

## **SPECIAL ISSUE**

*Kenya Gazette Supplement No. 206 (National Assembly Bills No. 67)*



REPUBLIC OF KENYA

# **KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2023**

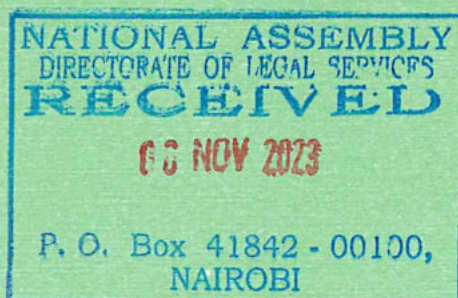
**NAIROBI, 30th October, 2023**

## **CONTENT**

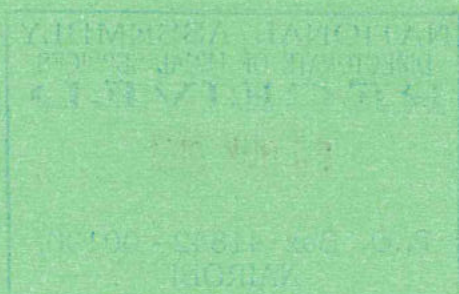
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**THE STATUTE LAW (MISCELLANEOUS  
AMENDMENTS) BILL, 2023**

**A Bill for**

**AN ACT of Parliament to make various amendments to  
statute law**

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

1. This Act may be cited as the Statute Law (Miscellaneous Amendments) Act, 2023. Short title.

2. The several laws specified in the first column of the Schedule are amended in the provisions specified in the second column thereof, in the manner respectively specified in the third column. Amendment of written laws.

**SCHEDULE**

<i>Written law</i>	<i>Provision</i>	<i>Amendment</i>
The Children's Act( No. 29 of 2022	s. 186 (4)	Delete
	(6) (f)	Delete
The Copyright Act (No. 12 of 2001)	s.2	Delete the definition of "collective management organizations" and substitute therefor the following new definition—  "collective management organization" means an organization approved and authorized by the Board which has as its main object, or one of its main objects, the negotiating for the license fees for the use of copyright work, distribution of royalties and the granting of licences in respect of the use of copyright works or related rights;
New		Insert the following new section immediately after section 30—  <div style="display: flex; align-items: center;"> <span style="margin-right: 10px;">Equitable Remuneration.</span> <div> <b>30AA.</b> (1) Where a sound recording is published for commercial purposes, or a </div> </div>



reproduction of such phonograms is used directly for broadcasting or other communication to the public, or is publicly performed, a single equitable remuneration for the performer or performers and the producer of the sound recording shall be paid by the user to the producer.

(2) Unless otherwise agreed between the performers and the producer, half of the amount received by the producer under subsection (1) shall be paid by the producer to the performer or performers.

(3) The right to an equitable remuneration under this section shall subsist from the date of publication of the sound recording until the end of the fiftieth calendar year following the year of publication, provided that the phonogram is still protected under the Act.

(4) For the purposes of this section, phonograms that have been available to the public by wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered to have been published for commercial purposes.

(5) A performer shall have the unwaivable and untransferable rights to receive



equitable remuneration or royalties in respect of any broadcast, communication to the public, rental or making available to the public of his performance fixed in an audiovisual fixation to be managed through the relevant collective management organization.

(6) The right to an equitable remuneration under this section shall subsist from the date of publication of the audiovisual performance until the end of the fiftieth calendar year following the year of publication, provided that the audiovisual work or performance is still protected under the Act.

s.30B(1) Insert the word “authors” immediately before the word “performers”

(2) Insert the word “authors” immediately before the word “performers”

(3) Insert the word “authors” immediately before the word “performers”.

s.46(1) Delete and substitute therefor the following new subsection—

No person or association of persons shall commence or carry on the business as a collective managements organization unless registered as such by the Board and granted operating license.

(3) Delete the expression “twelve months” and substitute therefor the expression “thirty-six months”.



(4)

Insert the words “and is registered as a Collective Management Organization by the Board” at the end of paragraph (a).

Delete paragraph (d) and substitute therefor the following new paragraph—

(d) its main object, or one of its main objects, is negotiating for the licence fees for the use of copyright works and the granting of licences in respect of the use of copyright works or related rights.

Insert the following new subsections immediately after subsection (12)—

(13) An organization registered in accordance with subsection (4)(a) may apply to the Board in the prescribed manner for an operating licence.

(14) Where a collective management organization operating licence is revoked, the approved collecting agent shall in conjunction with the Board open and operate an escrow account to hold monies not immediately available for utilization or distribution until the operating license is reinstated or a new organization is licensed by the Board.

(15) During the period of revocation under subsection (14), the agency shall continue to collect and remit royalties to rights holders.

s.46A

Renumber the existing provision as subsection (1) and insert the following new subsection—

(2) A licensed collective management organization shall appoint an agency approved by the Board to collect and distribute royalties on their behalf through the National Rights Registry.



(3) The agency appointed under subsection (2) shall collect royalties on such terms and conditions as may be agreed upon between their and the collective Management Organization subject to approval of such terms by the Board.

s.46B

Insert the following new subsection immediately after subsection (1)—

(1A) In addition to the members provided for under subsection (1) there shall be coopted into the board of directors of a collective management organization at least four persons who hold professional qualifications recognized by a professional body established under the relevant law.

Insert the following new subsections immediately after subsection (4)—

(5) The members of the board of a collective management organization shall be eligible to such salaries, honorariums, and other allowances as may be approved by members in a general meeting and endorsed by the Board.

(6) A person who has been convicted of an offence under this Act or any law relating to the management of any company or organization or of a felony shall not be eligible to hold office as a director or to be employed as a member of the staff of a collective management organization.

(7) Where a person who is a member of the board of a collective management organization or a member of its staff is charged with an offence under this Act or any other law relating to the management



of any company or organization or of a felony such person shall step aside from his or her position until the matter is heard and determined.

(8) A person to whom subsection (7) applies shall during the hearing of the case be entitled to receive half of his or her basic pay and if acquitted of the offence shall be paid the outstanding amount, and may with the concurrence of the members of the organization be reinstated to his or her respective position in the Board.

