

Approved for tabling.

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- FOURTH SESSION (2020)

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON

THE STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2018

(Senate Bill No. 24 of 2018)

MARCH 2020

*Directorate of Committee Services
The National Assembly,
Parliament Buildings,
NAIROBI*

Table of Contents

ABBREVIATIONS	ii
CHAIRPERSON'S FOREWORD	1
1.0 PREFACE	2
1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE	2
1.2 COMMITTEE MEMBERSHIP	3
1.3 COMMITTEE SECRETARIAT	1
2.0 CONSIDERATION OF THE STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2018	2
2.1 BACKGROUND INFORMATION	2
2.2 OBJECT AND OVERVIEW OF THE BILL	2
2.3 PUBLIC PARTICIPATION	3
2.3.1 Submissions from the Kenya Law Reform Commission	3
2.3.2 Submissions from the Kenya National Commission on Human Rights	3
3.0 COMMITTEE RECOMMENDATIONS	4
3.1 CLAUSE 2	4
3.2 CLAUSE 3	5
3.3 NEW CLAUSE 4	5
3.4 NEW CLAUSE 5	6
3.0 ANNEXURES	7

ABBREVIATIONS

COG	Council of Governors
SI	Statutory Instruments
SO	Standing Order

CHAIRPERSON'S FOREWORD

The Statutory Instruments (Amendment) Bill, 2018 sponsored by Sen. Samuel Poghio, MP Chairperson of the Senate Delegated Legislation Committee was published on 10th August, 2018 and read a First Time in the Senate on 13th September, 2018.

The Bill was passed with amendments by the Senate on Wednesday, 10th July 2019 and subsequently submitted to the National Assembly pursuant to Article 110(4) of the Constitution and the provisions of Standing Orders of the National Assembly seeking concurrence of the National Assembly on the Bill. Pursuant to the provisions of Standing Order 41(4), the Speaker of the National Assembly communicated to the House, the Message from the Senate regarding the Bill on 24th July, 2020. The Bill was read a First Time in the National Assembly on 25th July, 2019.

Having been cleared by the Budget and Appropriations Committees in accordance with Standing Order No. 143 (6) (a), the Speaker referred the Bill to the Committee on Delegated Legislation on 17th September, 2019.

The Bill seeks to amend the Statutory Instruments Act, 2013 to expressly include the Senate in the scrutiny process of statutory instruments.

The Committee has considered the Bill and its findings are contained in the body of the Report.

In conclusion, I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 127 (4), it is my pleasure and duty to present to the House the Committee's **Report on the Consideration of the Statutory Instruments (Amendment) Bill (Sen. Bill No. 21 of 2018).**

HON. GLADYS BOSS SHOLLEI CBS MP

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.
2. The Committee is mandated to consider in respect of any statutory instrument, whether it:
 - a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
 - d) contains imposition of taxation;
 - e) directly or indirectly bars the jurisdiction of the court;
 - f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
 - g) it involves expenditure from the consolidated fund or other public revenues;
 - h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
 - i) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
 - j) appears to have had unjustifiable delay in its publication or laying before Parliament;
 - k) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
 - l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
 - m) inappropriately delegates legislative powers;
 - n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
 - o) appears for any reason to infringe on the rule of law;
 - p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
 - q) accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

3. The Committee membership comprises –

Chairperson

Hon. Gladys Boss Shollei CBS MP
Uasin Gishu County Woman Representative
Jubilee Party

Vice- Chairperson

Hon. Fatuma Gedi, CBS, MP
Wajir County Woman Representative
Party for Development and Reforms

MEMBERS

Hon. Waihenya Ndirangu, MP
Roysambu Constituency
Jubilee Party

Hon. Alice Wahome, MP,
Kandara Constituency
Jubilee Party

Hon. Robert Mbui, MP
Kathiani Constituency,
Wiper Democratic Movement -Kenya

Hon. Daniel Maanzo, MP
Makueni Constituency
Wiper Democratic Movement -Kenya

Hon. Muriuki Njagagua, MP
Mbeere North Constituency
Jubilee Party

Hon. Timothy Wanyonyi, MP
Westlands Constituency
Orange Democratic Movement

Hon. Ronald Tonui, MP
Bomet Central Constituency
Jubilee Party

Hon. William Kamoti, MP
Rabai Constituency
Orange Democratic Movement

Hon. Martha Wangari, MP
Gilgil Constituency
Jubilee Party

Hon. Gideon Mulyungi, MP
Mwingi Constituency
Wiper Democratic Movement – Kenya

Hon. William Kassait Kamket, MP
Tiaty Constituency
KANU

Hon. (Dr.) Wilberforce Oundo, MP
Funyula Constituency
Orange Democratic Movement

Hon. George G. Murugara, MP
Tharaka Constituency
Democratic Party

Hon. Jennifer Shamalla, MP
Nominated
Jubilee Party

Hon. Munene Wambugu, MP
Kirinyaga Central Constituency
Jubilee Party

Hon. Muturi Kigano, MP
Kangema Constituency
Jubilee Party

Hon. Patrick Kariuki Mariru, MP
Laikipia West Constituency
Jubilee Party

Hon. Sammy Seroney, MP
Nominated
Wiper Democratic Movement – Kenya

Hon. Tindi Mwale, MP
Butere Constituency
Amani National Congress

Hon. Alfred W. Sambu, MP
Webuye East
Amani National Congress

Hon. Abdi Koropu Tepo, MP
Isiolo South Constituency
Kenya Patriots Party

1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises -

Ms. Susan Maritim
Senior Clerk Assistant (Team Leader)

Mr. Jimale Mohamed
Second Clerk Assistant

Mr. Dima Dima W.
Principal Legal Counsel

Mr. Josphat Motonu
Fiscal Analyst I

Ms. Ancetta Gacheri
Research Officer

Ms. Winnie Kiziah
Media Relations Officer II

Mr. Anthony Wamae
Serjeant at Arms

Mr. Charles Ayari
Superintendent of Electronics

Ms. Mary Otieno
Office Superintendent

2.0 CONSIDERATION OF THE STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2018

2.1 Background Information

5. The Statutory Instruments (Amendment) Bill, 2018 sponsored by Sen. Samuel Poghio, MP, Chairperson of the Senate Committee on Delegated Legislation Committee was published on 10th August, 2018 and read a First Time in the Senate on 13th September, 2018.
6. The Bill was passed with amendments by the Senate on Wednesday, 10th July, 2019 and subsequently submitted to the National Assembly pursuant to Article 110(4) of the Constitution and the provisions of Standing Orders of the National Assembly seeking concurrence of the National Assembly on the Bill.
7. Pursuant to the provisions of Standing Order 41(4), the Speaker of the National Assembly communicated to the House, the Message from the Senate regarding the Bill on 24th July, 2020. The Bill was read a First Time in the National Assembly on 25th July, 2019.
8. Having been cleared by the Budget and Appropriations Committees in accordance with Standing Order No. 143 (6) (a), the Speaker referred the Bill to the Committee on Delegated Legislation on 17th September, 2019.

2.2 Object and Overview of the Bill

9. The Bill seeks to amend the Statutory Instruments Act, 2013 to expressly include the Senate in the scrutiny process of statutory instruments.
10. The Bill proposes to amend the Statutory Instruments Act, 2013 as follows –

CLAUSE 1 of the Bill provides for the short title.

CLAUSE 2 of the Bill seeks to amend section 11 of the Act by—

- (a) deleting the words “responsible Clerk” appearing immediately after the words “transmitted to the” in subsection (1) and substituting therefor the words “Clerk of the Senate and the Clerk of the National Assembly”;
- (b) deleting subsection (2);
- (c) deleting the words “responsible Clerk” appearing in subsection (3) and substituting therefor the words “Clerk of each House”.

CLAUSE 3 of the Bill seeks to amend section 15 of the Act by deleting subsection (3) and substituting therefor the following new subsection —

“(3) Despite the provision of subsection (2), the extension of time by resolution of the House shall not exceed twenty-one days.”

CLAUSE 4 of the Bill seeks to introduce new section 15A, requiring that once a resolution has been made approving or annulling a statutory instrument, the Clerk of each House shall transmit the resolution to the other Clerk within 2 days.

CLAUSE 5 of the Bill seeks to amend the Act by deleting section 18 of the Act and substituting therefor the following new section —

“18. (1) When Parliament passes a resolution to annul a statutory instrument the statutory instrument shall be deemed to be annulled.

(2) The regulation making authority shall publish the annulment of the statutory instrument within fourteen days of the annulment.”

2.3 Public Participation

11. Pursuant to Article 118 of the Constitution, the public participation on the Bill was undertaken by the Senate Committee on Justice, Legal Affairs and Human Rights. The Senate invited submissions from members of the public vide an advertisement on *The Daily Nation* and *The Standard* Newspapers on 28th September, 2018.

12. A public hearing to receive submissions from the public was held on 17th October, 2018 at the Kenyatta International Conference Centre. The Committee also received written submissions from the Kenya Law Reform Commission (KLRC) and the Kenya National Commission on Human Rights (KNHCR). The two organisations submitted as follows —

2.3.1 Submissions from the Kenya Law Reform Commission

13. The Kenya Law Reform Commission submitted that the Statutory Instruments Act, 2013 currently does not provide for the procedure of transmission of statutory instruments in a bicameral parliament. There is therefore need to amend the said Act to include the procedure for transmission of statutory instruments between the two Houses of Parliament.

2.3.2 Submissions from the Kenya National Commission on Human Rights

14. The Kenya National Commission on Human Rights submitted that the involvement of the Senate in the law-making process will ensure adequate representation from the respective Counties and the general public.

15. The Commission further welcomed the spirit of inclusion and cooperation in the scrutiny of delegated legislation by both Houses. It proposed the need for further clarity in the scrutiny process, given the legislative mandates of the respective Houses and clarify if for instance, criteria similar to that under Article 110 of the Constitution would apply. For good order, it is important to include in the Act, the procedure to be followed when both Houses of Parliament are seized of the statutory instruments.

