

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2016**

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**NAIROBI, 11th November, 2016**

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**THE STATUTE LAW (MISCELLANEOUS  
AMENDMENTS) BILL, 2016**

**A Bill for**

**AN ACT of Parliament to make minor  
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, 2016. 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**

(s. 2)

<i>Written law</i>	<i>Provision</i>	<i>Amendment</i>
The Judicature Act (Cap. 8)	s.9	Delete and substitute therefor the following new section— Retirement Age. <b>9</b> (1) Subject to subsection (2), the age at which a person holding the office of judge shall retire shall be seventy years.  (2) Notwithstanding subsection (1), a person holding the office of Judge may elect to vacate office at any time after attaining the age of sixty-five years.
The Advocates Act (Cap. 16)	s.2	Delete the definitions of “unqualified person” and substitute therefor the following new definition— “unqualified person” means a person who is not qualified under section 9 and includes an advocate who— (a) is not qualified under section 9; (b) is not exempt under section 10; and (c) fails to take out a practising certificate.

s.23 Insert the following new subsection immediately after subsection (2)—

(2A) The Society shall issue a practice number to each advocate who becomes a member of the Society, and such number shall be affixed on every document drawn by such advocate and lodged for registration in any registry in Kenya.

New Insert the following new sections immediately after section 34—

Additional  
endorsements.

**34A.** (1) Subject to section 10, an advocate who holds a current practising certificate shall not file legal documents in any registry under any law requiring filing by an advocate, unless there is fixed on each such document, the stamp, admission number, practice number and signature of such advocate.

Validity of legal  
documents.

**34B.** (1) A practising advocate who is not exempt under section 10 and who fails to take out a practising certificate in any year, commits an act of professional misconduct.

(2) Notwithstanding any other provisions of this Act, nothing shall affect the validity of any legal document drawn or prepared by an advocate without a valid practising certificate.

(3) For the purpose of this section, "legal document" includes pleadings, affidavits, depositions, applications, deeds and other related instruments, filed in any registry under any law requiring filing by an advocate.

The Bills of Exchange Act (Cap. 27)	s.4(3)	Insert at the end thereof the words “Rwanda, Burundi and any other country granted membership to the Community under Article 3 of the Treaty for the East African Community.
The Probation of Offenders Act (Cap.64)	s.2	Insert the following definition in proper alphabetical sequence— “Minister” means the Cabinet Secretary responsible for matters relating to probation and after-care services.
	s.16(1)	Delete the word “Minister” and substitute therefor the expression “Public Service Commission”.
The Prisons Act (Cap 90)	s.2	Delete the definition of the word “Commissioner” and substitute therefor the following new definition— “Commissioner” means the Commissioner-General of Prisons. Insert the following new definition in proper alphabetical sequence— “Minister” means the Cabinet Secretary responsible for matter relating to prisons.
	s.9	Insert the words “or in the performance of any other function assigned to him” immediately before the words “every prison officer”.
	s.30(1)	Insert at the end thereof the words— “and shall be categorized and detained in such manner as to take into account the safety of the prisoner, of the public and of other persons in the prison”.
	s.43(1)	Delete the word “hard”.
	s.74(1)	Insert the following new paragraph immediately after paragraph (q)— (qa) guidelines and parameters for engaging with partners or stakeholders of the Service.
The Explosives Act (Cap 115).	s.2	Delete the definition of the word “Commissioner” and substitute therefor the following new definition—

“Commissioner” means the Director of Mines appointed under the Mining Act, 2016.

Insert the following new definition in proper alphabetical sequence—

“Minister” means the Cabinet Secretary responsible for mining.