(9) The payment of royalties by the collective management organization shall be automated and based on monitoring data and conducted in accordance with such conditions as the Board may from time to time prescribe.

s.46C

Insert the following new subparagraph immediately after subsection (1)—

(1A) Notwithstanding subsection (1), the Board may issue a licence for one entity to represent the rights of all parties within a sector.

s.46E

(6) Insert the following new paragraph immediately after paragraph (g)—

(h) at any other time when the Board considers it appropriate to do so in the best performance of its functions under this Act.

Insert the following subsections immediately after subsection (6)—

(7) Any member or director of a collective management organization who approves accounts beyond the limits



directed by the Board commits an offence and shall on conviction be liable to a fine not exceeding five times the amount in excess of the allowed amount or imprisonment for a term not exceeding three months or to both.

(8) A collective management organization shall only operate bank accounts authorized and monitored by the Board.

The Scrap Metal s. 2  
Act, 2015 (No. 1  
of 2015).

Insert the following new definitions in proper alphabetical sequence—

“Authority” means the Kenya Revenue Authority established under section 3 of the Kenya Revenue Authority Act;

“critical national infrastructure” means physical and virtual assets or facilities, whether owned by private or public entities which are essential to the provision of vital services to the public for their social and economic wellbeing, and which if destroyed, degraded or rendered unavailable, would impact on the social or economic wellbeing of the nation or affect the government’s ability to undertake national defence and security;

“electrical rewinder” means a person who deals in the repair or rewinding of electric motors;

“smelter” means an installation or factory for smelting metal from its ore or means a person engaged in the business of smelting”; and

“steel fabricators” means an installation or factory for the production



of metal structures using a range of processes such as cutting, bending or assembling, which generates scrap metal in their processes.

- s. 4(1) Insert the following new paragraph immediately after paragraph (e) —

(ea) the Principal Secretary of the Ministry for the time being responsible for matters relating to finance or his or her representative.

- s. 4(1)(f)(i) Delete the word “the” and substitute therefor the word “a”.

- s. 4(1)(f)(v) Delete.

- s. 6(1)(a)(ii) Delete the word “utility” and substitute therefor the words “critical national”.

- s. 9(1) Insert the word “a” immediately after the word “of”.

- s. 11 Renumber the provision as subsection (1) and add the following subsections—

(2) Notwithstanding subsection (1), the Cabinet secretary shall issue a special licence for dealing in copper, aluminium and their alloys.

(3) An application for a special licence shall be made in accordance with section 10.

- s. 18(3)(a) Delete the words “one million” and substitute therefor the words “five million”.

- s. 18(3)(b) Delete the word “five” and substitute therefor the word “ten”.

- s. 20(4) Delete the word “one” and substitute therefor the word “five”.

- s. 22(2) Delete the words “one million” and substitute therefor the word “five million”.



- s. 24 (1) Insert the words “critical national” immediately after the word “the”.

Insert the following new sections immediately after section (1)—

(1A) A state entity responsible for critical national infrastructure shall dispose scrap metal from critical national infrastructure to the Numerical Machining Complex and the Kenya Shipyard Limited for smelting into billets.

(1B) Where there is inadequate capacity at the Numerical Machining Complex and Kenya Shipyard Limited, the respective state entity through a written consent from the Numerical Machining Complex and the Kenya Shipyard Limited, shall seek approval from the Council to partner with a local smelter directly without involving a broker.

- s. 24(2) Delete the word “ten” and substitute therefor the word “twenty”

Delete the word “three” and substitute therefor the word “seven”.

- s. 26(1) Insert the words “or import” immediately after the word “export”.

- s. 26(2) Insert the words “or import” immediately after the word “export”

- s. 26(3) Insert the words “in consultation with the Authority.” immediately after the word “Secretary”

- s. 26 Insert the following new sub section immediately after sub section (3)—

(3A) The certificate issued under subsection (3) shall indicate the nature, quantity and consideration for scrap metal



- to ensure compliance with the approved limits.
- s. 30(1)(a) Insert the words “critical national” immediately after the word “vandalized”.
- s. 30(1)(e)(ii) Insert the words “smelter, electrical rewinder, steel fabricator” immediately after the word “miller”.
- The National Employment Authority Act, 2016 (No. 3 of 2016).
- s. 2 In the definition of “Authority”, delete the word “Youth”.
- s.4 (a) in the opening statement, insert the words “an employer who employs ten or more employees including” immediately after the words “applies to”;
- (b) insert the following new paragraph immediately after paragraph (a)—
- (aa) each county government;
- s.9 (c) Delete the word “function” and substitute therefor the word “functions”.
- s. 17(2) (a) Delete paragraph (c) and substitute therefor the following new paragraph—
- (c) has at least ten years’ experience, five of which shall be in a management level.
- (b) Delete paragraph (d).
- s.28(2) Delete.
- s. 30(1) Delete the word “youth” and substitute therefor the word “jobseeker”.
- s.30(2) Delete the word “youth” and substitute therefor the word “jobseeker”.



- s.30(3) Delete the word “youth” and substitute therefor the word “jobseeker”.
- s.33(1) Delete the words “private companies” and substitute therefor the words “prospective employers”.
- s.33(3) Delete the word “youth” and substitute therefor the word “jobseekers”.
- s.34 Delete the words “through community initiatives and similar fora”.
- s. 36(1) (a) Delete the word “students” and substitute therefor the word “trainees”.  
(b) Delete the words “or attachment during and”.
- s.36(3) Delete the word “student” and substitute therefor the words “trainee”.
- s.36(4) Deleting the word “students” wherever it appears and substitute therefor the word “trainees”.
- s.37 (a) Delete subsection (1) and replace it with the following new subsection—  
(1) The Authority shall encourage private and public institutions to employ Kenyans in all positions, including positions of leadership and management.  
(b) Delete subsection (2) and substitute therefor the following new subsection—  
(2) The Authority shall establish incentives to reward a private institution that employs Kenyans within six months after completing their certificate or undergraduate studies, and who do not possess more than five years’ experience.



	s.42	Delete the word “youth” wherever it appears and substitute therefor the word “jobseekers”.
The Fisheries Management and Development Act, 2016 (No. 35 of 2016).	s. 6(1)	Delete paragraph (a) and substitute therefor the following new paragraph—  (a) the Cabinet Secretary responsible for matters relating to fisheries, who shall be the chairperson.
	s. 6(3)	Delete.
The Energy Act, 2019 (No. 1 of 2019)	s. 2	Delete the definition of the term “distribution licence”.  Insert the following new definition in proper alphabetical sequence—  “distribution licence” means a document or instrument authorising a person to distribute energy in the manner described in the document or instrument, in that person's authorised area of supply for the purpose of enabling supply to premises in that area and to also receive bulk supply from another licensee;
	New	Insert the following new section immediately after section 6—  National Energy Efficiency and Conservation Action Plan <b>6A.</b> The Cabinet Secretary, in consultation with the relevant statutory authorities and stakeholders, shall coordinate the development and implementation of a national energy efficiency and conservation action plan.
	s. 10	Delete the words “with the exception of crude oil” appearing in paragraph (a) (ii);  Delete paragraph (ii) and substitute therefor the following new paragraph—  (ii) make proposals to the Cabinet Secretary for purposes of making



regulations on energy efficiency and conservation.