3.0 COMMITTEE RECOMMENDATIONS

In light of the Committee deliberations on the Bill, the Committee recommends that the Bill be AMENDED as follows —

3.1 CLAUSE 2

16. THAT, the Bill be amended by deleting Clause 2.

Justification

Most Statutory Instruments are made pursuant to Statutes /Acts which originate from and are passed and enacted in the National Assembly either because they have a money-bill effect or are not Bills concerning functions of county governments, hence are only passed by the National Assembly within the meaning of articles 109, 110 and 114 of the Constitution. Consequently, there are no requirements either Constitutional, statutory or otherwise for the regulations made thereunder to be scrutinized by the Senate as this would contravene articles 2(4), 94(6), 95, 96(2), 109, 110, 114 of, and the Fourth Schedule to the Constitution.

Further, Standing Order 210(4)(b)(ii) of the National Assembly Standing Orders has clear provisions and procedures of how the Committee deals with the Statutory Instruments made under a legislation concerning Counties (Senate Statutes) while Standing Order 211 provides clear procedures of dealing with Statutory Instruments forwarded from the Senate. There is hence no gap that the said amendment seeks to cure in the legislative process in both Houses of Parliament.

This amendment proposes scrutiny by both Houses for all Statutory Instruments. If the amendment is passed, the whole process may be too punitive and costly to the regulation making authorities and may hamper and slow down operationalization of the statutes/laws by the Executive, to the detriment of the general public.

17. THAT, Clause (b) of the Bill be rejected.

Justification

- i. This proposed amendment to the Act may contravene the provisions of Article 109 (2) and (3) of the Constitution. Further, Article 95(4) (c) and (5) (b) of the Constitution mandates the National Assembly to provide oversight over national revenue and its expenditure, and oversight of state organ (*which includes oversight over delegated legislation made by state organs*).
- ii. The Constitution further provides that Senate is to only legislate on matters concerning counties, unless otherwise provided in the law. **The National Assembly Standing Order 210(4)(b)** also provides guidelines on the statutory instruments made under legislation concerning Counties.

18. THAT, Clause 2 (c) of the Bill be rejected.

Justification

This amendment proposes scrutiny by both Houses for all Statutory Instruments. If the amendment is passed, the whole process may be too punitive and costly to the regulation making authorities and may hamper and slow down operationalization of the statutes/laws by the Executive, to the detriment of the general public.

3.2 CLAUSE 3

19. THAT, Clause 3 (a) be rejected.

Justification

Currently the Committee only prepares a Report for an annulment of a statutory instrument. Approval of an instrument is communicated directly to the regulation making authority without necessarily tabling a report in the House.

20. THAT, Clause 3 (b) of the Bill be rejected.

Justification

The Committee observed that the existing provision is general and applies to all acts regarding SI while the proposed amendments is limited to the time within which the Committee considers an instrument.

3.3 NEW CLAUSE 4

21. THAT, the Bill be amended by deleting the new Clause 4.

Justification

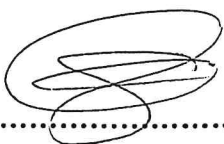
- i. The new clause seeks to introduce concurrence of both Houses, and to introduce the concept of a mediation committee. This proposal is too rigorous and punitive to the regulation making authorities, and further may subject the Committee to spending more of its time conforming to procedural technicalities rather than substantive analysis and scrutiny of the various instruments before it (as a process of overseeing the legislative agenda of State organs) as contemplated by Article 95(5)(b) of the Constitution and the Statutory Instruments Act.
- ii. Further, the proposal is well canvassed in the National Assembly Standing Order 211 which provides for the concurrence of Senate's resolution on statutory instruments. For instance, Standing Order 211(3) (b) provides for the creation of a joint committee should the National Assembly fail to agree with Senate's resolution.

3.4 NEW CLAUSE 5

22. THAT, the Bill be amended by deleting the new Clause 5.

Justification

The Committee observed that the current provision in the Act is adequate whereby publication is only required after revocation under section 19 of the Act. Section 18 provides that an annulment occurs where Parliament passes a resolution to annul a statutory instrument after it has been tabled. Section 19 provides that revocation occurs where the House adopts a report or resolution by the Committee to revoke a statutory instrument.

For  Signed.....

Date..... 10/3/2020

**HON. GLADYS BOSS SHOLLEI CBS MP
(CHAIRPERSON)**

3.0 ANNEXURES

- 1. Adoption List**
- 2. Report of the Senate Committee on Justice, Legal Affairs and Human Rights**
- 3. Committee Minutes**

COMMITTEE ON DELEGATED LEGISLATION

ADOPTION LIST



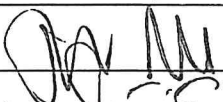
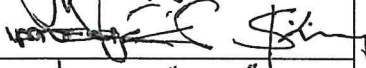

Adoption of the Report on the Statutory Instruments (Amendment) Bill, 2018

(Senate Bill No.24 of 2018)

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 03/03/2020

	HON. MEMBER	SIGNATURE
1.	Hon. Gladys Boss Shollei CBS, MP (Chairperson)	
2.	Hon. Fatuma Gedi, MP, CBS, (Vice Chairperson)	
3.	Hon. Isaac Waihenya Ndirangu, MP	
4.	Hon. Alfred Wekesa Sambu, MP	
5.	Hon. Muriuki Njagagua, MP	
6.	Hon. Alice Wahome, MP	
7.	Hon. Gideon Mulyungi, MP	
8.	Hon. Daniel Maanzo, MP	
9.	Hon. Robert Mbui, MP	
10.	Hon. Martha Wangari, MP	
11.	Hon. Ronald Kiprotich Tonui, MP	
12.	Hon. Timothy Wanyonyi, MP	
13.	Hon. William Kamoti, MP	
14.	Hon. Patrick Kariuki Mariru, MP	
15.	Hon. (Dr.) Wilberforce Oundo, MP	
16.	Hon. Abdi K. Tepo, MP	
17.	Hon. George Gitonga Murugara, MP	

	HON. MEMBER	SIGNATURE
18.	Hon. Jennifer Shamalla, MP	
19.	Hon. Munene Wambugu, MP	
20.	Hon. Muturi Kigano, MP	
21.	Hon. Sammy Seroney, MP	
22.	Hon. William Kamket Kassait, MP	
23.	Hon. Tindi Mwale, MP	

REPUBLIC OF KENYA



TWELFTH PARLIAMENT THE SENATE

**The County Statutory Instruments Bill (Senate Bills No. 21 of 2018)
The Petition to County Assemblies (Procedure) Bill (Senate Bills No. 22 of 2018)
The Treaty Making and Ratification (Amendment) Bill (Senate Bills No. 23 of 2018)
The Statutory Instruments (Amendment) Bill (Senate Bills No. 24 Of 2018)**

PUBLIC HEARINGS/ RECEIPT OF MEMORANDA

The County Statutory Instruments Bill (Senate Bills No. 21 of 2018), the Petition to County Assemblies (Procedure) Bill (Senate Bills No. 22 of 2018), the Treaty Making and Ratification (Amendment) Bill (Senate Bills No. 23 of 2018) and the Statutory Instruments (Amendment) Bill (Senate Bills No. 24 Of 2018) were read a First Time in the Senate on 13th September, 2018 and thereafter stood committed to the Senate Standing Committee on Justice, Legal Affairs and Human Rights.

Pursuant to the provisions of Article 118 and standing order 134 (5) of the Standing Orders of the Senate, the Standing Committee on Justice, Legal Affairs and Human Rights now invite interested members of the public to submit any representations that they may have on the Bills. The representations may be made orally or by submission of written memoranda in the following manner –

1. Public Hearings shall be held on **Wednesday, 10th October, 2018 from 10.00 a.m. to 1.00 pm at the Mini Chamber, County Hall, Parliament Buildings, Nairobi;** or
2. Written Memoranda may be forwarded to the **Clerk of the Senate/ Secretary Parliamentary Service Commission, P.O. Box 41842-00100, Nairobi**, hand-delivered to the **Office of the Clerk, First Floor, Main Parliament Buildings, Nairobi** or emailed to **cSenate@parliament.go.ke**, to be received **on or before Tuesday, 9th October, 2018 at 1:00 pm.**

The Bills may be found on the Parliament website at **<http://www.parliament.go.ke/senate>**

**CLERK OF THE SENATE/ SECRETARY
PARLIAMENTARY SERVICE COMMISSION.**



REPUBLIC OF KENYA

PARLIAMENT

SENATE BILLS

(Bill No. 24 of 2018)



THE STATUTORY INSTRUMENTS (AMENDMENT)
BILL, 2018

(A Bill published in the Kenya *Gazette* Supplement No. 113 of 10th August, 2018 and passed by the Senate, with amendments, on 10th July, 2019)

statutory instrument under subsection (2) for a period not exceeding twenty-eight days.

Insertion of new
section 15A in
No. 23 of 2013.

4. The principal Act is amended by inserting the following new section immediately after section 15-

Concurrence on
a statutory
instrument.

15A. (1) The Clerk of the House to which a statutory instrument is referred shall, upon-

(a) the resolution of the relevant House under section 15(1) for the approval or annulment of a statutory instrument; or

(b) expiry of the period specified under section 15(2),

cause the resolution of the House to be transmitted to the Clerk of the other House within two days of the resolution.

(2) A resolution under subsection (1) shall stand referred to the relevant Committee of that House which shall consider the resolution together with the statutory instrument and report to the House within fourteen days of the referral.

(3) The House to which resolution is referred to under subsection (1) may extend the time within which the Committee shall consider the resolution for a period not exceeding seven days.

- (4) If both Houses resolve to-
- (a) approve the statutory instrument;
 - or
 - (b) annul the statutory instrument;


the Clerk of the House to which the statutory instrument was transmitted under section 11(1) shall, within seven days of the decision, notify the regulation-making authority.

I certify that this printed impression is a true copy of the Bill as passed by the Senate on Wednesday, 10th July, 2019.



Clerk of the Senate

Endorsed for presentation to the National Assembly in accordance with the provisions of standing order 156 of the Senate Standing Orders.