The Income Tax Act (Cap. 470)	Head B (Rates of Tax)	Insert the following as the introductory portion for the second table appearing after item 1—  1A. The wife’s employment, wife’s professional and wife’s self employment income rates of tax shall be—
The Insurance Act (Cap. 487)	s.2	Delete the words “section 161 of” appearing in the definition of “auditor”
	3A(1)	Insert the following paragraphs immediately after paragraph (h)—  “(ha) educate the public regularly on the right to independently select an underwriter or broker from a list of underwriters or brokers licensed by the Authority;  (hb) regulate the business of bacc assurance offered by banks in the same manner as the ordinary insurance business including capital requirements and disclosures.
	s.43(2)(c)	Insert the words “as may be” immediately after the word “liability”
	s.73(2)	Delete the words “section 191 of” appearing in the subsection.
The Auctioneers Act (Cap. 526)	s.2	Delete the definition of the word “auctioneer” and substitute therefor the following new definition in proper alphabetical sequence—  “auctioneer” means a person licensed under section 10.
	s.3	Delete the expression “Part I of Chapter IV” appearing in subsection (1)(a) and substitute therefor the expression “Chapter 10”.

Delete the words “provincial administration” appearing in subsection (1)(b) and substitute therefor the words “National Security”.

Insert the following new subsection immediately after subsection (2)—

(3) Where a member of the Board nominated under section 3(1)(a), (b), (c) or (d) is nominated to the position of High Court, court of appeal or Supreme Court of Kenya, the appointee shall cease to serve as a member of the Board immediately upon assumption of office or elevation. -

New Insert the following new subsection immediately after section 3—

Board to be a body corporate.

**3A** The Board shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, developing or disposing of movable and immovable property;
- (c) borrowing or lending money; and
- (d) doing or performing all such other things or acts, which may lawfully be done by a body corporate.

4(2) Delete paragraph (c) and substitute therefor the following new paragraph—

- (c) develop and facilitate adequate training programmes for licensed auctioneers;

Insert the following new paragraphs immediately after paragraph (c)—

- (d) conduct routine inspections and visits of auctioneer's premises;
  - (e) set, maintain and continuously improve the standards of learning, professional competence and professional conduct for the provision of auctioneering services in Kenya;
  - (f) determine, maintain and enhance the standards of professional practice and ethical conduct and learning for the auctioneering profession in Kenya.
- s.10(1) Delete paragraph (b) and substitute therefor the following new paragraph—
- (b) has obtained sufficient knowledge and experience for a continuous period of not less than three years under or from a reputable licensed auctioneering firm;
- s.10(3) Delete the words "Member of Parliament or a Councillor" and substitute therefor the words "Member of the National Assembly, Senate or County Assembly".
- s.11 Delete paragraph (a).
- Renumber the existing provision as subsection (1) and insert the following new subsection—
- (2) A licensed auctioneer shall retire at the age of seventy years.
- s.14(2) Delete the words "a licensed auctioneer" appearing immediately after the word "employ" in the proviso to subsection (2) and substitute therefor the words "or engage a licensed auctioneer with equal experience".
- s.15 Insert the words "and sole surviving partnerships" immediately after the word "proprietor" appearing in the marginal note.

- s.15(1) Delete the expression “ninety days” and substitute therefor the expression “forty-five days”.
- s.18(6) Insert the words “the auctioneer may thereafter apply to the Board for the reinstatement of the licence” immediately after the word “business”.
- s.18(7) Insert the following new subsection immediately after subsection (7)—  
(8) Where a licence is reinstated, the holder of such licence shall be work for a period of twelve months under a licensed auctioneer of equal experience for supervision in order to become eligible to resume practice in their own capacity.
- s.20(1) Delete the expression “district or districts” appearing in paragraph (c) and substitute therefor the expression “county or counties”.
- The Clinical Officers (Training, Registration and Licensing) Act, 1988 (No 9 of 1988)
- s.3 Delete the word “Minister” wherever it occurs and substitute therefor the words “Cabinet Secretary”
- s.7(4) Delete the word “Minister” and substitute therefor the words “Cabinet Secretary”
- s.13(6) Delete the word “Minister” and substitute therefor the words “Cabinet Secretary”
- s.16 Delete the word “Minister” and substitute therefor the words “Cabinet Secretary”
- s.17 Delete the word “Minister” and substitute therefor the words “Cabinet Secretary”
- The Kenya Information and Communications Act, 1998. (No 2 of 1998)
- s.27A Insert new subsections (3A) and (3B) immediately after subsection (3) as follows—  
(3A) Subject to subsection (3B), a telecommunication operator shall, before levying or allowing to be levied, any specific charge relating to a premium rate



