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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

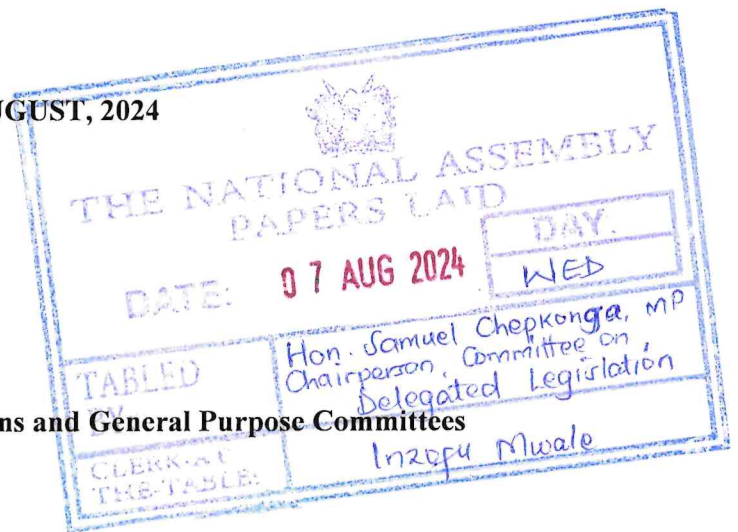
THIRTEENTH PARLIAMENT- THIRD SESSION - 2024

THE NATIONAL ASSEMBLY

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF THE SENATE AMENDMENTS TO
THE STATUTORY INSTRUMENTS (AMENDMENT) BILL (*NATIONAL
ASSEMBLY BILL NO. 2 OF 2023*)

AUGUST, 2024



The Directorate of Audit, Appropriations and General Purpose Committees
National Assembly
Parliament Buildings
NAIROBI



TABLE OF CONTENTS

CHAIRPERSON'S FOREWORD..... i

1.0 PREFACE..... 1

 1.1 Establishment and Mandate..... 1

 1.2 Committee Membership..... 2

 1.3 Committee Secretariat..... 3

**2.0 OVERVIEW OF THE SENATE AMENDMENTS TO STATUTORY INSTRUMENTS
(AMENDMENT) BILL, 2023**..... 4

 2.1 Introduction..... 4

 2.2 Analysis of the Bill..... 4

3.0 COMMITTEE OBSERVATIONS..... 6

4.0 COMMITTEE RECOMMENDATIONS..... 6

CHAIRPERSON'S FOREWORD

This report contains proceedings of the Committee on Delegated Legislation on its consideration of the Senate Amendments to the Statutory Instruments (Amendment) Bill (*National Assembly Bills No. 2 of 2023*).

The National Assembly considered the Statutory Instruments (Amendments) Bill (*National Assembly Bill No. 2 of 2023*) and passed it with amendments on 28th November, 2023 and forwarded the same to the Senate for concurrence pursuant to the provisions of Standing Order 144. The Senate considered the Bill and passed it with amendments on 11th June, 2024.

The Senate amendments to the Bill were subsequently referred to the Committee on Delegated Legislation for consideration, and reporting back to the House.

In considering the amendments, the Committee held a meeting on Tuesday, 30th July, 2024 during which it observed that, the Senate had proposed amendments to clauses 2(5), 5 and 7 and a deletion of clauses 3, 4 and 6.

Under clause 2(5) the Senate proposed that the Cabinet Secretary is required to publish a notice in the Gazette within seven days from the date of the resolution, to the effect that the statutory instrument is a nullity; and to submit the published notice to Parliament.

The Senate proposes a deletion of clause 4 which sought to require the Clerk of the relevant House of Parliament to publish an annulment of a statutory instrument in the Gazette and Parliamentary website.

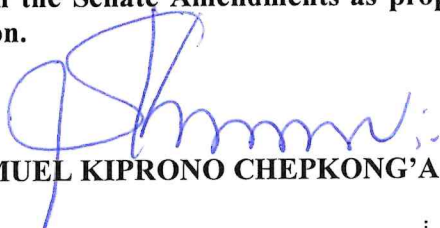
The Committee considered the proposed amendments to the Bill and recommended that the House approves the proposed amendments to clauses 2(5), 5 and clause 7 and deletion of clauses 3, 4, and 6 as proposed by the Senate.

In conclusion, the Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank all those who participated in the consideration of the Bill.

Finally, I wish to express my appreciation to the Honorable Members of the Committee for making useful contributions towards the preparation and production of this report.

On behalf of the Committee on Delegated Legislation and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege to present to this House the report of the Committee on its consideration of the Senate Amendment to Statutory Instruments (Amendment) Bill (*National Assembly Bill No. 2 of 2023*).

It is my pleasure to report that the Committee has considered the Senate amendments to Statutory Instruments (Amendment) Bill (*National Assembly Bill No. 2 of 2023*), and has the honour to report back to the National Assembly with the recommendation **that the House agrees with the Senate Amendments as proposed, pursuant to Article 112(2)(a) of the Constitution.**



HON. SAMUEL KIPRONO CHEPKONG'A, CBS, M.P.

