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**REPUBLIC OF KENYA**

**PARLIAMENT**

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**NATIONAL ASSEMBLY BILLS**

*(Bill No. 51 of 2020)*

**THE ANTI-DOPING (AMENDMENT) BILL, 2020**

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(A Bill published in the Kenya Gazette Supplement No. 229 of 2020 and  
passed by the National Assembly on December 22<sup>nd</sup>, 2020)

**N.A. /B/No. 51/2020**

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**THE ANTI-DOPING (AMENDMENT) BILL, 2020**

**A Bill for**

**AN ACT of Parliament to amend the Anti-Doping Act to comply with the 2021 World Anti-Doping Code; to put in place an enhanced results management system for anti-doping rule violations and for connected purposes**

**ENACTED** by the Parliament of Kenya, as follows—

1. This Act may be cited as the Anti-Doping (Amendment) Act, 2020 and shall come into operation as follows—

Short title and commencement.

(a) section 21 on such date as the Cabinet Secretary may, by notice in the Gazette, appoint; and

(b) all other sections, on the date of assent.

2. Section 2 of the Anti-Doping Act, in this Act referred to as the “principal Act”, is amended—

Amendment of section 2 of No. 5 of 2016.

(a) in the definition of “accredited laboratory”, by deleting the word “test” and substituting therefor the word “analyse”;

(b) by deleting the definition of “administration”;

(c) by deleting the definition of “complicity”;

(d) by deleting the definition of “doping control” and substituting therefor the following definition—

“doping control” means the steps and processes commencing with test distribution planning to the disposition of any appeal and the enforcement of consequences, including steps and processes in between, including but not limited to provision of testing, investigations, whereabouts information, therapeutic use exemptions, sample collection and handling, laboratory analysis, results management, and hearings and appeals, and investigations or proceedings relating to violations of Article 10.14 (status during ineligibility or provisional suspension) of the World Anti-Doping Code;

(e) in the definition of “in-competition”, by deleting the words “twelve hours” and substituting therefor

the words “one minute to midnight on the day”;

- (f) by deleting the definition of “possession”;
- (g) by deleting the definition of “prohibited association”;
- (h) by deleting the definition of “tampering”;
- (i) by deleting the definition of “Therapeutic Use Exemption” and substituting therefor the following definition—

“Therapeutic Use Exemption” means an exemption that allows an athlete with a medical condition to use a prohibited substance or prohibited method, but only if the conditions set out in Article 4.4. of the World Anti-Doping Code and the International Standard for Therapeutic Use Exemptions are met;

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

“anti-doping activities” means anti-doping education and information, test distribution planning, maintenance of a registered testing pool, managing Athlete Biological Passports, conducting testing, organising analysis of samples, gathering of intelligence and conduct of investigations, processing of therapeutic use exemptions applications, results management, hearings, monitoring and enforcing compliance with any consequences imposed, and all other activities related to anti-doping to be carried out by or on behalf of an anti-doping organisation, as set out in the World Anti-Doping Code and in the International Standards;

“athlete biological passport” means the program and methods of gathering and collating data as described in the International Standard for Testing and Investigations and International Standard for Laboratories;

“delegated third party” means any person to which the Agency delegates any aspect of doping control or anti-doping education

programs including, but not limited to, third parties or other Anti-Doping Organisations that conduct sample collection or other doping control services or anti-doping educational programs for the Agency, or individuals serving as independent contractors who perform doping control services for the Agency, but does not include the Court of Arbitration for Sport (CAS);

“education” means the process of learning to instill values and develop behaviors that foster and protect the spirit of sport, and to prevent intentional and unintentional doping;

“institutional independence” means the independence of the hearing panels on appeal from the Anti-Doping Organisation responsible for results management;

*Note:* They must therefore not in any way be administered by, connected or subject to the Anti-Doping Organisation responsible for results management;

“operational independence” means—

- (a) that board members, staff members, commission members, consultants and officials of the Anti-Doping Organization with responsibility for results management or its affiliates who may include a member federation or confederation, as well as any person involved in the investigation and pre-adjudication of the matter cannot be appointed as members or clerks (to the extent that such clerk is involved in the deliberation process or drafting of any decision) of hearing panels of that Anti-Doping Organization with responsibility for results management; and
- (b) that hearing panels shall be in a position to conduct the hearing and decision-making process without interference

from the Agency or any third party;