- service provided to a subscriber, disclose the fact, amount, and frequency of the charge to the subscriber.
- (3B) Subsection (3A) shall not apply to services rendered by a telecommunications operator on behalf of a public body.
- The Community Service Orders Act, 1998 (No. 10 of 1998).
- s.2 Insert the following new definitions in proper alphabetical sequence—
- “Minister” means the Cabinet Secretary for the time being responsible for Community Services.
- “Permanent Secretary” means the Principal Secretary in the Ministry responsible for Community Service.
- s.7(1) Delete the word “Provincial” appearing in paragraph (c);
- Delete the expression “Commissioner of Police” appearing in paragraph (e) and substitute therefor the expression “Inspector-General of Police”.
- Delete the expression “Commissioner of Prisons” appearing in paragraph (f) and substitute therefor the expression “Commissioner-General of Prisons”.
- Insert the following new subsection immediately after subsection (1)—
- (1A) The Director of Probation shall be the Vice-Chairman of the Committee.
- The Industrial Property Act 2001 (No.3 of 2001).
- s.11(3) Delete paragraph (b).
- s.12 Insert the words “a Corporation Secretary and” immediately after the word “appoint”.
- Renumber the existing provision as subsection (1) and insert the following new subsection—
- (2) The Managing Director may delegate to any officer any of the duties and functions conferred on him under this Act.

- s.22 Insert the word “and” immediately after the words “inventive step” and delete the words “or is a new use”.
- s.28(4) Delete.
- s.36(2) Delete the words “one or more” and substitute therefor the words “two or more”.  
Add the following new subsection immediately after subsection (2)—  
(3) The Cabinet Secretary may make regulations for the carrying out of the provisions of this section.
- s.41(1) Insert the words “and address” immediately after the word “name” appearing in paragraph (a).  
(6) Delete.  
(7) Delete paragraph (d).
- s.42(1) Insert the following proviso—  
Provided that the Managing Director may at the request of the applicant, publish the application before the expiry of eighteen months.  
Insert the following new subsection immediately after subsection (3)—  
(4) The Cabinet Secretary may make regulations for the carrying out of the provisions of this section.
- s.44(1) Delete.  
(2) Delete the words “and the subject matter thereof does not fall within a technical field specified in subsection (1) of this section”.  
Delete the word “three” and substitute therefor the word “five”.  
(3) Add the following new paragraph—  
(c) the application complies with the requirements of unity of invention prescribed in section 35.  
(4) Delete.  
(5) Delete.  
(6) Delete.

- (7) Delete and substitute therefor the following new subsection—  
 (7) Where the Managing Director is of the opinion that any of the conditions referred to in subsection (3) are not fulfilled, he shall notify the applicant accordingly and invite him to make his observations, and where applicable, to amend his application.
- (8) Delete the expression “subsection (2)” and substitute therefor the expression “subsection (3).”
- s.45(1) Insert the expression “41 or” immediately before the expression “44”
- s.54(2) Delete the words “the Institute” and substitute therefor the words “ a relevant authority”.
- s.82(2) Insert the expression “42” immediately after the expression “24”.  
 Insert the following new subsection immediately after subsection (2)—  
 (2A) An application for a utility model certificate shall be published in the Industrial Property Journal upon compliance with the requirements of section 41.
- s.103(2) Delete.
- s.113(6) Delete the word “Board” and substitute therefor the expression “Cabinet Secretary”
- The Children Act, 2001 (No. 8 of 2001) s.31 Delete subsections (1) and (2) and substitute therefor the following new subsections—  
 (1) The Council shall consist of—  
 (a) a chairperson appointed by the President, who shall be knowledgeable in, or has actively contributed to the promotion of the rights and welfare of children;  
 (b) the Principal Secretary responsible for matters relating to children or his representative;  
 (c) the Principal Secretary responsible for finance or his representative;

- (d) the Principal Secretary responsible for Education or his representative;
- (e) the Principal Secretary responsible for health or his representatives;
- (f) the Attorney General or his representative;
- (g) the Director children's Services;
- (h) the following person appointed by the Cabinet Secretary—
  - (i) one representative from the non-governmental organization engaged in matters related to children activities;
  - (ii) one person representing faith based organisations; and
- (i) the Chief Executive officer who shall be secretary to the Council.