Speaker of the Senate

PRINTED BY THE CLERK OF THE SENATE

REPUBLIC OF KENYA



THE SENATE

TWELFTH PARLIAMENT

SECOND SESSION

THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND
HUMAN RIGHTS

A REPORT ON PUBLIC PARTICIPATION ON THE
STATUTORY INSTRUMENTS (AMENDMENT) BILL (SEN.
BILL NO. 24 OF 2018)

Clerk's Chambers,
First Floor,
Parliament Buildings,
NAIROBI.

February, 2019

PAPERS LAID	
DATE	20/02/2019
TABLED BY	Chairperson
COMMITTEE	Legal Affairs
CLERK AT THE TABLE	JSC, am

COG
Recommended for
approval for
tabling.
Eg 19/02/19

Rt Hon. Speaker
You may approve for
tabling.
0002
19/02/19

Approved
[Signature]
20/2/2019

TABLE OF CONTENTS

ABBREVIATIONS AND ACRONYMS.....	ii
PREFACE	iii
Establishment of the Committee	iii
Membership of the Committee	iii
Acknowledgement	iv
CHAPTER ONE	1
INTRODUCTION	1
1.0 Background	1
1.1 The Object of the Bill.....	1
1.2 Legal Framework	2
1.3 Overview of the Bill	3
CHAPTER TWO	5
PUBLIC PARTICIPATION.....	5
2.0 Attendance by Stakeholders.....	5
2.1 Submissions from Stakeholders	5
CHAPTER THREE.....	7
COMMITTEE OBSERVATIONS AND RECOMMENDATIONS	7
3.0 General Observations.....	7
3.1 Observations and Recommendations on the Clauses of the Bill.....	7

ABBREVIATIONS AND ACRONYMS

KLRC	Kenya Law Reform Commission
KNCHR	Kenya National Commission on Human Rights
MP	Member of Parliament
SEN	Senator

PREFACE

Mr. Speaker,

Establishment of the Committee

The Standing Committee on Justice, Legal Affairs and Human Rights is established pursuant to the Senate Standing Order 218 and mandated to *consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.*

Membership of the Committee

The Committee is comprised of the following members:-

- | | |
|-----------------------------------|--------------------|
| 1. Sen. Samson Cherarkey, MP | - Chairperson |
| 2. Sen. Mithika Linturi, MP | - Vice-Chairperson |
| 3. Sen. James Orengo, MP | |
| 4. Sen. Fatuma Dullo, MP | |
| 5. Sen. Amos Sitswila Wako, MP | |
| 6. Sen. Kilonzo Mutula Jnr., MP | |
| 7. Sen. Susan Wakarura Kihika, MP | |
| 8. Sen. Irungu Kang'ata, MP | |
| 9. Sen. Faki Mohamed, MP | |

Mr. Speaker,

The promulgation of the Constitution in 2010 ushered in a new governance system and greatly expanded the democratic space in the country. The purpose of the Statutory Instruments (Amendment) Bill (Sen. Bill No. 24 of 2018) is to amend the Statutory Instruments Act (No.23

of 2013) in order to expressly include the Senate in the statutory instruments scrutiny process. As part of the Parliament of Kenya vide Article 93 of the Constitution of Kenya 2010, the Senate of Kenya has a role in the making of the laws of Kenya which includes statutory instruments. Excluding the Senate from such an important aspect of law making would deny the Counties the right to be represented.

The Committee considered the Bill at length, conducted public participation and deliberated on the submissions received. Based on the deliberations and public participation, the Committee will present amendments with the view of strengthening the provisions of the Bill for consideration by this House.

Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate as well as the Secretariat for the support extended to it in the conduct of the public hearings and in fulfilling its mandate.

Further it wishes to thank stakeholders who made both written and oral submissions such as the Kenya Law Reform Commission (KLRC) and the Kenya National Commission on Human Rights (KNCHR).

Mr. Speaker,

It is now my pleasant duty, pursuant to Standing Order 137, to present a Report of the Standing Committee on Justice, Legal Affairs and Human Rights on The Statutory Instruments (Amendment) Bill (Sen. Bill No. 24 of 2018).

Signed.....

Date.....13/2/2019.....

SEN. SAMSON CHERARKEY, MP

CHAIRPERSON

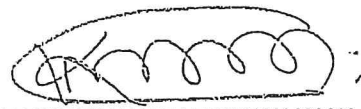
JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS COMMITTEE

ADOPTION OF THE REPORT OF THE JUSTICE, LEGAL AFFAIRS AND
HUMAN RIGHTS COMMITTEE OF THE SENATE

We, the undersigned Members of the Justice, Legal Affairs and Human Rights
Committee of the Senate, do hereby append our signatures to adopt the Report-

Sen. Samson Cherarkey, MP

Chairperson



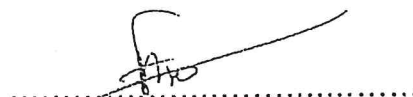
Sen. Mithika Linturi, MP

Vice-Chairperson

.....

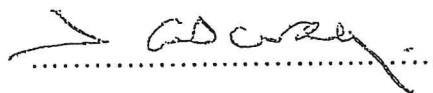
Sen. Fatuma Dullo, MP

Member



Sen. James Orengo, MP

Member



Sen. Amos Sitswila Wako, MP

Member

.....

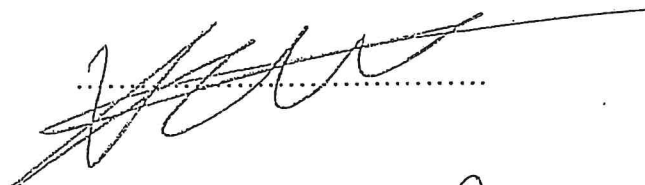
Sen. Kilonzo Mutula Jnr., MP

Member

.....

Sen. Irungu Kang'ata, MP

Member



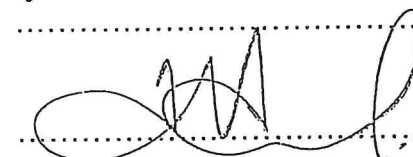
Sen. Susan Wakarura Kihika, MP

Member

.....

Sen. Faki Mohamed, MP

Member



CHAPTER ONE

INTRODUCTION

1.0 Background

The Statutory Instruments (Amendment) Bill (Sen. Bill No. 24 of 2018) was sponsored by Sen. Samuel Poghio, Chairperson, Sessional Committee on Delegated Legislation. The purpose of the Bill is to amend the Statutory Instruments Act (No.3 of 2018) in order to expressly include the Senate in the statutory instruments scrutiny process. As part of the Parliament of Kenya vide Article 93 of the Constitution of Kenya 2010, the Senate of Kenya has a role in the making of the laws of Kenya which includes statutory instruments. Excluding the Senate from such an important aspect of law making would deny the Counties the right to be represented.

The Bill was published on 10th August, 2018 and was read a First Time on 13th September, 2018. Following the First Reading in the Senate, it stood committed, pursuant to Standing Order 134(1), to the Standing Committee on Legal Affairs and Human Rights for facilitation of public participation. Subsequently, the Committee, pursuant to Article 118 of the Constitution and Standing Order 134 (5), invited submissions from members of the public on the Bill via an advertisement on "The Standard" Newspaper and the "Daily Nation" Newspapers.

1.1 The Object of the Bill

Statutory Instruments are a form of legislation which allow the provisions of an Act of Parliament to be subsequently brought into force or altered without Parliament having to pass a new Act. They are also referred to as secondary, subsidiary, delegated or subordinate legislation.

Acts of Parliament often confer powers on Cabinet Secretaries to make more detailed orders, rules or regulations by means of statutory instruments. The scope of these powers may vary from powers to stipulate fines or penalties for offences to much wider powers such as filling out the broad provisions in Acts. It is noteworthy that often, Acts of Parliament only contain a broad framework. Statutory Instruments are therefore used to provide the necessary detail that would

be considered too complex to include in the body of an Act. Secondary legislation can also be used to amend, update or enforce existing primary legislation¹.

The purpose of the Bill is to amend the Statutory Instruments Act (No.3 of 2018) in order to expressly include the Senate in the statutory instruments scrutiny process. This will align the Act with the Constitution of Kenya, 2010 which created a bicameral Parliament with two distinct Houses of Parliament. As part of the Parliament of Kenya, the Senate of Kenya has a role in the making of the laws of Kenya which includes statutory instruments. Excluding the Senate from such an important aspect of law making would deny the Counties the right to be represented.

1.2 Legal Framework

Constitution of Kenya (2010)

Article 94 and Article 96 clearly sets out the law-making function of the Senate as follows:

“(1) The Senate represents the counties, and serves to protect the interests of the counties and their governments.

(2) The Senate participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties, as provided in Articles 109 to 113.

(3) The Senate determines the allocation of national revenue among counties, as provided in Article 217, and exercises oversight over national revenue allocated to the county governments.

(4) The Senate participates in the oversight of State officers by considering and determining any resolution to remove the President or Deputy President from office in accordance with Article 145.”

Pursuant to Article 96 (2) Senate participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties, as provided in Articles 109 to 113. Article 110 further defines Bills affecting counties to include those which touch on functions allocated to counties in Part II of the Fourth Schedule to the Constitution, a Bill that relates to elections of members of a county executive or legislature, or any Bill that touches on the finances of County Governments.

¹ House of Commons Information Office , Statutory Instruments <https://www.parliament.uk/documents/commons-information-office/I07.pdf> Retrieved 25.11.2018

The Senate is a national institution and counties do not operate as a separate territory. In the interest of counties, the Senate is the platform in which to scrutinize National Government obligations to Counties and monitor the implementation of mandates and commitments in line with constitutional responsibilities. All these laws must, as a constitutional requirement, be debated and passed by the Senate before presidential assent.

Any law debated and passed in the National Assembly which concerns counties has to be referred to the Senate for debate and approval before the President can assent to it. The threshold of Bills concerning counties should be interpreted to cover all Bills since all matters concerns counties. This should also extend to statutory instruments submitted to Parliament by Ministries' and other agencies. Currently, the Statutory Instruments Act (No.23 of 2013) does not expressly include the Senate in the statutory instruments scrutiny process. As part of the Parliament of Kenya, the Senate of Kenya has a role in the making of the laws of Kenya which includes statutory instruments.

1.3 Overview of the Bill

The Bill provides as follows-

Short Title

Clause 1 of the Bill sets out the short title as the Statutory Instruments (Amendment) Act, 2018.