“protected person” means an athlete or other natural person who at the time of the anti-doping rule violation—

- (a) has not reached the age of sixteen years;
- (b) has not reached the age of eighteen years and is not included in any Registered Testing Pool and has never competed in any international event in an open category; or
- (c) for reasons, other than age has been determined to lack legal capacity under applicable national legislation;

“recreational athlete” means any person who engages or participates in sport or fitness activities for recreational purposes and does not include any person who, within the five years prior to committing any anti-doping rule violation, has been an international-level athlete (as defined by each International Federation consistent with the International Standard for Testing and Investigations) or national-level athlete (as defined by each National Anti-Doping Organization consistent with the International Standard for Testing and Investigations), has represented any country in an international event in an open category or has been included within any Registered Testing Pool or other whereabouts information pool maintained by any International Federation or National Anti-Doping Organization; and

“results management” means the process encompassing the timeframe between notification as per Article 5 of the International Standard for Results Management, or in cases which may include Atypical Finding, Athlete Biological Passport or whereabouts failure, such pre-notification steps expressly provided for in Article 5 of the International Standard for Results Management, through the charge until the final resolution of the matter, including the end of the hearing process at first instance or on

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appeal, if an appeal is lodged.

3. Section 3 of the principal Act is amended by adding the following new paragraph immediately after paragraph (d)—

Amendment of section 3 of No. 5 of 2016.

“(e) board members, directors, officers and specified employees, and delegated third parties and their employees, who are involved in any aspect of doping control, of the entities specified under paragraphs (a) to (d).”

4. Section 4 of the principal Act is amended by adding the following new paragraph immediately after paragraph (b)—

Amendment of section 4 of No. 5 of 2016.

“(c) safeguard the physical health and mental integrity of athletes.”

5. Section 5 of the principal Act is amended—

Amendment of section 5 of No. 5 of 2016.

(a) by deleting subsection (2A) and substituting therefor the following subsection—

“(2A) The Agency shall be the only organisation permitted to carry out anti-doping activities in Kenya and its authority to enforce this Act, including any consequence for the breach thereof, shall be recognized by all national and international sports federations and national and international sports organisations.”

(b) by deleting subsection (3); and

(c) by deleting subsection and (4).

6. Section 7 of the principal Act is amended—

Amendment of section 7 of No. 5 of 2016

(a) in subsection (1)—

(i) in paragraph (g), by deleting the words “and sports organisations” and substituting therefor the words “national and international sports federations, and national and international sports organisations”;

(ii) in paragraph (n), by deleting the word “sportspersons” and substituting therefor the word “athletes”;

(iii) in paragraph (o), by deleting the word “sportspersons” and substituting therefor the

- word “athletes”;
- (iv) in paragraph (q), by inserting the words “and encourage reciprocal testing between anti-doping organisations” immediately after the word “mandate” ;
- (v) by deleting paragraph (ua) and substituting therefor the following paragraph—
- “(ua) plan, implement, evaluate and promote anti-doping education in line with the requirements of the International Standard for Education”;
- (vi) by deleting paragraph (ub) and substituting therefor the following paragraph—
- “(ub) vigorously undertake results management and ensure proper enforcement of consequences in accordance with the Agency's rules and the Code”;
- (vii) by deleting paragraph (uc);
- (viii) by inserting the following new paragraph immediately after paragraph (ud)—
- “(ue) adopt a policy implementing the requirements for the encouragement and protection of whistleblowers;”
- (b) in subsection (2), by deleting paragraph (c) and substituting therefor the following paragraph—
- “(c) ensure that data privacy requirements and the rights of everyone involved in the doping control procedures are respected.”
- (c) by adding the following new subsections immediately after subsection (2) —
- “(3) The Agency may delegate any aspect of doping control or anti-doping education to a delegated third party and shall—
- (a) require the delegated third party to perform such aspects in compliance with the Code, International Standards, and this Act; and
- (b) always remain fully responsible for ensuring that the delegated aspects are

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performed in compliance with the Code.”