(2) The members of the Council appointed under subsection (1) (a) and (h) shall hold office for three years and may be nominated for a further final term of three years.

s.155(2) Insert the following new paragraph immediately after paragraph (e)

- (f) keep and maintain a register on children who may be adopted and prospective adoptive parents;
- (g) declare children free for adoption.

s.156(1) Delete the words "a registered adoption society" and substitute therefor the words "the Adoption Committee".

Insert the following new subsection immediately after subsection (3)—

(4) The Cabinet Secretary may issue a moratorium on international adoptions where such adoptions are in contravention of the Constitution or any other law, or of any international treaties or conventions to which Kenya is a party.

The Copyright Act, 2001 (No. 12 of 2001).	S.2	Delete the word “Minister” wherever it occurs and substitute therefor the words “Cabinet Secretary”
	s.7	Delete the word “Minister” wherever it occurs and substitute therefor the words “Cabinet Secretary”
	s.9	Delete the word “Minister” wherever it occurs and substitute therefor the words “Cabinet Secretary”
	s.11	Delete the word “Minister” wherever it occurs and substitute therefor the words “Cabinet Secretary”
	s.16	Delete the word “Minister” wherever it occurs and substitute therefor the words “Cabinet Secretary”
	s.18(3)	Delete the word “Minister” wherever it occurs and substitute therefor the words “Cabinet Secretary”
	S.30(8)	Insert the words “and the compensation shall be collected by the Board and distributed to the respective copyright collecting society registered under section 46” at the end thereof.
	S.30A(1)	Delete the words “following” and substitute therefor the words “succeeding”
	s.39(3)	Delete the word “Minister” and substitute therefor the words “Cabinet Secretary”
	s.45(3)	Delete the word “Minister” and substitute therefor the words “Cabinet Secretary”
	s.46	Delete the word “Minister” and substitute therefor the words “Cabinet Secretary”
	s.48	Delete the word “Minister” and substitute therefor the words “Cabinet Secretary”
	s.49	Delete the word “Minister” and substitute therefor the words “Cabinet Secretary”
	The Public Officer Ethics Act, 2003 (No. 4 of 2003)	s.3

responsible commission for the members of the Witness Protection Agency established under that Act.

The Persons  
with Disabilities  
Act 2003 (No.  
14 of 2003)

s.4

Delete and substitute therefor the following new section—

Membership.

4. (1) The Council shall consist of—

- (a) the Chairperson, who shall be drawn from organizations of persons with disabilities and who shall be appointed by the President;
- (b) the Principal Secretary in the Ministry responsible for matters relating to disabilities or a representative duly appointed in writing.
- (c) the Principal Secretary in the Ministry responsible for finance or a representative duly appointed in writing;
- (d) the following persons appointed by the Cabinet Secretary—
  - (i) four persons representing various categories of disabilities, nominated by organizations of persons with disabilities;
  - (ii) two persons nominated by organizations for persons with

disabilities, one of whom shall be from organizations of parents of person with mental disabilities.

(e) the executive Director of the Council who shall be the Secretary to the Council.

(2) The appointing authority, in making appointments under this section, shall ensure that—

- (a) there is equitable representation of categories of persons with disabilities and that not more than two-thirds of the members are of the same gender;
- (b) at least one of the members of the Council shall be from a rural-based organization;
- (c) persons appointed have knowledge or experience of the needs of persons with disabilities and belong to a related group or organization;
- (d) the requirement of a mix of skills across all functionalities of the Council is observed.

s.5 Delete and substitute therefor the following new section—

Tenure of office.