- s. 12(1)(e) Delete.
- s. 20(1) Delete the phrase “half of a” appearing in paragraph (a).
- s. 20 Delete the word “levies” appearing in the proviso.
- s. 26(4) Insert the word “of” immediately after the word “terms”.
- s. 45(1) Delete the words “who shall be the Secretary to the Board” appearing in paragraph (d).
- s. 45(1)(e) Delete the word “three” and substitute therefor the word “seven”.
- s. 45 Delete paragraph (f).
- s. 76(2) Insert the following new paragraph immediately after paragraph (g)—  
(h) the Managing Director of Kenya Power and Lighting Company PLC or his or her representative.
- s. 82 Delete the word “Authority” and substitute therefor the expression “Renewable Energy Resource Advisory Committee”.
- s. 98(1)(d) Insert the word “with” immediately after the word “compliance”.
- s. 100(1)(b) Insert the word “of” immediately after the word “type”.
- s. 117 Delete the word “one” and substitute therefor the words “one half of a”.
- s. 129(2) Delete the word “three” and substitute therefor the word “four”.
- s. 149 (3) Delete the word “licence” and substitute therefor the word “certificate”.
- s. 154(2) Delete the word “metres” and substitute therefor the word “meters”.
- Proviso*



- s. 166(3) Delete and substitute therefor the following new subsection—

(3) For the avoidance of doubt, the licensee shall not be liable to any penalty under subsection (1) or to pay compensation under subsection (2) if the failure, poor quality or irregularity of electricity supply was caused by third party interference to the licensee's electricity supply lines, or by inevitable accident or force majeure, or was so slight as not to materially affect the quality or value of the supply.

- s. 166(4) Delete and substitute with the following new subsection—

(4) The Cabinet Secretary may make regulations to give effect to this section subject to the grid attaining the quality and reliability of supply and service as prescribed by the Authority.

- s. 167(1) Delete the expression “(1)”.

- s. 167(1) Delete the word “electrician” appearing in paragraph (o) and substitute therefor the words “electrical worker”.

- s. 169(2) Delete and substitute therefor the following new subsection—

(2) Any vessel that is used to convey the vandalised or stolen equipment or appliances referred to in subsection (1) shall be forfeited to the State.

- s. 187 Delete the words “coordinate the development and implementation of a” and substitute therefor the words “develop and implement”.

- s. 199(1) Insert the word “*Gazette*” immediately after the words “by notification in the”.

- s. 208(1) Delete the words “on the recommendation of” and substitute therefor the words “in consultation with”.



- s. 216(1) Delete the word “Consolidated”.
- The Public s. 29(3) Insert the word “development”  
Private immediately after the words “recoverable  
Partnerships project”.  
Act, 2021 (No.  
14 of 2021).
- s.48(2) Delete the word “appraisal” appearing  
immediately after the word “project” and  
substitute therefor the word “implementation”.
- s.55(4) Delete the words “than an” and substitute  
therefor the word “the”.
- s. 73(7) Delete the expression “section 71” wherever it  
appears and substitute therefor the expression  
“section 72”.
- s. 75(5) Delete the word “seven” and substitute  
therefor the word “fourteen”.
- The s. 3 Delete paragraph (a) and substitute therefor the  
Parliamentary following new paragraph—  
Service Act  
(No. 22 of  
2019).
- (a) specify the further functions that may  
be performed and powers that may be  
exercised by the Commission pursuant  
to Article 127(6)(e) and Article  
252(1)(d) of the Constitution;
- s. 5 Insert the following new paragraph  
immediately after paragraph (f)—
- (fa) the provision of technical,  
infrastructural and administrative  
competence to ensure efficient  
and effective delivery of services  
to Parliament;
- s.18 Insert the following new sub-sections  
after subsection (2)—
- (3) The Commission shall review  
and determine the rates of reimbursement  
for travel by motor vehicle for Members,



in accordance with international best practice;

(4) The Commission shall review and determine the rates of reimbursement of the daily subsistence costs expended by Members and staff of Parliament in the performance of their duties;

The Judicial Service Act  
(No. 1 of 2011).

New

Insert the following new section immediately after section 13—

Review and  
recommendations  
on conditions of  
service

13A. In accordance with the mandate conferred to the Commission by Articles 172(1)(b) and 252(1) (d) of the Constitution, the Commission shall review and determine the nature of transport facilitation and the rates of reimbursement of the daily subsistence costs expended by judges, judicial officers and staff of the Judiciary in the performance of their duties.



## **MEMORANDUM OF OBJECTS AND REASONS**

The Statute Law (Miscellaneous Amendments) Bill, 2022 seeks to make various amendments to various statutes. It is in keeping with the practice of making various amendments which do not merit the publication of separate Bills into one Bill. The Bill contains proposed amendments to the following statutes—

### **The Children's Act, 2022 (No. 29 of 2022)**

The Bill proposes to amend the Children's Act, 2022 to remove the provisions which prohibit the court from granting a sole male applicant adoption of a child.

### **The Copyright Act, 2001 (No. 12 of 2001)**

The Bill proposes to amend the Copyright Act, 2001 to make provisions for the equitable remuneration of performers and producers of sound recordings and expand the responsibilities of collective management organisations towards the authors and performers.

It is also proposed to bring collective management organisations under regulation by the Board in order to enhance their efficiency.