“(4) The Kenya Bureau of Standards, the Pharmacy and Poisons Board, the Medical Practitioners and Dentists Council, the Ministry for the time being responsible for matters relating to Health and all other aligned or relevant agencies, shall collaborate with the Agency in aligning their standards in accordance with the requirements of the Code and this Act.”

7. Section 9 of the principal Act is amended—

Amendment of  
section 9 of No. 5  
of 2016.

(a) by re-numbering section 9 as section 9(1); and

(b) by adding the following new sub-section immediately after subsection (1)—

“(2) The Agency and Committee shall be independent in their operational decisions and activities from sport and government, including, without limitation from any involvement in their operational decisions or activities by any person who is at the same time involved in the management or operations of any national and international sports federations, national and international sports organisations, Major Event Organization, National Olympic Committee, National Paralympic Committee, or Ministry or other government department with responsibility for sports or anti-doping.”

8. Section 10 of the principal Act is amended—

Amendment of  
section 10 of No.  
5 of 2016.

(a) in subsection (5), by inserting the following new paragraph immediately after paragraph (d)—

“(da) is provisionally suspended or serving a period of ineligibility under the Agency’s Anti-Doping Rules and has been directly or intentionally engaged in conduct within the previous six years which would have constituted a violation of the Agency’s Anti-Doping Rules if such Rules had been applicable to them.”

(b) by adding the following new subsection



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immediately after subsection (5)—

“(6) Before serving as a member of the Board, each proposed member shall sign a conflict of interest and confidentiality declaration form as provided by the Agency.”

9. Section 12 of the principal Act is amended, in subsection (1), by adding the following new paragraph immediately after paragraph (f)—

Amendment of section 12 of No. 5 of 2016.

“(g) no longer meets the requirements for their appointment as set out in section 10(2) and (5) of this Act.”

10. Section 14 of the principal Act is amended—

Amendment of section 14 of No. 5 of 2016.

(a) in subsection (1), by deleting the word “for” and substituting therefor the words “to oversight”;

(b) in subsection (2)—

(i) in paragraph (d), by deleting the word “open” and substituting therefor the words “authorize the opening of”;

(ii) in paragraph (f), by inserting the words “approve the strategic plan,” immediately before the word “lay”; and

(iii) in paragraph (h), by deleting the word “other” and substituting therefor the word “oversight”.

11. Section 17(4) of the principal Act is amended in paragraph (b) by deleting sub-paragraph (vi) and substituting therefor the following new subparagraph—

Amendment of section 17 of No. 5 of 2016.

“(vi) administrative support to the Therapeutic Use Exemption Committee”;

12. Section 19 of the principal Act is amended by adding the following new subsection immediately after subsection (2)—

Amendment of section 19 of No. 5 of 2016.

“(3) Subject to applicable law, the Agency may not employ a person in any position involving doping control (other than authorized anti-doping education or rehabilitation programs) who—

- (a) has been provisionally suspended;
- (b) is serving a period of ineligibility under the Agency's Anti-Doping Rules or the World Anti-Doping Code; or
- (c) was not subject to the Rules and the Code, but has directly and intentionally engaged in conduct within the previous six (6) years which would have constituted a violation of Anti-Doping Rules if they had been applicable to such person”.

13. The principal Act is amended by inserting the following new section immediately after section 22—

Insertion of new section 22A.

Board members and staff to be bound by the Act.

22A. Subject to applicable law, as a condition of such position or involvement, all of the Board members, directors, officers, and those employees (and those of appointed delegated third parties), who are involved in any aspect of doping control, shall be bound by this Act and any other anti-doping rules as persons in conformity with the Code for direct and intentional misconduct, or to be bound by comparable Rules and Regulations put in place by the Agency.

14. Section 23 of the principal Act is amended—

Amendment of section 23 of No. 5 of 2016.

- (a) in subsection (2), by adding the words “persons appointed by the Agency” immediately after the word “following”;
- (b) by inserting the following new subsection immediately after subsection (3)—
  - “(3A) Before serving as members of the Committee, each member shall sign an Oath of Secrecy and Declaration of Conflict of Interest Form as provided by the Agency.”
- (c) in subsection (4), by deleting the words “two, shall be doctors” and substituting therefor the words “one, shall be a doctor”; and
- (d) in subsection (5)(a), by adding the words “and International Standards” immediately after the word “Code”.