5. The Chairperson and members appointed under section 4(1)(d) shall hold office for a period not exceeding three years and shall be eligible for re-appointment for a further term not exceeding two years.

The Sexual  
Offences  
Act, 2006 (No 3  
of 2006)

s.2

Delete the definition of the word "child" and substitute therefor the following new definition—

"child" means an individual who has not attained the age of eighteen years;

Delete the definition of the expression "genital organs" and substitute therefor the following new definition—

"genital organs" includes the whole or part of the male or female genital organs;

Insert the words "or one's genital organs" immediately after the words "pornographic material" appearing in the definition of the words "indecent act";

Insert the word "relationship" immediately after the word "expertise" appearing in the definition of the word "intermediary";

Delete the definition of the word "penetration" and substitute therefor the following new definition—

"penetration" means the partial or complete insertion of the genital organs or fingers of a person, or the insertion of any object into the genital organs of another person;

Insert the following new definition in its proper alphabetical sequence—

"sexual offender" means a person who has been convicted of a sexual offence under this Act

Delete the definition of the expression "vulnerable person" and substitute therefor the following new definition —



“vulnerable person” includes a child and a person who is vulnerable due to age, gender, trauma, mental or other disability, or any other special characteristic within the meaning of this Act.

- s.3(1) Insert the words “fingers or other objects” immediately after the words “genital organs” appearing in paragraph (a);
- Insert the following new paragraph immediately after paragraph (a) —
- (aa) the other person does not consent to the penetration, or the consent is obtained by force or by means of threats or intimidation of any kind;
- Delete paragraph (b);
- Delete paragraph (c).
- s.4 Delete and substitute therefor the following new section—
- Attempted rape. **4.** Any person who attempts to commit rape commits the offence of attempted rape and is liable on conviction to imprisonment for a period not less than five years, which may be enhanced to life.
- s.8(5) Delete the word “eighteen” and substitute therefor the word “sixteen”;
- s.8(7) Delete the word “eighteen” and substitute therefor the word “sixteen”.
- s.22(1) Delete the expressions “half father” and “half mother” and substitute therefor the expressions “step-father” and “step-mother” respectively.
- s.23 Insert the words “or otherwise” immediately after the word “authority”.
- s.39(1) Insert the words “and has exhausted all avenues of appeal against such conviction” at the end of the subsection;

	s.39(1)	Insert the words “and updated on a monthly basis” immediately after the word “maintained”.
	s.43(5)	Delete
The Refugees Act 2006. (No. 13 of 2006)	s.6	Delete the word “Department” and substitute therefor the expression “Secretariat”.  Delete the expression “Department of Refugee Affairs” wherever it appears and substitute therefor the expression “Refugee Affairs Secretariat”.
	s.8(3)	Delete the words “Provincial administration and internal security” appearing in paragraph (b) and substitute therefor the words “interior and co-ordination of national government”.
The Anti-Counterfeit Act, 2008 (No. 13 of 2008)	s.6(1)	Delete the introductory portion and substitute therefor the following— “There shall be a Board of the Agency which shall consist of—  Delete the word “industrialization” appearing in paragraph (b) and substitute therefor the word “trade”.
The Proceeds of Crime and Anti-money Laundering Act, 2009 (No. 9 of 2009)	s.2	Delete the definition of the expression “Deputy Director”.
	s.25(1)	Delete the words “and a Deputy Director”.
	s.25(2)	Delete the words “and the Deputy Director”.
	s.25(4)	Delete the words “or Deputy Director”.
	s.25(5)	Delete the words “and the Deputy”.
	s.26(1)	Delete the words “or Deputy Director”.
	s.27(1)	Delete the words “or Deputy Director”.
	s.27(2)	Delete the words “or Deputy Director”.
	s.30	Delete.
	s.32	Delete the words “the Deputy Director”.
The Competition Act, 2010 (No. 10 of 2010)	Schedule Para 3	Delete subparagraph (4) and substitute therefor the following— (4) The chairman shall preside at all meetings of the Authority at which he is