### **The Scrap Metal Act, 2015 (No. 1 of 2015)**

The Bill proposes to amend the Scrap Metal Act to provide for a special licence for dealing in copper, aluminium and their alloys. This is intended to protect critical infrastructure for instance transformers. The Bill further proposes to restrict the disposal of scrap metal from critical infrastructure to two national entities namely the Numerical Machining Complex and the Kenya Shipyard Limited.

The Ministry of Industrialization, Trade and Enterprise Development has also proposed the regulation of imports in addition to exports as well as the enhancement of several penalties in the Act to deter vandalism and other prohibited acts.

### **The National Employment Authority Act, 2016 (No. 3 of 2016)**

The Bill proposes to amend the National Employment Authority Act, 2016, to cure inconsistencies in the Act and align it with the National Employment Authority Human Resources policy and procedures Manual.

### **The Fisheries Management and Development Act, 2016 (No. 35 of 2016)**

The Bill proposes to amend the Fisheries Management and Development Act, 2016, to provide that the Cabinet Secretary responsible



for matters relating to fisheries shall be the chairperson of the Kenya Fisheries Advisory Council.

### **The Energy Act, 2019 (No. 1 of 2019)**

The Bill proposes to amend the Energy Act, 2015 to give effect to the recommendations of the Presidential Taskforce on the Review of Power Purchase Agreements. The proposals include:

- (a) addressing the overlap in functions between the Energy Petroleum Regulatory Authority and the Ministry of Energy;
- (b) including the Kenya Power and Lighting Company in the Membership of the Rural Electrification and Renewable Energy Corporation established under the Act;
- (c) winding up the Nuclear Power and Energy Agency and transferring its functions to the Ministry and
- (d) subjecting the making of regulations to the attainment by the grid of the quality and reliability of supply and service prescribed by the Energy and Petroleum Regulatory Authority to allow for compensation of consumers for power outages when the country achieves N-I Grid Reliability status.

### **The Public Private Partnerships Act, 2021 (No. 14 of 2021)**

The Bill proposes to amend the Public Private Partnerships Act, 2021 to correct typographical and cross-referencing errors contained in the Bill, and to align provisions with each other to ensure consistency.

### **The Parliamentary Service Act, 2019 (No. 22 of 2019)**

The Bill proposes to amend the Parliamentary Service Act, 2019 to specify the nature of the further functions that may be performed by the Commission, as provided for in Article 127(6)(e) and Article 252(1)(d) of the Constitution.

### **The Judicial Service Act, 2011 (No. 1 of 2011)**

The Bill proposes to amend the Judicial Service Act, 2011 to provide for the facilitative mandate of the Commission under Articles 172(1)(b) and 252(1) (d) of the Constitution.

Dated the 25th October, 2023.

KIMANI ICHUNG'WAH,  
*Leader of Majority.*



*Section 186 of No. 29 of 2022 which it is intended to amend—*

**186. Who may apply to adopt a child.**

(1) The Court may make an adoption order on application by—

- (a) a sole applicant; or
- (b) two spouses jointly.

(2) The Court shall not make an adoption order in any case unless—

- (a) the applicant has attained the age of twenty-five years, but is not above the age of sixty-five years; and
- (b) the applicant, or both of the applicants in a joint application, is more than twenty-one years older than the child.

(3) The restrictions in subsection (2) shall not apply in any case where a sole applicant or one of the joint applicants is the mother, father or relative of the child.

(4) The Court shall not make an adoption order in favour of a sole male applicant, unless the applicant is a blood relative of the child.

(5) The Court shall not make an adoption order in favour of the following persons unless the Court is satisfied on reasons to be stated on the record that there are special circumstances that warrant the making of the adoption order an applicant or joint applicants who has, or both have, attained the age of sixty-five years.

(6) The Court shall not make an adoption order in favour of an applicant or joint applicants if the applicant or joint applicants, or any of them—

- (a) is of unsound mind within the meaning of the Mental Health Act (Cap. 248);
- (b) is incapable of exercising proper care and guardianship of a child;
- (c) has been convicted by a Court of competent jurisdiction for any of the offences specified in the Third Schedule or similar offences;
- (d) in the case of joint applicants, if the applicants are not married to each other;
- (e) is a sole male applicant except where the applicant is a biological relative of the child; or
- (f) is a foreign applicant except where the applicant is a biological relative of the child.



(7) Notwithstanding anything contained in this section the Court may at its sole discretion decline to make an adoption order in favour of any person or persons if the Court is of the view that it is not in the best interest of the child to make the order.

(8) Subject to the provisions of this section, an application for an adoption order in respect of a child shall be accompanied by written consents of the following persons—

- (a) a parent or guardian of the child, or any person who is liable by virtue of any order or agreement to contribute to the maintenance child;
- (b) on the application of one of the spouses, the consent of the other spouse; and
- (c) in the case of a child who has attained the age of ten years, the child himself or herself.

(9) If the child referred to in subsection (8)(c) has a disability which restricts or impairs the child's ability to independently give his or her consent, the child shall be accorded such assistance, including the assistance of an intermediary, to facilitate his or her written consent.

*Section 2 of No. 12 of 2001 which it is intended to amend—*

collective management organisation means an organisation approved and authorized by the Board which has as its main object, or one of its main objects, the negotiating for the collection and distribution of royalties and the granting of licenses in respect of the use of copyright works or related rights;

*Section 30B of No. 12 of 2001 which it is intended to amend—*

### **30B. Collection and payment of royalty**

(1) Subject to the provisions of sections 28 and 30 of this Act, the Kenya Revenue Authority or any other designated entity by the Board shall collect royalties on behalf of collective management organizations licensed to represent performers and owners of sound recordings.

(2) All claims for compensation under this section shall be made through the collective management organizations representative of performers and producers of sound recordings.

(3) The level of the royalty payable shall be agreed between the collective management organization representative of performers and producers of sound recordings and the organization representative of manufacturers and importers of audio recording equipment, audio blank



tape and media intended for recording or failing such agreement by the Board.

(4) The Board shall determine and, by notice in the Gazette, publish the share of the private copying remuneration applicable to the respective rightsholders.

*Section 46 of No. 12 of 2001 which it is intended to amend—*

#### **46. Collective administration of Copyright**

(1) No person or association of persons shall commence or carry on the business of a copyright collective management organisation except under or in accordance with a certificate of registration granted under this section.

(2) Applications for registration as collective management organisations shall be made to the Board accompanied with the prescribed fees and the Board, by a Gazette notice is empowered to declare a body which has applied for registration a collecting society, for all relevant copyright owners or for such classes of relevant copyright owners as are specified in the notice.