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15. Section 24 of the principal Act is amended—

Amendment of  
section 24 of No.  
5 of 2016.

(a) in subsection (2), by inserting the words “directly to its international federation” immediately after the words “apply”; and

(b) by adding the following new subsection immediately after subsection (3)—

“(4) The decision of the Committee may be appealed in a manner specified in the Anti-Doping Rules.”

16. Section 25 of the principal Act is amended—

Amendment of  
section 25 of No.  
5 of 2016.

(a) in subsection (2), by deleting the words “the name of”; and

(b) in subsection (3), by deleting the words “the inclusion of his or her name” and substituting therefor with the words “that athlete inclusion”.

17. Section 27 of the principal Act is amended—

Amendment of  
section 27 of No.  
5 of 2016.

(a) in subsection (1), by inserting the words “as well as all Board members, directors, officers, employees and appointed delegated third parties who are involved in any aspect of doping control” immediately after the words “a minor”;

(b) in subsection (5)—

(i) in paragraph (c), by adding the words “and take responsibility to make sure that any medical treatment received does not violate the Anti-Doping Rules” immediately after the word “methods”; and

(ii) by adding the following new paragraph immediately after paragraph (e)—

“(f) disclose the identity of their athlete support personnel upon request by the Agency.”

(c) in subsection (6), by adding the following new paragraphs immediately after paragraph (b)—

“(c) be knowledgeable of and comply with the Anti-Doping Rules;

(d) not use or possess any prohibited substance or prohibited method without valid justification; and

(e) not use the defence of lack of knowledge or the requirement to comply with the Anti-Doping Rules as a defence for any infringement under this Act.”

(d) by adding the following new subsection immediately after subsection (6)—

“(7) Other persons subject to this Act shall be knowledgeable of, and comply with the Anti-Doping Rules provided that lack of such knowledge shall not be used as a defence in case of infringement of any provision of this Act.”

18. Section 28 of the principal Act is amended—

Amendment of  
section 28 of No.  
5 of 2016.

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

“(1) A sample taken from an athlete shall be analysed at an accredited laboratory or laboratory otherwise approved by the World Anti-Doping Agency to detect prohibited substances or its metabolites and markets.”

(b) by deleting subsection (2) and substituting therefor the following new subsection—

“(2) A sample and related analytical data or doping control information shall be analysed—

(a) to detect prohibited substances and prohibited methods identified on the prohibited list and other substances as may be directed by the World Anti-Doping Agency;

(b) to assist an anti-doping organization in profiling relevant parameters in an athlete’s urine, blood or other matrix, including for DNA or genomic profiling; or

(c) for any other legitimate anti-doping purpose.”

(c) by deleting subsection (3) and substituting therefor the following new subsection—

“(3) Samples, related analytical data and doping control information may be used for anti-doping research purposes, subject to written consent of the athlete.”

(d) by adding the following new subsections immediately after subsection (3) —

(4) Samples and related analytical data or doping control information used for research purposes shall first be processed in such a manner as to prevent samples and related analytical data or doping control information being traced back to a particular athlete.

(5) The results of all tests sample analysis shall be submitted to the Agency.

19. Section 29 of the principal Act is amended—

Amendment of section 29 of No. 5 of 2016.

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

“(1) The Agency shall for purposes of enforcing this Act appoint anti-doping compliance officers.”

(b) in subsection (2)—

(i) in paragraph (a), by deleting the word “Board” and substituting therefor the word “Agency”;

(ii) by deleting paragraphs (b) and (c); and

(c) by deleting subsection (4).

20. The principal Act is amended by repealing section 31 and replacing therefor the following section—

Repeal and replacement of section 31 of No. 5 of 2016.

Jurisdiction of Sports Tribunal.