Interpretation

Clause 2 (a) of the Bill seeks to amend section 11 (1) of the Statutory Instruments Act (No.23 of 2013) to ensure that 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 concurrently to the "Clerk of the Senate and the Clerk of the National Assembly"

Amendment of section 11 of No. 23 of 2013

Clause 2 (b) of the Bill seeks to delete Clause 11(2) of the Statutory Instruments Act (No.23 of 2013) which stipulated that regulation-making authorities shall submit copies of all statutory instruments for tabling before the National Assembly.

Clause 2 (c) of the Bill seeks to amend section 11 (3) of the Statutory Instruments Act (No.23 of 2013) by replacing the words “responsible Clerk” with “Clerk of each House” with respect to the registration of every statutory instrument transmitted to the respective House tabling or laying.

Amendment of section 15 of No. 23 of 2013

Clause 3 of the Bill is amended by deleting section 15 (3) which provides that where a time is prescribed for doing an act or taking a proceeding by the National Assembly relating to the handling of a statutory instrument, the National Assembly may, by resolution, extend that time by a period not exceeding twenty-one days and substituting with a new Clause to reflect both Houses.

CHAPTER TWO

PUBLIC PARTICIPATION

2.0 Attendance by Stakeholders

The Committee, pursuant to Article 118 of the Constitution and Standing Order 134 (1), invited submissions from members of the public on the Bill via an advertisement on the Daily Nation Newspaper and Standard Newspapers at Kenyatta International Convention Centre, Taifa Hall, Nairobi at 10am on 17th October, 2018. The Committee received written submissions from the Kenya Law Reform Commission (KLRC) and the Kenya National Commission on Human Rights (KNCHR).

2.1 Submissions from Stakeholders

The Committees took into consideration proposals from stakeholders on specific Clauses of the Bills, as follows-

Submissions from the Kenya Law Reform Commission (KLRC)

The Kenya Law Reform Commission submitted that the Statutory Instruments Act (No.23 of 2013) currently does not provide for the procedure of transmission of statutory instruments in a bicameral Parliament. There is need to amend to the Statutory Instruments Act (No.23 of 2013) to include the procedure for transmission of Statutory Instruments between the two Houses of Parliament.

Submissions from the Kenya National Commission on Human Rights (KNCHR)

The Kenya National Commission on Human Rights submitted that as highlighted in the memorandum of objects and reasons in the Bill, involving the Senate in the scrutiny of statutory instruments. Involving the Senate in the scrutiny of statutory instruments in the law-making process will ensure adequate representation from the respective counties and largely the public.

The Kenya National Commission on Human Rights further submitted that it welcomed the spirit of inclusion and cooperation in the scrutiny of delegated legislation by both Houses. Delegated

legislation in the form of rules, regulations or even tariffs forms part and parcel of legislation as per the Interpretation and General Provisions Act (Chapter 2 of the Laws of Kenya) Indeed, several of the statutory instruments affect the parent statutes that touch on matters concerning county governments. It is therefore important for the Senate, as the watchdog over county interests and in line its constitutional mandate participates in the approval of the delegated legislation which will form part of the laws that affect county governments.

The Commission further submitted that the proposed amendment should be considered in the spirit of the Constitution and devolution which limits legislative authority of the Senate to Bill affecting county governments. Article 109 (3) of the Constitution expressly states that , “ *A Bill not concerning county government is considered only in the National Assembly , and passed in accordance with Article 122 and the Standing order of the Assembly.* ”

In light of the above, the Commission proposes the need for further clarity in the scrutiny process, given the legislative mandates of the respective Houses and clarifies if for instance, criteria similar to that under Article 110 of the Constitution would apply. For good order, it is also important to mention in the Act, the procedure to be followed when both Houses of Parliament are seized of the statutory instruments.

CHAPTER THREE

COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.0 General Observations

The Committee observed that the Statutory Instruments Act (No.23 of 2013) does not expressly include the Senate in the statutory instruments scrutiny process. As part of the Parliament of Kenya, the Senate of Kenya has a role in the making of the laws of Kenya which includes statutory instruments. Article 93 of the Constitution provides for the establishment of a bicameral Parliament. Article 94 and Article 96 of the Constitution clearly provides for that the law-making function of the Senate Pursuant to Article 96 (2) Senate participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties, as provided in Articles 109 to 113.

The Committee noted that statutory instruments in the form of rules, regulations or even tariffs forms part and parcel of legislation as per the Interpretation and General Provisions Act (Chapter 2 of the Laws of Kenya). The Senate has passed various Bills to guide the implementation of county functions set out under the Fourth Schedule of the Constitution. It is therefore necessary that the Senate scrutinises statutory instruments arising from parent Acts that touch on matters concerning county governments. The Statutory Instruments (Amendment) Bill (Sen. Bill No. 24 of 2018) is therefore timely and essential to align the Statutory Instruments Act (No.23 of 2013) with the Constitution.

3.1 Observations and Recommendations on the Clauses of the Bill

The Committee on Justice, Legal Affairs and Human Rights made the following observations and recommendations based on the deliberations of the Bill based on submissions from the public and stakeholders as follows-

Procedure for Consideration of Statutory Instruments in a Bicameral Parliament

The Committee observed that the Statutory Instruments Act (No.23 of 2013) currently does not provide for the procedure of transmission of statutory instruments in a bicameral Parliament. The Committee agreed with stakeholders that there is need for further clarity in the scrutiny process,

given the legislative mandates of the respective Houses and clarifies if for instance, criteria similar to that under Article 110 of the Constitution would apply.

The Committee further noted that although the procedure for the consideration is set out under Standing Order 221 and Standing 222 of the Senate Standing Orders, it was important to entrench the procedure in legislation to ensure clarity in the concurrence to statutory instruments between the two Houses.

Recommendation(s)

The Committee therefore recommends that New Clauses be inserted in the Statutory Instruments (Amendment) Bill (Sen. Bill No. 24 of 2018) to include a procedure for the consideration of statutory instruments by both Houses of Parliament in the Statutory Instruments Act (No.23 of 2013). The amendment should include specific timelines on the transmission of statutory instruments by both Houses.

- The Committee proposed that Clause 5(4) (a) should be since as it is currently drafted it did not clearly communicate.

iii) *The Treaty Making and Ratification (Amendment) Bill (Senate Bills No. 23 of 2018)*

- This matter was deferred to be discussed at the next meeting.

iv) *The Statutory Instruments (Amendment) Bill (Senate Bills No. 24 of 2018)*

- The Kenya Law Reform Commission proposed an amendment to the principal Act to include a process on how the two houses will consider statutory instruments. The Committee adopted the proposal.

MIN. NO. 262/2018

REVIEW OF ELECTIONS AND RELATED LAWS

Sen. Mutula reminded Members present that during the induction retreat of the Committee it had been noted that amendments to elections was always done at the last minute and that amendments are piecemeal. The Committee thus resolved to have one of its areas of focus as review electoral and related laws. The Committee is receiving support to engage a consultant who is Wachira Maina and through Electoral Law and Governance Institute for Africa (ELGIA) it will hold a couple of planning and consultation meetings with various stakeholders.

It was important that the first such consultative meeting be held with the Senate Leadership. The proposed date for the meeting was Thursday, 22nd November, at 7.30 am at the Intercontinental Hotel.

Members took note and advised as follows-

- That the Committee be briefed by Wachira Maina first on the issues. A meeting was scheduled to take place on 20th November, 2018 at 9.00 am.
- The matter to be forwarded to the Senate Business Committee for consideration.

MIN. NO. 263/2018

ANY OTHER BUSINESS

None

MIN. NO. 264/2018

DATE OF THE NEXT MEETING AND ADJOURNMENT

The next meeting would be the following day. There being no other business, the meeting was adjourned at 1.17 pm.

Signed

SEN. SAMSON CHERARKEY (CHAIRPERSON)

Date: 13/2/2019

MINUTES OF THE 42nd SITTING OF THE STANDING COMMITTEE ON JUSTICE,
LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON WEDNESDAY, 17TH OCTOBER,
2018 IN THE MARA ROOM, KICC AT 11.19 AM.

PRESENT

- | | |
|--------------------------|--------------|
| 1. Sen. Samson Cherarkey | -Chairperson |
| 2. Sen. Fatuma Dullo | -Member |
| 3. Sen. Mutula Junior | -Member |
| 4. Sen. Mohamed Faki | -Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------|-------------------|
| 1. Sen. Mithika Linturi | -Vice Chairperson |
| 2. Sen. Amos Wako | -Member |
| 3. Sen. James Orengo | -Member |
| 4. Sen. Susan Kihika | -Member |
| 5. Sen. Irungu Kang'ata | -Member |

IN-ATTENDANCE

Sen. Aaron Cheruiyot, MP

IN-ATTENDANCE

- | |
|-----------------------|
| 1. Ms. Kavata Musyoka |
| 2. Ms. Lucy Radoli |

SENATE SECRETARIAT

- | |
|-------------------|
| - Clerk Assistant |
| - Legal Counsel |

MIN. NO.242/2018

PRELIMINARIES

The Chairperson called the meeting to order at 11.19 am and commenced the meeting with a word of prayer.

MIN. NO.243/2018

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented after being proposed by Sen. Dullo and seconded by Sen. Faki.

MIN. NO. 244/2018

PUBLIC HEARING ON THE COUNTY
STATUTORY INSTRUMENTS BILL
(SENATE BILLS NO. 21 OF 2018), PETITION
TO COUNTY ASSEMBLIES (PROCEDURE)
BILL (SENATE BILLS NO. 22 OF 2018),
TREATY MAKING AND RATIFICATION
(AMENDMENT) BILL (SENATE BILLS NO.
23 OF 2018) AND THE STATUTORY
INSTRUMENTS (AMENDMENT) BILL
(SENATE BILLS NO. 24 OF 2018)

No Member of the public appeared for the public hearing. In spite of this the Committee waited for the duration of the public hearing for the public. Some stakeholders submitted written memoranda.