(3) Every certificate issued to a collective management organisation shall be in the prescribed form and shall unless cancelled be valid for a period of twelve months from the date of issue.

(3A) Where the collective management organization has not submitted a complete application or where administrative shortfalls are apparent, the Board may issue a provisional license for a period not exceeding six months and such provisional license shall be counted as part of the complete license if the license is subsequently issued.

(4) The Board may approve a collective management organisation if it is satisfied that—

- (a) the body is a company limited by guarantee and incorporated under the Companies Act, 2015;
- (b) it is a non-profit making entity;
- (c) its rules and regulations contain such other provisions as are prescribed, being provisions necessary to ensure that the interests of members of the collecting society are adequately protected;
- (d) its principal objectives are the collection and distribution of royalties; and
- (e) its accounts are regularly audited by independent external auditors elected by the society.



(5) The Board shall not approve another collective management organisation in respect of the same class of rights and category of works if there exists another collective management organisation that has been licensed and functions to the satisfaction of its members.

(6) The Board may, where it finds it expedient, assist in establishing a collective management organisation for any class of copyright owners.

(7) Deleted by Act No. 20 of 2019, s. 30.

(8) Deleted by Act No. 20 of 2019, s. 30.

(9) The Board may by notice in the Gazette and two daily newspapers of national circulation de-register a collective management organisation if its satisfied that the collective management organisation—

- (a) is not functioning adequately as collective management organisation;
- (b) is not acting in accordance with its Memorandum and Articles of Association or in the best interests of its members;
- (c) has altered its rules so that it no longer complies with subsection 4 of this section; and
- (d) it has refused or failed to comply with any of the provisions of this Act.

(10) Before deregistering a collective management organization, the Board shall notify the organization in writing and invite it and any of its members to make written representations against deregistration within twenty one days from the date of the notice.

(11) If, after consideration of any written representations made in terms of subsection (10), the Board is of the opinion that the failure in question on the part of the organisation is materially prejudicing or has materially prejudiced its members, the Board may withdraw the registration thereof or otherwise sanction members of the Board of Directors or Management of the organization as set out under this Act.

(12) Any person who purports to collect royalties from users as provided for under this section without authority of the Board commits an offence and shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment to a term not exceeding four years, or both.

*Section 46A of No. 12 of 2001 which it is intended to amend—*

#### **46A. Approval for imposition and collection of levy**

Notwithstanding any other provision of this Act, no collecting society shall—



- (a) impose or collect royalty based on a tariff that has not been approved and published in the Gazette by the Cabinet Secretary in charge of copyright issues in the Gazette from time to time; or
- (b) levy royalty on users exempted by the Cabinet Secretary by notice in the Gazette.

*Section 46B of No. 12 of 2001 which it is intended to amend—*

**46B. Qualification and tenure of Directors and Chairpersons of collective management organizations**

(1) A member of a collective management organization shall be eligible for election as a director if he holds a postsecondary qualification recognized in Kenya.

(2) A director elected under this section shall serve for a term of three years and shall be eligible for re-election for one further term.

(3) A director elected as a chairperson of a collective management organization shall hold office for a term of three years and shall be eligible for re-election for one further term.

(4) A chief executive officer of a collective management organization shall hold office for a term of four years and shall be eligible for reappointment for one further term upon satisfactory performance as evaluated by the directors.

*Section 46C of No. 12 of 2001 which it is intended to amend—*

**46C. Role and types of collective management organizations**

(1) Authors, producers, performers, visual artists and publishers may form a collective management organization to collect, manage and distribute royalties and other remuneration accruing to their members.

(2) Any new collective management organization to deal with rights not provided for under subsection (1) may be approved by the Kenya Copyright Board as may be necessary.

(3) The designated extent of operation shall be set by Regulations made under this Act.

*Section 4 of No. 1 of 2015 which it is proposed to amend—*

**4. Composition of the Council**

(1) The Council shall consist of —

- (a) a chairperson appointed by the Cabinet Secretary who has at least five years' experience in the public or private sector;



- (b) the Principal Secretary of the Ministry for the time being responsible for matters relating to transport or representative;
- (c) the Commissioner-General of the Kenya Revenue Authority or a representative;
- (d) the Inspector-General of Police or a representative;
- (e) the Principal Secretary of the Ministry for the time being responsible for matters relating to industrialisation or his or her representative;
- (f) the following persons, nominated as follows, and appointed by the Cabinet Secretary —
  - (i) one person nominated by the Scrap Metal Dealers Association;
  - (ii) one person nominated by the metal cottage industry;
  - (iii) one person nominated by the Kenya Association of Manufacturers;
  - (iv) one person nominated by large utility companies or agencies in charge of infrastructure, to be appointed on rotational basis;
  - (v) one person nominated by the Consumer Federation of Kenya.

Authority may determine.

*Section 6 of No. 1 of 2015 which it is proposed to amend—*

## **6. Functions of the Council**

(1) The functions of the Council shall be to—

- (a) advice the Cabinet Secretary on—
  - (i) the appropriate measures and mechanisms for regulating the scrap metal industry in ensuring economic growth, protection of public health and conformity to the principles of environmental stewardship as required by the Basel Convention;
  - (ii) the appropriate measures and mechanisms for protecting public interest against vandalism, theft to utility infrastructure and private property;



- (iii) the methods of attracting investors on the utilization of excess scrap materials and supporting existing users of scrap metal;
- (iv) the applicable license fees to be prescribed under this Act; and

*Section 9 of No. 1 of 2015 which it is proposed to amend—*

### **9. Restriction from dealing in scrap metal**

(1) A person shall not deal in scrap metal, unless that person has a licence issued by the Council and is a member of Scrap Metal Dealers Association.

*Section 11 of No. 1 of 2015 which it is proposed to amend—*

### **11. Issue of licence**

Every licence granted or renewed under this section shall —

- (a) be issued in the form prescribed in the Third Schedule;
- (b) be valid for one year;
- (c) specify the licensee as the principal or agent to deal in scrap metal;
- (d) specify the location of all the premises in which the licensee is authorized to deal in scrap metal;
- (e) specify any type of scrap metal the licensee may or may not deal in; and
- (f) be subject to such conditions as the Council may consider necessary.