1.0 PREFACE

1.1 Establishment and Mandate

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

1.2 Committee Membership

3. The Committee membership comprises of:

Hon. Chepkonga Samuel Kiprono, CBS, M.P.
(Chairperson)
UDA

Anaibkoi Constituency

Hon. Githinji Robert Gichimu, M.P.
(Vice Chairperson)
UDA

Gichugu Constituency

Hon. Mbui Robert, CBS, M.P.
WDM-KENYA
Kathiani Constituency

Hon. Chebor Paul Kibet, M.P.
UDA
Rongai Constituency

Hon. Maj. (Rtd) Dekow Barrow Mohamed, M.P.
UDA
Garrisa Township Constituency

Hon. Yakub Adow Kuno, M.P.
UPIA
Bura Constituency

Hon. Julius Lekakeny Ole Sunkuli, EGH, MBS, M.P.
KANU
Kiligoris Constituency

Hon. Maj. (Rtd) Abdullahi Bashir Sheikh, M.P.
UDM
Mandera Constituency

Hon. Kamene Joyce, M.P.
WDM-KENYA
Machakos County

Hon. Mwirigi John Paul, M.P.
UDA
Igembe-South Constituency

Hon. Onchoke Mamwacha Charles, M.P.
UPA
Bonchari Constituency

Hon. Odoyo Jared Okello, M.P.
ODM
Nyando Constituency

Hon. Kimaiyo Gideon Kipkoech, M.P.
UDA
Keiyo-South Constituency

Hon. Chepkorir Linet, M.P.
UDA
Bomet County

Hon. Komingoi Kibet Kirui, M.P.
UDA
Bureti Constituency

Hon. Munyoro Joseph Kamau, M.P.
UDA
Kigumo Constituency

Hon. Ruku Geoffrey Kariuki Kiringa, M.P.
DP
Mbeere-North Constituency

Hon. Mwale Nicholas S. Tindi, M.P.
ODM
Butere Constituency

Hon. Lenguris Pauline, M.P.
UDA
Samburu County

Hon. Mnyazi Amina Laura, M.P.
ODM
Malindi Constituency

Hon. Mugabe Innocent Maino, M.P.
ODM
Likuyani Constituency

1.3. **Committee Secretariat**

4. The Secretariat facilitating the Committee comprises –

Ms. Esther Nginyo
Clerk Assistant I (Team Leader)

Mr. Dima Dima
Principal Legal Counsel I

Ms. Fiona Wanjiru Githunguri
Legal Counsel II

Mr. Brian Langwech
Clerk Assistant III

Ms. Isabella N. Mwembi
Clerk Assistant III

Mr. Silvanus Makau Mbuvi
Clerk Assistant III

Ms. Viola Khalwali Saiya
Research Officer III

Mr. Noah Chemweno
Serjeant at Arms

Ms. Rahab Chepkilim
Audio Officer

2.0 OVERVIEW OF THE SENATE AMENDMENTS TO STATUTORY INSTRUMENTS (AMENDMENT) BILL, 2023

2.1 Introduction

5. The Statutory Instruments (Amendment) Bill (*National Assembly Bill No. 3 of 2024*) was sponsored by the Chairperson, Committee on Delegated Legislation.
6. Pursuant to Standing Order 126, the Bill was read a first time on 21st March, 2023 and thereafter it was committed to the Select Committee on Delegated Legislation for its consideration.
7. The principal object of this Bill was to amend the provisions of the Statutory Instruments Act, 2013 to ensure notification of the public on the annulled instruments so as to ensure that the void instruments are not illegally implemented.
8. The Bill was passed by the House on 28th November, 2023 and was forwarded to the Senate pursuant to Article 110(4) of the Constitution and Standing Order 144 of the National Assembly Standing Orders. The Senate considered the Bill and passed it with amendments on 11th June, 2024.
9. The Bill was referred back to the National Assembly in accordance with Article 112(1)(b).

2.2 Analysis of the Bill

10. In **CLAUSE 2** - the Senate proposes a deletion of the proposed subsection (5) and substitution with the following new subsection—

(5) Where it comes to the attention of the Committee that a Cabinet Secretary responsible for a regulation making authority has failed to submit a statutory instrument in accordance with subsection (1), the Committee may, by a resolution, require the Cabinet Secretary to-

- i. Publish a notice in the Gazette within seven days from the date of the resolution, to the effect that the statutory instrument is a nullity; and
 - ii. Submit the published notice to Parliament.
11. Under **CLAUSE 3** - The Senate proposes a deletion of the proposed amendment to section 12.
 12. **CLAUSE 4** -The Senate proposes a deletion of Clause 4 which sought to require the Clerk of the relevant House of Parliament to publish an annulment of a statutory instrument in the Gazette and Parliamentary website.
 13. **CLAUSE 5** -The Senate proposes an amendment to Clause 5 which sought to amend section 19 of the Act. The Senate proposes that where Parliament has adopted a report or a resolution that a statutory instrument be annulled, the instrument shall stand annulled and the Clerk of the relevant House shall publish the annulment in the Parliamentary website and shall convey the resolution of the House to the regulation making authority. Thereafter the regulation making authority shall publish the annulment in the gazette within 14 days upon receipt of the communication from the Clerk.
 14. **CLAUSE 6** - The Senate proposes a deletion of clause 6 which proposes an amendment to section 23 that was requiring that a statutory instrument shall come into effect only after it has been considered in accordance with this Act.