MIN. NO.245/2018

ANY OTHER BUSINESS

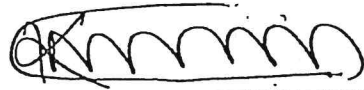
None

MIN. NO.246/2018

DATE OF THE NEXT MEETING AND
ADJOURNMENT

The next meeting would be the following day. There being no other business, the meeting was adjourned at 12.13 pm.

Signed



SEN. SAMSON CHERARKEY (CHAIRPERSON)

Date:

12/2/2019

MINUTES OF THE 30TH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON MONDAY, 30TH JULY, 2018 IN COMMITTEE ROOM 4, FIRST FLOOR, PARLIAMENT BUILDINGS AT 11.25 AM.

PRESENT

- | | |
|--------------------------|--------------|
| 1. Sen. Samson Cherarkey | -Chairperson |
| 2. Sen. Fatuma Dullo | -Member |
| 3. Sen. Mutula Junior | -Member |
| 4. Sen. Irungu Kang'ata | -Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------|-------------------|
| 1. Sen. Mithika Linturi | -Vice Chairperson |
| 2. Sen. Amos Wako | -Member |
| 3. Sen. James Orenge | -Member |
| 4. Sen. Mohamed Faki | -Member |
| 5. Sen. Susan Kihika | -Member |

IN-ATTENDANCE

1. Sen. Halakhe Abshiro
2. Sen. Judith Pareno

IN-ATTENDANCE

1. Gov. Kivutha Kibwana

COUNCIL OF GOVERNORS

- Chairperson, Legal Committee

IN-ATTENDANCE

2. Ms. Kavata Musyoka
3. Ms. Lucy Radoli
4. Ms. Clare Jerotich

SENATE SECRETARIAT

- Clerk Assistant
- Legal Counsel
- Research Officer

MIN. NO.186/2018

The Chairperson called the meeting to order at 11.25 am and commenced the meeting with a word of prayer.

PRELIMINARIES

MIN. NO.187/2018

The agenda of the meeting was adopted as presented through consensus.

ADOPTION OF THE AGENDA

MIN. NO. 188/2018

PRE-PUBLICATION SCRUTINY OF THE

i) Treaty Making and Ratification (Amendment) Bill, 2018

Members present were taken through the legislative proposal. Members noted as follows-

- Treaties should be published and publicized;
- Whether Kenya needs to review treaties that Kenya was a signatory to before the promulgation of the Constitution; and
- That Senate must play a role in monitoring and evaluation of treaties. That section 15 (1) of the Act be amended.

Members adopted the legislative proposal to be published subject to include the bulleted issues above.

ii) **Petition to County Assemblies Procedure Bill, 2018**

Members were taken through the legislative proposal and took note. They adopted the legislative proposal to be published.

iii) **Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2018**

Members present were taken through the legislative proposal. Members noted as follows-

- That schedule two of the Bill be synchronized with the current revenue sharing formulae
- Part V of the Bill be deleted.

Members adopted the legislative proposal to be published subject to include the bulleted issues above.

MIN. NO. 189/2018

CONCEPT NOTE AND PROGRAMME ON
THE PROPOSED CONFERENCE ON
FULFILLMENT OF ECONOMIC - AND
SOCIAL RIGHTS

The Secretariat took Members through the draft concept note and programme. Members took note, approved the concept note and programme and recommended that both documents be presented before the Senate Business Committee for concurrence.

MIN. NO.190/2018

ANY OTHER BUSINESS


1. A Member noted that a Petition on a municipal established in Samburu had been referred to the Committee. The Committee should expedite and plan to travel to Mararal that Friday.
2. The Legal Committee of the Council of Governors attended the meeting and made submissions on the Impeachment Procedure Bill as follows-
 - Amend clause 14 (6) (b) to give more time for the public to submit the written memoranda within 30 days.
 - Add clause 14 (7) to provide for flexibility of the hearing date for both parties.
 - Include clause 17 (2) (a) to provide for flexibility of the hearing date for both parties.
 - Amend clause 21 to provide for once in five years;
 - The threshold for removal of governors must apply both in the senate and the national assembly;
3. There is need to hold a meeting between Senators and Governors to audit devolved functions, audit the impact of public participation

MIN. NO.191/2018

DATE OF THE NEXT MEETING AND
ADJOURNMENT

The next meeting would be the following day. There being no other business, the meeting was adjourned at 1.55 pm.

Signed


SEN. SAMSON CHERARKEY (CHAIRPERSON)

Date:

13/2/2019

**MINUTES OF THE 9TH SITTING OF THE COMMITTEE ON DELEGATED
LEGISLATION HELD ON TUESDAY, 3RD MARCH, 2020 AT 11.30 A.M. IN THE SMALL
DINING ROOM, NEW WING, MAIN PARLIAMENT BUILDINGS**

PRESENT

- | | |
|-----------------------------------|------------|
| 1. The Hon. George Murugara, MP | (Chairing) |
| 2. The Hon. Daniel Maanzo, MP | |
| 3. The Hon. Kamoti Mwamkale, MP | |
| 4. The Hon. Muriuki Njagagua, MP | |
| 5. The Hon. Ronald Tonui, MP | |
| 6. The Hon. Abdi Koropu Tepo, MP | |
| 7. The Hon. Gideon Mulyungi, MP | |
| 8. The Hon. Jennifer Shamalla, MP | |
| 9. The Hon. Kassait Kamket, MP | |
| 10. The Hon. Munene Wambugu, MP | |
| 11. The Hon. Muturi Kigano, MP | |
| 12. The Hon. Patrick Mariru, MP | |
| 13. The Hon. Sammy Seroney, MP | |

ABSENT WITH APOLOGY

- | | | |
|---|---|------------------|
| 1. The Hon. Gladys Boss Shollei CBS MP | - | Chairperson |
| 2. The Hon. Fatuma Gedi, CBS, MP | - | Vice Chairperson |
| 3. The Hon. Waihenya Ndirangu, MP | | |
| 4. The Hon. Alice Wahome, MP | | |
| 5. The Hon. Martha Wangari, MP | | |
| 6. The Hon. Robert Mbui, MP | | |
| 7. The Hon. Timothy Wanyonyi, MP | | |
| 8. The Hon. (Dr.) Wilberforce Oundo, MP | | |
| 9. The Hon. Tindi Mwale, MP | | |

ABSENT

The Hon. Alfred Sambu, MP

IN-ATTENDANCE

National Assembly Secretariat

- | | | |
|-----------------------|---|---------------------------------------|
| 1. Ms. Susan Maritim | - | Senior Clerk Assistant |
| 2. Mr. Jimale Mohamed | - | Second Clerk Assistant |
| 3. Mr. Dima Dima | - | Principal Legal Counsel |
| 4. Mr. Charles Ayari | - | Superintendent of Electronics (Audio) |
| 5. Ms. Mary Otieno | - | Office Superintendent |

MIN.NO. /NA/CDL/2020/048 PRAYER AND PRELIMINARIES

Pursuant to Standing Order 188, the Members present unanimously elected Hon. George Murugara, MP, to chair the meeting.

The meeting thereafter commenced with the Prayer at 1140am.

MIN.NO. /NA/CDL/2020/049 ADOPTION OF THE AGENDA

The Committee unanimously adopted the Agenda as presented having been proposed by Hon. Jennifer Shamalla, MP and Hon. Muriuki Njagagua, MP.

MIN.NO. /NA/CDL/2020/050 CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Minutes of the 3rd Sitting held on 27th February, 2020 were confirmed as a true record of the proceedings, having been proposed by Hon. Sammy Seroney, MP and seconded by Hon. Kamket Kassait, MP.

MIN.NO. /NA/CDL/2020/051 MATTERS ARISING

Under MIN.NO. /NA/CDL/2020/022, the Committee rescheduled the retreat with the National Transport Safety Authority to 16th to 19th April, 2020 in Mombasa County.

MIN.NO. /NA/CDL/2020/052 ADOPTION OF THE REPORT ON THE STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2018

The Committee considered and unanimously adopted the Report on the Statutory Instruments (Amendment) Bill, (Senate Bill No. 24 of 2018) without amendment, having been proposed by Hon. Jennifer Shamalla, MP and seconded by Hon. Kamoti Mwamkale, MP.

MIN.NO. /NA/CDL/2020/052 ADOPTION OF THE REPORT ON THE COUNTY STATUTORY INSTRUMENTS BILL, 2018

The Committee considered and unanimously adopted the Report on the County Statutory Instruments (Amendment) Bill, (Senate Bill No. 21 of 2018) without amendment, having been proposed by Hon. Munene Wambugu, MP and seconded by Hon. Jennifer Shamalla, MP.

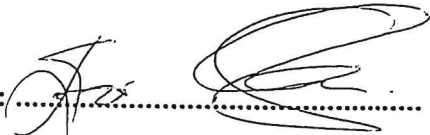
MIN.NO. /NA/CDL/2020/053 ANY OTHER BUSINESS

No other business arose.

MIN.NO. /NA/CDL/2020/054 ADJOURNMENT

There being no other business, the meeting was adjourned at 12.05 p.m. The next meeting to be called by notice.