31. (1) The Tribunal shall have jurisdiction to hear and determine cases on—

(a) anti-doping rule violations on

national and lower level athletes and athlete support personnel;

- (b) anti-doping rule violations on other persons subject to the Anti-Doping Rules;
- (c) anti-doping rule violations arising from national and lower level events;
- (d) Therapeutic Use Exemptions (TUE) decisions of Anti-Doping Agency of Kenya (ADAK); and
- (e) matters of compliance of sports organisations in the first instance and appellate level.

(2) The Tribunal shall be guided by the Code, the International Standards established under the Code, the 2005 UNESCO Convention Against Doping in Sports, the Sports Act, and the Agency's Anti-Doping Rules, amongst other legal sources.

No. 25 of 2013.

(3) The Tribunal shall establish its own procedures.

(4) Appeal level disputes involving national and lower level athletes, athlete support personnel, sports federations, sports organisations, professional athletes and other persons subject to the Anti-Doping Rules shall be resolved by the Tribunal—

- (a) which shall consist of a panel of three members appointed by the Chairperson of the Tribunal; and
- (b) after the panel members have signed a no conflict of interest declaration in form provided by the Agency.

(5) The World Anti-Doping Agency, the International Olympic Committee, the International Paralympic Committee, and

the relevant International Federations shall have the right to a second appeal to the Court of Arbitration for Sports (CAS) with respect to the appeal decisions of the Tribunal.

(6) For the avoidance of doubt, the Tribunal shall not have jurisdiction over Appeals involving International Level athletes or arising from the participation in International Events or national crimes related to doping.

(7) The Cabinet Secretary may prescribe rules to give effect to this section.”

21. The principal Act is amended by inserting the following new sections immediately after section 31—

Insertion of new sections 31A, 31B, 31C, 31D, 31F and 31G in No. 5 of 2016.

Establishment of the Anti-Doping Results Management Panel.

**31A.** (1) There is established the Anti-Doping Results Management Panel.

(2) The Results Management Panel consists of—

(a) a pool of professionals of not less than five years' experience in—

(i) legal practice;

(ii) sports administration;

(iii) medical practice;

(iv) a relevant scientific field; and

(b) retired sportsmen, who shall have retired at least five years prior to the appointment.

(3) The Agency shall publish the names of the members of the Panel on the Agency's website.

(4) The Agency shall review the competence of the Results Management Panel every two years and such review shall be in accordance with the Code and the International Standards.

(5) The members of the Results

Management Panel shall serve on a part-time basis.

Powers of the Results Management Panel.

**31B.** The Results Management Panel shall—

- (a) conduct Results Management hearings related to Anti-Doping rule violations referred to it by the Agency;
- (b) determine whether an Anti-Doping violation has occurred;
- (c) impose sanctions; and
- (d) perform any other functions that may be conferred to it by the Agency in accordance with the Anti-Doping Rules.

Constitution of a Results Management Panel.

**31C.** (1) Where the athlete, athlete support personnel or other person charged with an anti-doping rule violation requests a hearing, the Agency shall lodge a charge with the Results Management Panel by—

- (a) notifying the concerned athlete, athlete support personnel or other person to select one member from the pool of the members of the Results Management Panel; and
- (b) selecting one member from the pool of the members of the Results Management Panel.

(2) The two members selected by the athlete, athlete support personnel or other person and the Agency under subsection (1) shall select one member from the pool of the members of the Results Management Panel, who shall be the Chairperson of the Results Management Panel and shall meet the criteria set under subsection (6).

(3) The hearing and determination of any anti-doping matter in the first instance shall be conducted by a Results Management Panel consisting of three members, unless the Chairperson considers



that—

- (a) taking into account the circumstances; and
- (b) complexity of the specific case, additional members need to be appointed.

(4) The Chairperson shall ensure that the total number of the members of the Results Management Panel shall at all times be an odd number.

(5) Upon appointment to constitute a Results Management Panel under section 31C, each Results Management Panel member shall—

- (a) sign a no conflict of interest declaration, kin as provided by the Agency; and
- (b) if such facts or circumstances arise at a later stage of the hearing process, the relevant Results Management Panel member shall promptly disclose them to the parties and recuse themselves from the case, in which case a new member shall be appointed by the party who appointed the recused member.

Hearing process.