*Section 18 of No. 1 of 2015 which it is proposed to amend—*

### **18. Register by licensee**

(3) Any licensee, servant or agent who fails to comply with section commits an offence and is liable on conviction—

- (a) for a first offence, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both; and
- (b) for a second or subsequent offence to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both and such license shall be revoked.



*Section 20 of No. 1 of 2015 which it is proposed to amend—*

**20. Restriction on licensees**

(4) Any licensee who contravenes this section commits an offence and is liable on conviction to a fine not exceeding one million shillings and, where such offence continues after conviction, to a fine not exceeding two thousand shillings for each day in which such offence continues or until the license is revoked.

*Section 22 of No. 1 of 2015 which it is proposed to amend—*

**22. Information regarding stolen or lost property**

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one million shillings to imprisonment for a term not exceeding one year or to both.

*Section 24 of No. 1 of 2015 which it is proposed to amend—*

**24. Destruction of infrastructure**

(1) A person shall not remove, deface or destroy any scrap metal from the infrastructure designed for roads, bridges, railways, pipelines, telecommunication, electricity, water and sewerage, or any government infrastructure project.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding ten million shillings to imprisonment for a term not exceeding three years or to both,

*Section 26 of No. 1 of 2015 which it is proposed to amend—*

**26. Exports of scrap metal**

(1) A person shall not export scrap metal in any form.

(2) Notwithstanding subsection (1), the Cabinet Secretary for matters relating to finance, in consultation with the Cabinet Secretary responsible for industrialization and with the recommendation of the Council, may, under such circumstances as may be prescribed, authorize the export of specific scrap metal for a specified period.

(3) A certificate for each consignment shall be issued by the Principal Secretary .

(4) Any exemption allowed under this section shall be valid for six months from the date of issue of the certificate of exemption.

(5) Any person who contravenes this section commits an offence is liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years or to both .



*Section 30 of No. 1 of 2015 which it is proposed to amend—*

**30. Power of entry**

(1) An inspector may at any reasonable time, with or without a search warrant—

- (a) enter upon and inspect any place, premises or vehicle at, on or in which goods that are reasonably suspected of being stolen scrap metal or vandalized infrastructure are to be found and make a record as provided in the prescribed form;
- (b) take the steps that may be reasonably necessary to terminate the deal or transaction on vandalized or stolen scrap metal at, on or in such place, premises or vehicle, and to prevent the recurrence of any such act in future:

Provided that the actions set out herein shall not include the destruction or alienation of the relevant scrap metal unless authorize)y an order issued by a court of competent jurisdiction,

- (c) seize, detain, and, where applicable, remove for detention, all the scrap metal found at, on or in such place, premises or vehicle or other modes of conveyance;
- (d) seize detain, and, where applicable, remove for detention, any tools which may be used in processing such scrap metal;
  - (i) question that person and take down a statement from that ^ person;
  - (ii) demand from that person any book, document, article, item or object which in any way may assist in identifying the location, source or destination of the scrap metal, or the identity and address of any person who may be involved in dealing as a supplier, miller, distributor, exporter or clearing and forwarding agent of the scrap metal.

*Section 2 of No. 3 of 2016 which it is proposed to amend—*

**2. Interpretation**

“Authority” means the National Youth Employment Authority established by section 6;

*Section 4 of No. 3 of 2016 which it is proposed to amend—*

**4. Application of the Act**

This Act applies to –



- (a) the national government;
- (b) the private sector; and
- (c) the informal sector.

*Section 9 of No. 3 of 2016 which it is proposed to amend—*

### **9. Powers of the Authority**

The Authority shall have powers for the purpose of carrying out its functions to perform such acts as may be authorized by this Act or any other written law and in particular—

- (a) advise the Cabinet Secretary on any matter deemed by the Authority to be necessary or expedient to be considered by the State in connection with the provisions of this Act or the application thereof and on any other matter relating to employment which has been referred by the Cabinet Secretary to the Authority for the advice and recommendations of the Authority;
- (b) conduct studies on any matter relating to its mandate;
- (c) obtain information relevant to the discharge of its function;

*Section 17 of No. 3 of 2016 which it is proposed to amend—*

### **17. Director-General**

(2) A person shall be qualified to be appointed as a Director-General if that person -

- (a) holds a degree from a university recognized in Kenya;
- (b) meets the requirements of Chapter Six of the Constitution;
- (c) has at least five years' experience, two of which shall be in a management level; and
- (d) has not attained the age of thirty-five years at the time of appointment.

*Section 28 of No. 3 of 2016 which it is proposed to amend—*

### **28. Information on vacancies**

(2) Whenever a vacancy occurs, the appointing office shall give priority to the job seekers registered by the Authority who possess the qualifications or skills sought.



*Section 30 of No. 3 of 2016 which it is proposed to amend—*

**30. Applications.**

(1) A youth registered under this Act may apply directly to a prospective employer.

(2) The Authority may forward applications or details of any qualified candidates to any prospective employer for their consideration and employment of the Kenyans registered under this Act.

(3) A State entity, public office or State office may request for data of qualified youth from the Authority for purposes of considering them for employment.

(4) A State entity, public office or State office may request for data of qualified youth from the Authority for purposes of considering them for employment.

*Section 33 of No. 3 of 2016 which it is proposed to amend—*

**33. Authority to undertake due diligence**

(1) The Authority shall, on its own motion, or using other state machineries, undertake due diligence on private companies seeking its services under this Act.

(2) The Authority shall not partner with any prospective employer where the Authority or any national security organ has, upon due diligence, established possible employment malpractices or violation of laws of Kenya.

(3) Notwithstanding subsection (1) and (2), the Authority shall take necessary measures to ensure that the youth are not denied access to employment unreasonably.

*Section 34 of No. 3 of 2016 which it is proposed to amend—*

**34. Facilitation of training**

The Authority shall, through community initiative and similar fora, facilitate training on any matter relating to employment to Kenyans seeking employment.

*Section 36 of No. 3 of 2016 which it is proposed to amend—*

**36. Placement for internship**

(1) The Authority shall facilitate placement of students at tertiary institutions in positions of internship or attachment during and after completion of their study.



(2) The Authority shall, during or after successful completion of a person's undergraduate, diploma or certificate studies, make efforts to find paid internship for that person in a Government institution or any other sector, as the person seeks employment individually or through the Authority.