Signed:


HON. GLADYS BOSS SHOLLEI CBS MP
(CHAIRPERSON)

Date:

10/3/2020

**MINUTES OF THE 2ND SITTING OF THE COMMITTEE ON DELEGATED
LEGISLATION HELD ON THURSDAY, 20TH FEBRUARY, 2020 AT 11.30 A.M. IN THE
SMALL DINING ROOM, NEW WING, MAIN PARLIAMENT BUILDINGS**

PRESENT

- | | | |
|--|---|------------------|
| 1. The Hon. Gladys Boss Shollei CBS MP | - | Chairperson |
| 2. The Hon. Fatuma Gedi, CBS, MP | - | Vice Chairperson |
| 3. The Hon. George Murugara, MP | | |
| 4. The Hon. Muriuki Njagagua, MP | | |
| 5. The Hon. Daniel Maanzo, MP | | |
| 6. The Hon. Kamoti Mwamkale, MP | | |
| 7. The Hon. Patrick Mariru, MP | | |
| 8. The Hon. Ronald Tonui, MP | | |
| 9. The Hon. Munene Wambugu, MP | | |
| 10. The Hon. Martha Wangari, MP | | |
| 11. The Hon. Sammy Seroney, MP | | |
| 12. The Hon. Jennifer Shamalla, MP | | |
| 13. The Hon. Kassait Kamket, MP | | |
| 14. The Hon. Abdi Koropu Tepo, MP | | |

ABSENT WITH APOLOGY

1. The Hon. Robert Mbui, MP
2. The Hon. Muturi Kigano, MP
3. The Hon. Gideon Mulyungi, MP
4. The Hon. Timothy Wanyonyi, MP
5. The Hon. (Dr.) Wilberforce Oundo, MP
6. The Hon. Alice Wahome, MP
7. The Hon. Waihenya Ndirangu, MP
8. The Hon. Tindi Mwale, MP

ABSENT

The Hon. Alfred Sambu, MP

IN-ATTENDANCE

National Assembly Secretariat

- | | | |
|-----------------------|---|---------------------------------------|
| 1. Mr. Jimale Mohamed | - | Second Clerk Assistant |
| 2. Mr. Dima Dima | - | Principal Legal Counsel |
| 3. Mr. Anthony Wamae | - | Serjeant at Arms |
| 4. Mr. Charles Ayari | - | Superintendent of Electronics (Audio) |

MIN.NO. /NA/CDL/2020/010

PRAYER AND PRELIMINARIES

The meeting commenced at 11.45 a.m. with the Prayer.

MIN.NO. /NA/CDL/2020/011 ADOPTION OF THE AGENDA

The Committee unanimously adopted the Agenda as presented having being proposed by Hon. Muriuki Njagagua, MP and seconded by Hon. Sammy Seroney, MP.

MIN.NO. /NA/CDL/2020/012 CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Minutes of the 1st Sitting held on 18th February, 2020 were confirmed as a true record of the proceedings, having been proposed by Hon. Sammy Seroney, MP and seconded by Hon. Muriuki Njagagua, MP.

MIN.NO. /NA/CDL/2020/013 MATTERS ARISING

The Committee resolved to reschedule the joint retreat with the Kenya Civil Aviation Authority to **Saturday, 29th February to Tuesday, 3rd March, 2020 in Machakos County** to consider the 33 draft Civil Aviation Regulations, 2020 and the Civil Aviation (Unmanned Aircraft Systems) Regulations, 2019.

The Committee was also reminded that the National Transport and Safety Authority (NTSA) will appear on Thursday, 27th February, 2020 at 10.00 a.m. to respond to Members queries on the transport sector, more specifically to vehicle inspection and speed governors.

**MIN.NO. /NA/CDL/2020/014 CONSIDERATION OF THE STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2018
(SENATE BILL NO. 24 OF 2018)**

The Legal Counsel informed the Committee that the the Statutory Instruments (Amendment) Bill, 2018, (Senate Bill No. 24 of 2018) published vide Kenya Gazette Supplement No. 113 of 10th August 2018, was passed by the Senate on the 10th of July 2019. The Bill is sponsored by Sen. Samuel Poghio, Chairperson and Sessional Committee on Delegated Legislation.

The Bill was referred to the National Assembly pursuant to Article 110(4) of the Constitution and the provisions of Standing Order 41 and 156 of the Senate whereby the Speaker of the Senate conveyed the decision of the Senate to the National Assembly seeking concurrence of the National Assembly to the Bill.

Pursuant to the provisions of Standing Order 143 and 127, the Speaker of the National Assembly referred the Statutory Instruments (Amendment) Bill, 2018 to the Committee on Delegated Legislation for scrutiny.

He further informed the Committee on the Object, Overview, Observations and Effect of the Bill. The Members were also taken through the Bill clause by clause which its main principal object is to amend the Statutory Instruments Act to expressly include the Senate in the scrutiny process of statutory instruments.

Overview, Observations and Legal Implications of the Proposed Amendments to the Bill

PROVISIONS OF THE STATUTORY INSTRUMENTS ACT	PROPOSED AMENDMENT	REMARKS
<p>Section 11 (1)</p> <p>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.</p>	<p><u>CLAUSE 2</u></p> <p>The Statutory Instruments Act, in this Act referred to as the “principal Act”, is amended in section 11 by—</p> <p>(a) deleting the words “responsible Clerk” appearing immediately after the words “transmitted to the” in subsection (1) and substituting therefor the words “Clerk of the Senate and the Clerk of the National Assembly”</p>	<p>This amendment seeks to have statutory instruments transmitted to the Clerks of both houses, and tabled in each house.</p> <p>Some Regulations are made pursuant to Acts which originate from and were passed by the National Assembly either because they had a money-bill effect or were not Bills concerning functions of the county government, hence were only passed by the National Assembly. Consequently there are no requirements Constitutional, statutory or otherwise for the regulations made thereunder to be scrutinized by the Senate. (Articles 109, 110 and 114 of the Constitution).</p> <p>Standing Order 210(4)(b)(ii) of the National Assembly Standing Orders has clear provisions and procedures of how the Committee deals with the Statutory Instruments made under a legislation concerning Counties (Senate Statutes) while Standing Order 211 provides clear procedures of dealing with Statutory Instruments forwarded from</p>

PROVISIONS OF THE STATUTORY INSTRUMENTS ACT	PROPOSED AMENDMENT	REMARKS
		<p>the Senate. There is hence no gap that the said amendment seeks to cure in law.</p> <p>This amendment proposes scrutiny by both Houses for all Statutory Instruments. If the amendment is passed the whole process may be too punitive and costly to the regulation making authorities and may hamper and slow down operationalization of the statutes/laws by the executive, to the detriment of the general public.</p>
<p>Section 11(2)</p> <p>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</p>	(b) deleting subsection (2);	<p>This amendment seeks to do away with the requirement of mandatory submission of statutory instruments to the National Assembly, pursuant to the legislative powers conferred by article 109 of the Constitution.</p> <p>This amendment may contravene the provisions of Article 109 (2) and (3) of the Constitution.</p> <p>Article 95(4) (c) and (5) (b) of the Constitution mandates the National Assembly to provide oversight over national revenue and its expenditure, and oversight of state organ (<i>which includes oversight over delegated</i></p>

PROVISIONS OF THE STATUTORY INSTRUMENTS ACT	PROPOSED AMENDMENT	REMARKS
		<p><i>legislation made by state organs).</i></p> <p>The Constitution provides that Senate is to only legislate on matters concerning counties, unless otherwise provided in the law.</p> <p>National Assembly Standing Order 210(4)(b) provides guidelines on the statutory instruments made under legislation concerning counties.</p>
<p>Section 11(3)</p> <p>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.</p>	<p>(c) deleting the words "responsible Clerk" appearing at the beginning subsection (3) and substituting therefor the words "Clerk of each House".</p>	<p>This amendment seeks to have the Clerks of both houses register every statutory instrument transmitted to them</p> <p>The implications of this amendment are similar to those amending section 11 (1).</p>
<p>Section 15 (1)</p> <p>The Committee shall make a report to Parliament containing only a resolution that the statutory instruments that stands permanently referred to the Committee be revoked.</p>	<p><u>CLAUSE 3</u></p> <p>The principal Act is amended in section 15 by-</p> <p>(a) deleting subsection (1) and substituting therefor the following new subsection.</p> <p>(1) The Committee shall make a report to the relevant House containing a resolution either that the statutory instrument that</p>	<p>The amendment seeks to introduce new requirements of the Committee submitting a report to the house whether approving or annulling a statutory instrument.</p> <p>Currently, the report is only prepared by the committee for an annulment of a statutory instrument.</p> <p>This amendment may be considered by the committee as the standing Orders currently requires a</p>

PROVISIONS OF THE STATUTORY INSTRUMENTS ACT	PROPOSED AMENDMENT	REMARKS
	stands referred to the Committee be approved or that the statutory instrument be annulled.	communication to RMA of the approvals without necessarily tabling a report in the House.
<p>Section 15 (3)</p> <p>Despite the provision of this Act or any other written law, where a time is prescribed for doing an act or taking a proceeding by the National Assembly relating to the handling of a statutory instrument, the National Assembly may, by resolution, extend that time by a period not exceeding twenty-one days.</p>	<p>(b) deleting subsection (1) and substituting therefor new subsection.</p> <p>(3) Notwithstanding subsection (2) the House may, by resolution, extend the time within which the Committee shall consider a statutory instrument under subsection (2) for a period not exceeding twenty-eight days.</p>	<p>Section 15(3) of the SI Act allows extension of time where time has been prescribed for any act or proceeding regarding a statutory instrument.</p> <p>The House may by resolution extend the time for a maximum of 21 days.</p> <p>The amendment seeks to <i>restrict the extension of time only to the time within which the Committee shall consider a statutory instrument.</i></p> <p>The amendment proposes the extension be for a maximum of 28 days, from 21 days.</p> <p>The existing provision is general and applies to all acts regarding SI while the proposed amendments is limited to the time within which the committee considers an SI.</p>
NEW SECTION 15A	<p><u>CLAUSE 4</u></p> <p>The principal Act is amended by inserting the following new section immediately after section 15-</p>	<p>The amendment seeks to introduce new section 15A, requiring that once a resolution has been made approving or annulling a statutory instrument, the Clerk of each House shall</p>

PROVISIONS OF THE STATUTORY INSTRUMENTS ACT	PROPOSED AMENDMENT	REMARKS
	<p>15 A (1) The Clerk of the House to which a statutory instrument is referred shall, upon-</p> <p>(a) the resolution of the relevant House under section 15(1) for the approval or annulment of a statutory instrument; or</p> <p>(b) expiry of the period specified under section 15(2),</p> <p>cause the resolution of the House to be transmitted to the Clerk of the other House within two days of the resolution</p> <p>(2) A resolution under subsection (1) shall stand referred to the relevant Committee of that House which shall consider the resolution together with the statutory instrument and report to the House within fourteen days of the referral.</p> <p>(3) The House to which resolution is referred to under subsection (1) may extend the time within which the Committee shall consider the resolution for a period not exceeding seven days.</p>	<p>transmit the resolution to the other Clerk within 2 days.</p> <p>Thereafter, the resolution together with the statutory instrument would be considered by the relevant committee of the House and report to the House within 14 days.</p> <p>The consideration period may be extended by 7 days.</p>
	<p>15 A (4) and (5)</p> <p>(4) If both Houses resolve to-</p>	<p>This amendments seek to introduce concurrence of</p>