**31D.** (1) Upon the receipt of a confirmed charge from the Agency alleging the occurrence of an anti-doping violation, the Results Management Panel shall—

- (a) conduct a hearing within fourteen days of receipt of the charge;
- (b) ensure that the cases referred to it are heard, concluded and decisions delivered within six months from the date of receipt of the charge;
- (c) grant not more than three adjournments to each party in the

case;

- (d) ensure that the adjournments granted under (c) shall not be for more than fourteen days;
- (e) have powers to order the parties to proceed with the hearing in the event that three adjournments are exhausted;
- (f) ensure to conclude the hearing at least thirty days before the six months' time limit under (b); and
- (g) issue a written decision within twenty days after the conclusion of the hearing.

(2) These deadlines may be extended in duly justified circumstances.

Secretarial services.

**31E.** (1) Results Management Panel shall be operationally independent from the Agency.

(2) The Agency shall provide the secretariat services to the Results Management Panel.

(3) The Agency shall be responsible for—

- (a) prompt notification of the Results Management Panel's decisions to the athlete or other person and to other Anti-Doping Organisations with a right of appeal under Code Article 13.2.3; and
- (b) promptly reporting and publishing the decision.

Right of Appeal.

**31F.** (1) All parties with a right to appeal except World Anti-Doping Agency (WADA) may file an appeal within fourteen days from the date of the delivery of the decision by the Results Management Panel.

(2) The filing deadline for an appeal

filed by WADA shall be the later of—

- (a) twenty-one days after the last day on which any other party having a right to appeal could have appealed; or
- (b) twenty-one days after WADA's receipt of the complete file relating to the decision.

(3) The following persons may lodge an appeal where dissatisfied by a decision from the Results Management Panel—

- (a) the athlete or other person who is the subject of the decision being appealed;
- (b) the other party to the case in which the decision was rendered;
- (c) the relevant International Federation;
- (d) the national anti-doping organisation of the athlete's or other person's country of residence or countries where the athlete or other person is a national or license holder;
- (e) the International Olympic Committee or International Paralympic Committee, as applicable, where the decision may have an effect in relation to the Olympic Games or Paralympic Games, including decisions affecting eligibility for the Olympic Games or Paralympic Games; and
- (f) World Anti-Doping Agency.

(4) An appeal lodged in accordance with this section may be made at—

- (a) the Tribunal where the matters involve a national and lower level

athletes or other persons; or

(b) the Court of Arbitration for Sports where the matter involves an international level athlete or arises from the participation in the international event.

(5) Notwithstanding any other provision, the only person who may appeal from the imposition of a provisional suspension is the athlete or other person upon whom the provisional suspension is imposed.

(6) Where an appeal is preferred in accordance with the provision of this section, the decision of the Results Management Panel shall remain in effect until the determination of the appeal.

**22.** Section 32 of the principal Act is amended by deleting subsection (2).

Amendment of section 32 of No. 5 of 2016.

**23.** The principal Act is amended by repealing section 41B and substituting therefor the following new section—

Repeal and replacement of section 41B of No. 5 of 2016.

Internal Rules to conform with the Code.

**41B.** Each sports federation shall prepare Rules requiring all athletes preparing for or participating in a competition or activity authorized or organised by a national federation or one of its member organisations, and each athlete support personnel associated with such athletes to agree to be bound by Anti-Doping Rules and the Agency's results' management authority in conformity with the Code as a condition for such participation.

**24.** Section 41D of the principal Act is amended by adding the words "or other anti-doping organisation" immediately after the word "Agency".

Amendment of section 41D of No. 5 of 2016.

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**25.** Section 42 of the principal Act is amended by deleting subsection (6) and substituting therefor with the following—

Amendment of  
section 42 of No. 5  
of 2016.

“(6) An athlete, athlete support personnel or other person subject to the Anti-Doping Rules who commits a violation contrary to the Anti-Doping Rules shall be subject to the requisite sanctions, as set out in the Anti-Doping Rules.”

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I certify that this printed impression is a true copy of the Bill passed by the National Assembly on the 22<sup>nd</sup> December, 2020.



*Clerk of the National Assembly*

Endorsed for presentation to the Senate in accordance with the provisions of Standing Order 142 of the National Assembly Standing Orders.



*Speaker of the National Assembly*

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