- present, and in his absence the members present may appoint one from among their number to preside at the meeting
- The Judicial Service Act 2011 (No. 1 of 2011)
- s.5 Insert the following new subsection immediately after subsection (4)—
- (5) If a vacancy occurs in the office the Chief Justice and that of the Deputy Chief Justice, or if the Deputy Chief Justice is unable to act in the absence of Chief Justice, the senior most judge in the Supreme Court shall act as the Chief Justice and shall assume the administrative duties of the Chief Justice until the position of Chief Justice or Deputy Chief Justice is filled.
- The National Police Service Act, 2011 ((No. 11A of 2011)
- s.2 Delete the definition of the expression “member of the service” and substitute therefor the following new definition—
- “Member of the Service” means a police officer from the Kenya Police Service, the Administration Police Service, or the Directorate of Criminal Investigation, special police, the National Police Reserve and any other service established under this Act;
- s.10(1) Delete paragraph (na) and substitute therefor the following new paragraph—
- (na) designate, in consultation with the National Police Service Commission, County Commanders from the National Police Service.
- Insert the following new paragraph immediately after paragraph (u)—
- (ua) review, develop and implement the curriculum in accordance with the training policy.
- s.13 Delete and substitute therefor the following new section—
- (13.) Whenever a vacancy occurs in the office of Deputy Inspector-General, the President may on the recommendation of the Commission appoint a suitably qualified police officer to act as Deputy

The Kenya  
Citizenship and  
Immigration  
Act, 2011 (No.  
12 of 2011)

- Inspector-General until the appointment of the substantive holder of the office.
- s.27 Insert the following new paragraph immediately after paragraph (j)—  
(ja) collection of criminal intelligence.
- s.29(1) Insert the words “and who shall have the status of Deputy Inspector-General” immediately after the expression “section 30”.
- s.76(3) Delete the words “An officer below the rank of Sergeant” and substitute therefor the word “Any officer”.
- s.79(2) Delete.
- s.11 Insert the words “and has acquired residence status” immediately after the expression “seven years” appearing in the introductory portion.
- s.15(2) Delete the expression “five years” and substitute therefor the expression “seven years”.
- s.16(2) Delete the expression “five years” and substitute therefor the expression “seven years”.
- s.19(1) Insert the words “or registration” immediately after the words “by birth”.
- s.27(3) Insert the following new paragraph at the end thereof—  
(h) such other documentation or information as the Director may require to ascertain the citizenship status of the applicant.
- s.31(1) Delete the words “a period not exceeding seven days” appearing in paragraph (g) and substitute therefor the words “for such period of time as may be reasonable in the circumstances”.
- s.33(1) Insert the following new paragraph at the end thereof—  
(x) a person who is reasonably suspected to be engaged in acts of terrorism or in the funding or facilitation of terrorism.

s.37 Delete the introductory portion and substitute therefor the following—

“The following persons, their spouses, children and dependants shall be eligible upon application in the prescribed manner for grant of permanent residence status in Kenya....”.

Insert the words “or residence” immediately after the word “work” appearing in paragraph (b).

Insert the words “or dependants under any law” immediately after the word “children” appearing in paragraph (c).

Insert the following new paragraph immediately after paragraph (c)—

(ca) children or dependants of registered citizens who are born before their parents acquire citizenship.

Insert the following new paragraph immediately after paragraph (d)—

(e) widows or widowers of Kenyan citizens.

s.40(10) Delete the words “may appeal to the High Court” and substitute therefor the words “may apply to the Cabinet Secretary for review in the prescribed manner”.

Insert the following new subsection immediately after subsection (10)—

(11) A notice of approval or rejection as the case may be, of an application under this section shall be issued to the respective applicant in the prescribed manner.

(12) Where the notification issued under subsection (11) is for the rejection of the application, an aggrieved applicant may apply for a review of the Cabinet Secretary’s decision within a period of ninety days from the date of receipt of the notification.

s.41(1) Delete the words “referred to in paragraph (a)” and substitute therefor the words “in respect of which the permit was issued”.