PROVISIONS OF THE STATUTORY INSTRUMENTS ACT	PROPOSED AMENDMENT	REMARKS
	<p>(a) approve the statutory instrument; or</p> <p>(b) annul the statutory instrument;</p> <p>the Clerk of the House to which the statutory instrument was transmitted under section 11(1) shall, within seven days of the decision, notify the regulation-making authority.</p> <p>(5) Where the House resolves to revoke a statutory instrument and the other House does not, the statutory instrument shall be referred to a joint committee for mediation in accordance with Article 113 of the Constitution which shall be applied with the necessary modification.</p>	<p>both houses, and introduce a mediation committee</p> <p>This amendment is too rigorous and punitive to the Regulation making authorities, and further may subject the committee to spend more of its time conforming to procedural technicalities rather than substantive analysis and scrutiny of the various instruments before it.</p> <p>The proposal is well canvassed in the National Assembly Standing Order 211 provides for the concurrence of Senate's resolution on statutory instruments.</p> <p>Standing order 211(3) (b) provides for the creation of a joint committee should the National Assembly fail to agree with Senate's resolution.</p>
<p>Section 18</p> <p>Annulment</p> <p>When a report on a statutory instrument has been tabled in Parliament, the statutory instrument shall be deemed to be annulled if Parliament passes a resolution to that effect.</p>	<p><u>CLAUSE 5</u></p> <p>The principal Act is amended by deleting section 18 and substituting therefor the following new section-</p> <p>18. (1) When Parliament passes a resolution to annul a statutory instrument the statutory instrument shall be deemed to be annulled.</p>	<p>The amendment seeks to require the regulation making authority to also publish an annulment of a statutory instrument.</p> <p>Currently, publication is only required after revocation under section 19 of the Act.</p> <p>Section 18- an annulment occurs where Parliament passes a resolution to annul a</p>

PROVISIONS OF THE STATUTORY INSTRUMENTS ACT	PROPOSED AMENDMENT	REMARKS
	(2) The regulation making authority shall publish the annulment of the statutory instrument within fourteen days of the annulment.	<p>statutory instrument after it has been tabled.</p> <p>Section 19- revocation occurs where the house adopts a report or resolution by the committee to revoke a statutory instrument.</p> <p>The Black Laws Dictionary defines —</p> <p>“annul” to mean</p> <p>“To cancel; make void; destroy. To annul a judgment or judicial proceeding is to deprive it of all force and operation, either <i>ab initio</i> or prospectively as to future transactions.”</p> <p>“revoke” to mean</p> <p>“To call back; to recall; to annul an act by calling or taking it back”</p> <p>It was held in the case of <i>Woodson v. Skinner</i> that the word “annul” is not a technical word and there is nothing which prevents the idea from being expressed in equivalent words;</p> <p><u>Recommendation by Directorate of Legal services:</u></p> <p>Hon. members to consider making it a requirement for Parliament <u>and not</u></p>

PROVISIONS OF THE STATUTORY INSTRUMENTS ACT	PROPOSED AMENDMENT	REMARKS
		RMA to publish an annulment.

Way Forward

Having considered the Bill, the Committee proposed rejection of all proposed amendments to the SI Act as contained in the Senate Bill. Members thereafter resolved to come up with new amendments to the Statutory Instrument Act.

The decision to reject the Bill was proposed by Hon. Daniel Maanzo, MP and seconded by Hon. Martha Wangari, MP.

MIN.NO. /NA/CDL/2020/015 ANY OTHER BUSINESS

It was resolved that the Committee will sponsor the Committee Chairperson to attend the Commission on the Status of Women (CSW64) conference to be held from 9th to 20th March, 2020 in New York, USA.

MIN.NO. /NA/CDL/2020/016 ADJOURNMENT

There being no other business, the meeting was adjourned at 12.45 p.m. Next meeting will be called on notice.

Signed:

Date:

HON. GLADYS BOSS SHOLLEI CBS MP

(CHAIRPERSON)

Minutes of the 1st Sitting held on 18th February, 2020 were confirmed as a true record of the proceedings, having been proposed by Hon. Sammy Seroney, MP and seconded by Hon. Muriuki Njagagua, MP.

The Committee was also reminded that the National Transport and Safety Authority (NTSA) will appear on Thursday, 27th February, 2020 at 10.00 a.m. to respond to Members queries on the transport sector, more specifically to vehicle inspection and speed governors.

**PROVISIONS OF THE PROPOSED
STATUTORY AMENDMENT
INSTRUMENTS ACT**

REMARKS

Section 11 (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.

CLAUSE 2

The Statutory Instruments Act, in this Act referred to as the "principal Act", is amended in section 11 by—
(a) deleting the words "responsible Clerk" appearing immediately after the words "transmitted to the" in subsection (1) and substituting therefor the words "Clerk of the Senate and the Clerk of the National Assembly"

This amendment seeks to have statutory instruments transmitted to the Clerks of both houses, and tabled in each house.

Some Regulations are made pursuant to Acts which originate from and were passed by the National Assembly either because they had a money-bill effect or were not Bills concerning functions of the county government, hence were only passed by the National Assembly. Consequently there are no requirements Constitutional, statutory or otherwise for the regulations made thereunder to be scrutinized by the Senate. (Articles 109, 110 and 114 of the Constitution).

Standing Order 210(4)(b)(ii) of the National Assembly Standing Orders has clear provisions and procedures of how the Committee deals with the Statutory Instruments made under a legislation concerning Counties (Senate Statutes)

**PROVISIONS OF THE PROPOSED
STATUTORY AMENDMENT
INSTRUMENTS ACT**

REMARKS

while Standing Order 211 provides clear procedures of dealing with Statutory Instruments forwarded from the Senate. There is hence no gap that the said amendment seeks to cure in law.

This amendment proposes scrutiny by both Houses for all Statutory Instruments. If the amendment is passed the whole process may be too punitive and costly to the regulation making authorities and may hamper and slow down operationalization of the statutes/laws by the executive, to the detriment of the general public.

Section 11(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

(b) deleting subsection (2);

This amendment seeks to do away with the requirement of mandatory submission of statutory instruments to the National Assembly, pursuant to the legislative powers conferred by article 109 of the Constitution.

This amendment may contravene the provisions of Article 109 (2) and (3) of the Constitution.

Article 95(4) (c) and (5) (b) of the Constitution mandates the National Assembly to provide oversight over national revenue and its

PROVISIONS OF THE PROPOSED
STATUTORY AMENDMENT
INSTRUMENTS ACT

REMARKS

expenditure, and oversight of state organ (*which includes oversight over delegated legislation made by state organs*).

The Constitution provides that Senate is to only legislate on matters concerning counties, unless otherwise provided in the law.

National Assembly Standing Order 210(4)(b) provides guidelines on the statutory instruments made under legislation concerning counties.

Section 11(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.

(c) deleting the words "responsible Clerk" appearing at the beginning subsection (3) and substituting therefor the words "Clerk of each House".

This amendment seeks to have the Clerks of both houses register every statutory instrument transmitted to them

The implications of this amendment are similar to those amending section 11 (1).

Section 15 (1)

The Committee shall make a report to Parliament containing only a resolution that the statutory instruments that stands permanently referred to the Committee be revoked.

CLAUSE 3

The principal Act is amended in section 15 by-

(a) deleting subsection (1) and substituting therefor the following new subsection.

(1) The Committee shall make a report to the relevant House containing a resolution either that

The amendment seeks to introduce new requirements of the Committee submitting a report to the house whether approving or annulling a statutory instrument.

Currently, the report is only prepared by the committee for an annulment of a statutory instrument.

**PROVISIONS OF THE PROPOSED
STATUTORY
INSTRUMENTS ACT**

REMARKS

the statutory instrument that stands referred to the Committee be approved or that the statutory instrument be annulled.

This amendment may be considered by the committee as the standing Orders currently requires a communication to RMA of the approvals without necessarily tabling a report in the House.

Section 15 (3)

Despite the provision of this Act or any other written law, where a time is prescribed for doing an act or taking a proceeding by the National Assembly relating to the handling of a statutory instrument, the National Assembly may, by resolution, extend that time by a period not exceeding twenty-one days.

(b) deleting subsection (1) and substituting therefor new subsection.

(3) Notwithstanding subsection (2) the House may, by resolution, extend the time within which the Committee shall consider a statutory instrument under subsection (2) for a period not exceeding twenty-eight days.

Section 15(3) of the SI Act allows extension of time where time has been prescribed for any act or proceeding regarding a statutory instrument.

The House may by resolution extend the time for a maximum of 21 days.

The amendment seeks to *restrict the extension of time only to the time within which the Committee shall consider a statutory instrument.*

The amendment proposes the extension be for a maximum of 28 days, from 21 days.

The existing provision is general and applies to all acts regarding SI while the proposed amendments is limited to the time within which the committee considers an SI.

NEW SECTION 15A

CLAUSE 4

The principal Act is amended by inserting the following

The amendment seeks to introduce new section 15A, requiring that once a resolution has been made approving or annulling a

**PROVISIONS OF THE PROPOSED
STATUTORY
INSTRUMENTS ACT**

REMARKS

new section immediately
after section 15-

15 A (1) The Clerk of the
House to which a statutory
instrument is referred shall,
upon-

- (a) the resolution of the
relevant House under
section 15(1) for the
approval or
annulment of a
statutory instrument;
or

~~(a)~~(b) expiry of the
period specified
under section 15(2),

cause the resolution of the
House to be transmitted to
the Clerk of the other House
within two days of the
resolution

(2) A resolution under
subsection (1) shall stand
referred to the relevant
Committee of that House
which shall consider the
resolution together with the
statutory instrument and
report to the House within
fourteen days of the referral.

(3) The House to which
resolution is referred to
under subsection (1) may
extend the time within which
the Committee shall consider
the resolution for a period not
exceeding seven days.

statutory instrument, the
Clerk of each House shall
transmit the resolution to the
other Clerk within 2 days.

Thereafter, the resolution
together with the statutory
instrument would be
considered by the relevant
committee of the House and
report to the House within 14
days.