(3) A student at a tertiary institution or institution of higher learning who wishes to be placed on internship or attachment by the Authority shall furnish the Authority, in a manner provided by the Authority, with personal and academic details to facilitate such placement.

(4) The Authority shall maintain a record of

(a) all students seeking internship or attachment; and

(b) all students who successfully attain positions of internship or attachment.

*Section 37 of No. 3 of 2016 which it is proposed to amend—*

### **37. Encouragement to employ Kenyans**

(1) The State shall, through the Authority, encourage private and public institutions to employ Kenyans in all positions, including positions of leadership and management.

(2) The State shall come up with incentives to reward any private institution that employs Kenyans within six months of completion of their certificate or undergraduate studies, and who do not possess more than five years work experience.

*Section 42 of No. 3 of 2016 which it is proposed to amend—*

### **42. Annual reports**

(2) The report referred to under subsection (1) shall include -

(a) number of youth registered in the period under review;

(b) number of youth who have secured employment during the period under review;

*Section 6 of No. 35 of 2016 which it is proposed to amend—*

### **6. Establishment of the Kenya Fisheries Council**

(1) There is hereby established an advisory body to be known as the Kenya Fisheries Advisory Council ("the Council"), which shall consist of—

(a) the Cabinet Secretaries responsible for fisheries;



*Section 2 of No. 1 of 2019 which it is proposed to amend—*

## **2. Interpretation**

“distribution licence” means any document or instrument authorizing a person to operate a distribution system for the purpose of enabling supply of electrical energy to consumers or to other licensees;

*Section 10 of No. 1 of 2019 which it is proposed to amend—*

## **10. Functions of the Authority**

The functions of the Authority shall be to—

(a) regulate—

- (i) generation, importation, exportation, transmission, distribution, supply and use of electrical energy with the exception of licensing of nuclear facilities;
- (ii) importation, refining, exportation, transportation, storage and sale of petroleum and petroleum products with the exception of crude oil;

*Section 12 of No. 1 of 2019 which it is proposed to amend—*

## **12. Board of the Authority**

(1) The management of the Authority shall vest in the Board of Directors of the Authority consisting of—

- (a) a Chairperson who shall be appointed by the President;
- (b) the Principal Secretary responsible for Energy or his representative;
- (c) the Principal Secretary responsible for Petroleum or his representative;
- (d) the Principal Secretary in the National Treasury or his or her authorized representative;
- (e) one County Executive Committee member responsible for energy and petroleum or his representative nominated by the Council of County Governors;
- (f) the Director-General; and
- (g) five other members not being public officers appointed by the Cabinet Secretary.



*Section 20 of No. 1 of 2019 which it is proposed to amend—*

## **20. Funds of the Authority**

(1) The funds of the Authority shall consist of—

- (a) levies not exceeding one half of a percent' on the sales of electricity and petroleum products;
- (b) licence fees;
- (c) such monies or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;
- (d) such monies as may be provided by Parliament for the purposes of the Authority;
- (e) any revenues generated from any proprietary interest held by the Authority whether movable or immovable;
- (f) interest from bank deposits; and
- (g) all monies from any other source provided for or donated or lent to the Authority:

Provided that any monies collected by the Authority including levies, fines and penalties in exercise of its functions shall be paid into the Consolidated Fund.

*Section 26 of No. 1 of 2019 which it is proposed to amend—*

## **26. Members of the Tribunal**

(4) The Chairperson, Vice-Chairperson and members of the Tribunal shall be appointed at different times so that the respective expiry dates of their terms office shall fall at different times.

*Section 45 of No. 1 of 2019 which it is proposed to amend—*

## **45. Board of the Corporation**

(1) The management of the Corporation shall vest in the Board of Directors of the Corporation which shall consist of —

- (a) a Chairperson appointed by the President; or his
- (d) the Chief Executive Officer who shall be the Secretary to the Board;
- (e) three members appointed by the Cabinet Secretary; and
- (f) four other members appointed by the Council of County Governors



*Section 76 of No. 1 of 2019 which it is proposed to amend—*

**76. Establishment of Renewable Energy Resource Advisory Committee**

(2) The Renewable Energy Resource Advisory Committee is composed of —

- (a) principal secretary in the Ministry of Energy or his or her representative who shall be the Chairperson;
- (b) chief executive officer of the Corporation or his representative, who shall be the Secretary;
- (c) managing director of the Geothermal Development Company Limited or his or her representative;
- (d) managing director of the Kenya Electricity Generating Company Limited or his or her representative;
- (e) Attorney-General or his or her representative;
- (f) principal secretary of the National Treasury or his representative; and
- (g) principal secretary responsible for matters relating to resources or his or her representative

*Section 82 of No. 1 of 2019 which it is proposed to amend—*

**82. Renewal and surrender of licence, etc**

The Cabinet Secretary may, on the advice of the Authority —

- (a) renew a licence for a term not exceeding five years after the initial expiry or any renewal thereof subject to such terms and conditions as the Cabinet Secretary may consider necessary;
- (b) wholly or partly remit all or any of the terms and conditions contained in any licence where, owing to special circumstances, in his opinion, compliance there with would be impossible or great hardship would be inflicted upon the licensee;
- (c) extend time to the licensee for complying with the terms and conditions of any licence upon such terms and conditions as the Cabinet Secretary may consider necessary; or
- (d) accept, whether with a view to renewing or reissuing any licence or otherwise the surrender of any licence or any part of the area comprised therein upon such terms and conditions as the Cabinet Secretary may consider necessary, but no such surrender shall



affect any liability incurred by the licensee before the surrender shall have taken effect.

*Section 98 of No. 1 of 2019 which it is proposed to amend—*

**98. Factors to be considered in reviewing an application**

(1) The Authority shall, in granting or rejecting an application for a licence or permit, take into consideration—

- (a) the impact of the undertaking on the social, cultural or recreational life of the community;
- (b) the need to protect the environment and to conserve the natural resources in accordance with the environmental, health, and maritime laws and international maritime treaties ratified by Kenya and other guidelines developed by the Authority;
- (c) compliance with Occupational Safety and Health Act (No. 15 of 2007) or other safety and health standards recommended by the Authority in consultation with the relevant statutory body;
- (d) compliance this Act and the relevant Kenyan Standard and in the absence of such standard, any international standard recommended by the Authority in consultation with the Kenya Bureau of Standards;
- (e) land use or the location of the undertaking;
- (f) economic and financial benefits to the country or area of supply of the undertaking;
- (g) the cost of the undertaking and financing arrangements;
- (h) the ability of the applicant to operate in a manner designed to y, protect the health and safety of users of the service for which the licence or permit is required and other members of the public who would be affected by the undertaking;
- (i) the technical and financial capacity of the applicant to render the service for which the licence or permit is required; and
- (j) any other matter that the Authority may consider likely to have a bearing on the undertaking.

