the Cabinet Secretary on matters relating to road transport and safety;
 - (b) implement policies relating to road transport and safety;
 - (c) plan, manage and regulate the road transport system in accordance with the provisions of this Act;
 - (d) ensure the provision of safe, reliable and efficient road transport services; and
 - (e) administer the Act of Parliament set out in the First Schedule and any other written law.
- (2) In the performance of its functions under subsection (1), the Authority shall—
 - (a) register and license motor vehicles;
 - (b) conduct motor vehicle inspections and certification;
 - (c) regulate public service vehicles;
 - (d) advise the Government on national policy with regard to road transport
 - (e) system;
 - (f) develop and implement road safety strategies;
 - (g) facilitate the education of the members of the public on road safety;
 - (h) conduct research and audits on road safety;
 - (i) compile inspection reports relating to traffic accidents;
 - (j) establish systems and procedures for, and oversee the training,
 - (k) testing and licensing of drivers;
 - (l) formulate and review the curriculum of driving schools;
 - (m) co-ordinate the activities of persons and organizations dealing in

- (n) matters relating to road safety; and
- (o) perform such other functions as may be conferred on it by the Cabinet Secretary or by any other written law.

Section 22 of Cap. 404 which it is proposed to amend—

Function of the
County Transport
Safety Committee.

22. Each county transport and safety committee shall be under the direction and supervision of the Authority and shall—

- (a) oversee the management and regulation of the road transport system by the Authority at the county level;
- (b) prepare and submit to the Authority such audit reports as the Authority may require on the safety, reliability and efficiency of the road transport system within the county;
- (c) advise the Authority on matters affecting the road transport system within the county; and
- (d) perform such other functions as may be assigned to it by the Authority.

Section 47 of Cap. 404 which it is proposed to amend—

National Transport
and Safety Fund.

47. (1) There is established a Fund to be known as the National Road Transport and Safety Fund which shall vest in the Authority.

(2) There shall be paid into the Fund—

- (a) moneys appropriated by Parliament;
- (b) the levy;
- (c) grants and donations made to the Authority; and
- (d) moneys from a source approved by the Authority

(3) The Authority shall apply the moneys received into the Fund to—

- (a) conduct research activities and audits on road transport safety;
- (b) conduct road safety education and awareness campaigns;
- (c) implement road safety strategies; and
- (d) carry out the operations of the Authority.

(4) All receipts, savings and accruals for the Fund and the balance of the Fund at the end of the financial year shall be retained for the purposes for which the Fund is established.

(5) There shall be paid out of the Fund any expenditure incurred by the Authority in the exercise of its powers or the performance of its functions under this Act.