15. **CLAUSE 7** -The Senate proposes an amendment to Clause 7 by substituting five hundred thousand shillings with one million shillings.

3.0 COMMITTEE OBSERVATIONS

16. In considering the proposed amendments, the Committee observed that the amendments conform to the Constitution and other existing laws, and that they were compliant with all the statutory procedures and the Standing Orders.
17. The Committee observed that the principal object of this Bill was to amend the provisions of the Statutory Instruments Act, 2013 to ensure notification of the public on the annulled instruments so as to ensure that the void instruments are not illegally implemented.
18. Further, it observed that the amendment shall enable Parliament to require the Regulation Making Authority to publish the nullity of the statutory instruments in the Gazette and submit the published notice to Parliament.
19. The Committee also observed that the amendment proposed to raise the penalty from five hundred thousand to one million shillings in the principal Act

4.0 COMMITTEE RECOMMENDATIONS

The Committee having considered the Senate Amendment to Statutory Instruments (Amendment) Bill (National Assembly Bill No. 2 of 2023) recommends that **the House agrees with the Senate Amendments as proposed, pursuant to Article 112(2)(a) of the Constitution.**

Summary of the Committee Consideration of the Senate Amendments

Clause	National Amendment	Assembly	Senate Amendment	Committee on Delegation Legislation's Resolution
2(5)	Section 11 of the Statutory Instruments Act, 2013 (hereinafter referred to as the "principal Act") is amended by inserting the following new subsections immediately after subsection (4)— “(5) Where a regulation making authority fails to submit a statutory instrument in accordance with subsection (1), the Committee shall require the regulation making authority to submit the statutory instrument to Parliament within seven days from the date of the resolution by the Committee.		Clause 2 be amended by deleting the proposed new sub-section 5 and substituting therefor the following new subsection— “(5) Where it comes to the attention of the Committee that a Cabinet Secretary responsible for a regulation making authority has failed to submit a statutory instrument in accordance with subsection (1), the Committee may, by a resolution, require the Cabinet Secretary to (a). publish a notice in the Gazette within seven days from the date of the resolution , to the effect that the statutory	Agreed to

		instrument is a nullity; and (b). submit the published notice to Parliament.	
3	Section 12 of the principal Act is amended by deleting subsection (3).	Clause 3 deleted	Agreed to.
4	Section 18 of the principal Act is amended by— (a) renumbering the existing provision as subsection (1); (b) inserting the following new subsection immediately after subsection (1)— “(2) The Clerk of the relevant House of Parliament shall, by notice in the <i>Gazette</i> and the Parliamentary website, publish the annulment of a statutory instrument by Parliament.”	Clause 4 deleted	Agreed to
5	Section 19 of the Principal Act is amended by— (a) renumbering the existing provision as subsection (1); and (b) inserting the following new subsection immediately after subsection (1)— “(2) The Clerk of the relevant House of Parliament shall, by notice in the <i>Gazette</i> and the Parliamentary website, publish the revocation of a statutory instrument by Parliament.”	The principal Act is amended by deleting section 19 substituting therefor the following new section 19- 19.(1) Where Parliament has adopted a report or a resolution that a statutory instrument be annulled- (a) the instrument shall stand annulled; and (b) the Clerk of the relevant House shall publish the annulment in the Parliamentary website and shall convey the resolution of the House to the regulation making authority. (2) Upon receipt of the communication from the Clerk in accordance with this section, the regulation making authority shall publish the annulment in	Agreed to

		the Gazette within fourteen days.	
6	Section 23 of the Principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection— “(1) A statutory instrument issued or made under any written law shall not come into effect until the statutory instrument is considered in accordance with this Act and the Standing Orders.”	Clause 6 deleted	Agreed to
7	Section 24 of the Principal Act is amended in subsection (5) by deleting the words “not exceeding twenty thousand shillings or such term of imprisonment not exceeding six months” and substituting therefor the words “not exceeding five hundred thousand shillings or such term of imprisonment not exceeding two years”	Clause 7 amended by deleting the clause and substituting therefor the following clause- 7. Section 24 of the principal Act is amended in subsection (5) by deleting the words “twenty thousand shillings” appearing immediately after the words “penalty not exceeding” and substituting therefor the words “one million”	Agreed to

Signed.....*Shmuni*.....Date.....*8/08/2024*.....

**HON. CHEPKONGA KIPRONO SAMUEL, CBS, MP
CHAIRPERSON
COMMITTEE ON DELEGATED LEGISLATIONS**