*Section 100 of No. 1 of 2019 which it is proposed to amend—*

**100. Forms and conditions of a licence or permit**

(1) Every licence or permit shall be in such form as the Authority may determine and shall, subject to subsection (2), contain such particulars or conditions where applicable—



- (a) the duration of the licence or permit;
- (b) the type coal or coal products;
- (c) the market area segments; and
- (d) any other matter connected with the carrying on of the undertaking.

*Section 117 of No. 1 of 2019 which it is proposed to amend—*

### **117. Requirement of a licence**

A person who wishes to carry out the generation, exportation, importation, transmission, distribution and retail supply of electricity must apply for a licence as the case maybe to the Authority in accordance with the provisions of this Act: Provided that a person shall not require any authorization to generate electrical energy for own use of a capacity not exceeding one megawatt

*Section 129 of No. 1 of 2019 which it is proposed to amend—*

### **129. Accounts, records and reports of licensee**

(2) A licensee shall, at his own cost, cause the annual accounts to be examined and audited by independent auditors and submit the audited accounts to the Authority within three months after the end of each financial year

*Section 149 of No. 1 of 2019 which it is proposed to amend—*

### **149. Certificates for electrical workers**

(3) A licence for electrical installation work shall be issued for a term of three years and may be renewed for a similar term upon expiry, subject to the holder satisfying such continuing technical trainings as may be prescribed .

*Section 154 of No. 1 of 2019 which it is proposed to amend—*

### **154. Metering of supply to consumers**

(2) The retailer shall supply and fix meters upon the premises of the consumer and connect the supply system therewith:

Provided that the licensee may agree to the value of the supply to any consumer being ascertained by a private metre belonging to the consumer.



*Section 166 of No. 1 of 2019 which it is proposed to amend—*

**166. Penalties and compensation for failure and defects in electricity supply**

(3) For the avoidance of doubt, the licensee shall not be liable to pay compensation under subsection (2) if the failure, poor quality or irregularity of electricity supply was caused by third party interference to the licensee's electricity supply lines or inevitable accident or force majeure was so slight as not to materially affect the quality or value of the supply.

(4) The Cabinet Secretary shall make regulations to give effect to this section within six months of the coming into force of this Act.

*Section 167 of No. 1 of 2019 which it is proposed to amend—*

**167. Regulations for electrical energy**

(1) The Cabinet Secretary may upon recommendation of the Authority make such regulations as may be necessary or expedient for the achievement of the objectives and purposes of this Act and in particular, for all or any of the following purposes—

(o) carrying out electrical installation work by an electrician and an electrical contractor.

*Section 169 of No. 1 of 2019 which it is proposed to amend—*

**169. Offences deemed to be economic crimes**

(2) Any vessel used to convey the vandalised equipment or appliance in the attempted vandalism detailed in subsection (1) shall be forfeited to the state.

*Section 187 of No. 1 of 2019 which it is proposed to amend—*

**187. Energy Efficiency and Conservation Programme**

The Authority shall coordinate the development and implementation of a prudent national energy efficiency and conservation programme.

*Section 199 of No. 1 of 2019 which it is proposed to amend—*

**199. Power of County Government to make rules**

(1) A County Government may, by notification in the, make rules for carrying out the provisions of this Act and not inconsistent with the rules and regulations, if any, made by the National Government.

*Section 208 of No. 1 of 2019 which it is proposed to amend—*

**208. Cabinet Secretary may make regulations generally**

(1) The Cabinet Secretary may, on the recommendation of the Authority and subject to section 167, make regulations for or with respect



to any matter that by this Act is required or permitted to be prescribed, or that is necessary or expedient to be prescribed for carrying out or giving effect to this Act.

*Section 29 of No. 14 of 2021 which it is proposed to amend—*

**29. Success fees and recoverable project development costs**

(3) Success fees and recoverable project costs under subsection (2) shall be payable into the Public Private Partnership Project Facilitation Fund.

*Section 48 of No. 14 of 2021 which it is proposed to amend—*

**48. Prequalification committees**

(2) The contracting authority may, where it considers it appropriate, constitute the project appraisal team as the prequalification committee for purpose of prequalifying bidders under subsection (1).

*Section 55 of No. 14 of 2021 which it is proposed to amend—*

**55. Evaluation of bids and evaluation reports**

(4) The contracting authority shall submit than an evaluation report to the Directorate for no objection within seven days of conclusion of the evaluation.

*Section 73 of No. 14 of 2021 which it is proposed to amend—*

**73. Project management**

(7) Where the Directorate determines in accordance with this section and section 71 that there has arisen an imbalance in the distribution of benefits, and for the purpose of promoting the sustained transfer of project-linked economic benefits to the citizens of Kenya, the Directorate shall, in consultation with contracting authority, initiate the amendment or variation of the project agreement in accordance with section 71.

*Section 75 of No. 14 of 2021 which it is proposed to amend—*

**75. Petition Committee**

(5) A petition under this section shall be made within seven days from the date of the decision of the Directorate, Committee or a contracting authority.

*Section 3(a) of No. 22 of 2019 which it is proposed to amend—*

**3. Object and purpose of the Act**

The object and purpose of this Act is to—



- (a) provide for further functions and powers of the Commission pursuant to Articles 127(6)(e) and 252(1)(d) of the Constitution.

*Section 18 of No. 22 of 2019 which it is proposed to amend—*

**18. Services and facilities for Parliament**

(1) The Commission shall, to the extent of its constitutional mandate, be responsible for fulfilment of the provisions under Article 127(6)(a) and (d) of the Constitution and in particular shall formulate policies, regulations, strategies and put in place mechanisms for the provision of such services and facilities as necessary for the effective functioning of Parliament and the well-being of Members and the staff of the Commission.

(2) The Commission shall adopt comprehensive strategic plans that ensure the realization of Article 127 (6) (b) and (d) of the Constitution.