The consideration period
may be extended by 7 days.

**PROVISIONS OF THE
STATUTORY
INSTRUMENTS ACT**

**PROPOSED
AMENDMENT**

REMARKS

15 A (4) and (5)

(4) If both Houses resolve to-

(a) approve the
statutory
instrument; or

(b) annul the
statutory
instrument;

the Clerk of the House to
which the statutory
instrument was transmitted
under section 11(1) shall,
within seven days of the
decision, notify the
regulation-making authority.

(5) Where the House
resolves to revoke a statutory
instrument and the other
House does not, the statutory
instrument shall be referred
to a joint committee for
mediation in accordance with
Article 113 of the
Constitution which shall be
applied with the necessary
modification.

This amendments seek to
introduce concurrence of
both houses, and introduce a
mediation committee

This amendment is too
rigorous and punitive to the
Regulation making
authorities, and further may
subject the committee to
spend more of its time
conforming to procedural
technicalities rather than
substantive analysis and
scrutiny of the various
instruments before it.

The proposal is well
canvassed in the National
Assembly **Standing Order
211** provides for the
concurrence of Senate's
resolution on statutory
instruments.

Standing order 211(3) (b)
provides for the creation of a
joint committee should the
National Assembly fail to
agree with Senate's
resolution.

Section 18

Annulment

When a report on a statutory
instrument has been tabled in
Parliament, the statutory
instrument shall be deemed
to be annulled if Parliament

CLAUSE 5

The principal Act is amended
by deleting section 18 and
substituting therefor the
following new section-

18. (1) When Parliament
passes a resolution to annul a
statutory instrument the

The amendment seeks to
require the regulation
making authority to also
publish an annulment of a
statutory instrument.

Currently, publication is only
required after revocation
under section 19 of the Act.

**PROVISIONS OF THE PROPOSED
STATUTORY
INSTRUMENTS ACT**

REMARKS

passes a resolution to that effect.

statutory instrument shall be deemed to be annulled.

(2) The regulation making authority shall publish the annulment of the statutory instrument within fourteen days of the annulment.

Section 18- an annulment occurs where Parliament passes a resolution to annul a statutory instrument after it has been tabled.

Section 19- revocation occurs where the house adopts a report or resolution by the committee to revoke a statutory instrument.

The Black Laws Dictionary defines —

“annul” to mean

“To cancel; make void; destroy. To annul a judgment or judicial proceeding is to deprive it of all force and operation, either *ab initio* or prospectively as to future transactions.”

“revoke” to mean

“To call back; to recall; to annul an act by calling or taking it back”

It was held in the case of *Woodson v. Skinner* that the word “annul” is not a technical word and there is nothing which prevents the idea from being expressed in equivalent words;

Recommendation by
Directorate of Legal
services:

**PROVISIONS OF THE PROPOSED
STATUTORY AMENDMENT
INSTRUMENTS ACT**

REMARKS

Hon. members to consider making it a requirement for Parliament and not RMA to publish an annulment.

Way Forward

Having considered the Bill, the Committee proposed rejection of all proposed amendments to the SI Act as contained in the Senate Bill. Members thereafter resolved to come up with new amendments to the Statutory Instrument Act.

The decision to reject the Bill was proposed by Hon. Daniel Maanzo, MP and seconded by Hon. Martha Wangari, MP.

MIN.NO. /NA/CDL/2020/015 ANY OTHER BUSINESS

The Committee resolved to sponsor the Committee Chairperson to attend the Commission on the Status of Women (CSW64) conference to be held from 7th to 14th March, 2020 in New York, USA to make a presentation related to her Petition on the withdrawal of harmful chemical pesticides from Kenyan market. Her invitation is courtesy of Heinrich Boll Foundation and the Route to Food Initiative.

MIN.NO. /NA/CDL/2020/016 ADJOURNMENT

There being no other business, the meeting was adjourned at 12.45 p.m. Next meeting will be called on notice.

Signed: 

Date: 25 February 2020

HON. GLADYS BOSS SHOLLEI CBS MP

(CHAIRPERSON)

**MINUTES OF THE 75TH SITTING OF THE COMMITTEE ON DELEGATED
LEGISLATION HELD ON TUESDAY 3RD DECEMBER, 2019 AT 11.30 A.M. IN THE
SMALL DINING ROOM, NEW WING, MAIN PARLIAMENT BUILDINGS**

PRESENT

1. The Hon. Gladys Boss Shollei CBS MP - Chairperson
2. The Hon. George Murugara, MP
3. The Hon. Alice Wahome, MP
4. The Hon. Ronald Tonui, MP
5. The Hon. Kamoti Mwamkale, MP
6. The Hon. Munene Wambugu, MP
7. The Hon. Martha Wangari, MP
8. The Hon. Muturi Kigano, MP
9. The Hon. Jennifer Shamalla, MP
10. The Hon. Kassait Kamket, MP
11. The Hon. Tindi Mwale, MP

ABSENT WITH APOLOGY

1. The Hon. Fatuma Gedi, MP - Vice Chairperson
2. The Hon. Robert Mbui, MP
3. The Hon. Muriuki Njagagua, MP
4. The Hon. Waihenya Ndirangu, MP
5. The Hon. Patrick Mariru, MP
6. The Hon. Gideon Mulyungi, MP
7. The Hon. Daniel Maanzo, MP
8. The Hon. Timothy Wanyonyi, MP
9. The Hon. (Dr.) Wilberforce Oundo, MP
10. The Hon. Sammy Seroney, MP
11. The Hon. Abdi Koropu Tepo, MP

ABSENT

The Hon. Alfred Sambu, MP

IN-ATTENDANCE

National Assembly Secretariat

- | | | |
|-----------------------------|---|---------------------------------------|
| 1. Ms. Susan Maritim | - | Senior Clerk Assistant |
| 2. Mr. Jimale Mohamed | - | Second Clerk Assistant |
| 3. Mr. Dima Dima | - | Principal Legal Counsel |
| 4. Ms. Anne Kigoro | - | Research and Policy Analyst |
| 5. Mr. Charles Ayari | - | Superintendent of Electronics (Audio) |
| 6. Ms. Millicent O. Akhonya | - | Legal intern |
| 7. Ms. Peninah Naisiae | - | Legal intern |

MIN.NO. /NA/CDL/2019/431

PRAYER AND PRELIMINARIES

The meeting commenced at 11.35 a.m. with the Prayer.

MIN.NO. /NA/CDL/2019/432

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTING

Minutes of the 67th, 68th, 69th, 70th, 71st 72nd, 73rd, and 74th sittings were read and confirmed as true a record of the proceedings as follows –

Minutes of the 67th sitting held on 21st November, 2019 were proposed by Hon. George Murugara, MP and seconded by Hon. Jennifer Shamalla, MP.

Minutes of the 68th sitting held on 22nd November at 9am, 2019 were proposed by Hon. Martha Wangari, MP and seconded by Hon. Munene Wambugu, MP.

Minutes of the 69th sitting held on 22nd November, 2019 at 2.30pm, were proposed by Hon. Muturi Kigano, MP and seconded by Hon. Ronald Tonui, MP.

Minutes of the 70th sitting held on 23rd November, 2019 at 9am, were proposed by Hon. Martha Wangari, MP and seconded by Hon. Munene Wambugu, MP.

Minutes of the 71st sitting held on 23rd November, 2019 at 2.30pm, were proposed by Hon. Kamoti Mwamkale, MP and seconded by Hon. Tindi Mwale, MP.

Minutes of the 72nd sitting held on 29th November, 2019 at 9am, were proposed by Hon. Jennifer Shamalla, MP and seconded by Hon. Kamoti Mwamkale, MP.

Minutes of the 73rd sitting held on 29th November, 2019 at 2.30pm, were proposed by Hon. Kamoti Mwamkale MP and seconded by Hon. Jennifer Shamalla, MP.

Minutes of the 74th sitting held on 30th November, 2019, were proposed by Hon. Martha Wangari, MP and seconded by Hon. Kamoti Mwamkale, MP.

MIN.NO. /NA/CDL/2019/433

MATTERS ARISING

No matters arose.

MIN.NO. /NA/CDL/2019/434

CONSIDERATION OF THE STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2018 (SENATE BILL NO. 24 OF 2018)

The Committee was informed that the the Statutory Instruments (Amendment) Bill, 2018, (Senate Bill No. 24 of 2018) published vide Kenya Gazette Supplement No. 113 of 10th August 2018, was passed by the Senate on the 10th of July 2019. The Bill is sponsored by Sen. Samuel Poghio, Chairperson and Sessional Committee on Delegated Legislation.

The Bill was referred to the National Assembly pursuant to Article 110(4) of the Constitution and the provisions of Standing Order 41 and 156 of the Senate whereby the Speaker of the Senate conveyed the decision of the Senate to the National Assembly seeking concurrence of the National Assembly to the Bill.

Pursuant to the provisions of Standing Order 143 and 127, the Speaker of the ~~National Assembly~~ referred the Statutory Instruments (Amendment) Bill, 2018 to the Committee on Delegated Legislation for scrutiny.

The principal object of the Bill is to amend the Statutory Instruments Act to expressly include the Senate in the scrutiny process of statutory instruments.

Way Forward

Having considered the Bill, the Committee proposed rejection of all proposed amendments to the SI Act as contained in the Senate Bill. The Bill to be further considered at a retreat during the Fourth Session.

MIN.NO. /NA/CDL/2019/435 CONSIDERATION OF THE RETIREMENT BENEFITS
(TREATING CUSTOMERS FAIRLY) GUIDELINES,
2019

The Committee deferred consideration of the Retirement Benefits (Treating Customers Fairly) Guidelines, 2019 until the Fourth Session scheduled to commence on 11th February, 2020.

MIN.NO. /NA/CDL/2019/436 ANY OTHER BUSINESS

No other business was conducted.

MIN.NO. /NA/CDL/2019/437 ADJOURNMENT

There being no other business, the meeting was adjourned at 12.15 p.m. The next meeting will be called on notice.

Signed:

Date: 18th Feb 2020

HON. GLADYS BOSS SHOLLEI CBS MP

(CHAIRPERSON)