- s.49(6) Delete the word “issues” and substitute therefor the word “issued”.
- s.50 Renumber the existing provision as subsection (1) and insert the following new provision—  
(2) The Cabinet Secretary shall notify the establishment of holding facilities by notice in the Gazette.
- s.53 Delete the expression “(n)” and substitute therefor the expression “(m)”.
- The Independent Policing Oversight Act, 2011 (No. 35 of 2011) s.7(1) Insert the following proviso immediately after subparagraph (a)(vii)—  
“provided that where the document, thing or information is privileged, the procedure for producing privileged document, thing or information shall be complied with.
- The National Construction Authority Act 2011 (No 41 of 2011) s.18(5) Delete the expression “sections 14 and 16” and substitute therefor the expression “section 16”.
- s.30(c) Delete the expression “section 29” and substitute therefor the expression “section 31”.
- s.42(2) Delete the expression “section 29” appearing in paragraph (a) and substitute therefor the expression “section 31
- Kenya School of Government Act, 2012 (No. 9 of 2012) s.13(3A) Insert the words “by the Council” immediately after the word “appointed”
- s.21(4) Delete the word “Commission” and substitute therefor the word “Council”.
- The Treaty-making and Ratification Act, 2012 (No. 45 of 2012) s.2(1) Delete the definition of the expression “Cabinet Secretary” and substitute therefor the following new definition—  
“Cabinet Secretary” means the Attorney-General.
- s.13 Delete subsection (1) and substitute therefor the following new subsection—

(1) There shall be a Registry of Treaties which shall be based in the office of the Attorney-General.

s.14(1) Delete and substitute therefor the following new subsection—

(1) The Registry shall be headed by a Registrar of Treaties who shall be appointed through an open and competitive process by the Public Service Commission.

The Retirement Benefits (Deputy President and Designated Officers) Act 2015 (No. 8 of 2015)

Long title

Insert the words "or Chief Justice" immediately after the word "Speaker".

s. 3

Insert the words "or Chief Justice" immediately after the word "Speaker".

New

Insert the following section immediately after section 5—

Pension and other benefits of retired Chief Justice

5A. A retired Chief Justice shall, during his or her lifetime, be entitled to—

- (a) a monthly pension equal to eighty per cent of the monthly salary of the entitled person's last monthly salary while in office;
- (b) a lump sum payment on retirement, calculated as a sum equal to one year's salary paid for each term served in office;
- (c) one saloon vehicle of an engine capacity not exceeding 2000 cc which shall be replaceable once every four years;

- (d) one four-wheel drive vehicle of an engine capacity not exceeding 3000 cc which shall be replaceable once every four years;
- (e) a fuel allowance equal to fifteen per cent of current monthly salary of the office holder;
- (f) full medical and hospital cover, providing for local and overseas treatment, with a reputable insurance company for the entitled person and the entitled person's spouse;
- (g) the additional benefits set out in the First Schedule.

First Schedule Insert the words "or the Chief Justice" immediately after the words "the Senate" appearing in the title.

The Business  
Registration  
Service Act  
2015 (No. 15 of  
2015)

- s.2 Delete the definition of the expression "Registrar-General".
- Insert the following new definition in proper alphabetical sequence—
- "Director-General" means the Director-General of the Service appointed under section 17.
- s.4(1) Delete and substitute therefor the following new subsection—
- (1) The Service shall, under the general supervision of the Cabinet Secretary, be responsible for the implementation of policies, laws, and other matters relating to the registration of Companies, partnerships and firms, individuals and corporations carrying on business under a business name, bankruptcy, hire-purchase, and chattels transfers.



- s.5(2) Insert the words “or his representative” at the end of paragraphs (c) and (d).  
Delete paragraph (f) and substitute therefor the following new paragraph—  
(f) the Director-General, who shall be an *ex-officio* member.
- s.17 Delete and substitute therefor the following new section—  
Director General 17. The Board shall appoint a Director-General on such terms and conditions as may be specified in the instrument of appointment
- s.18 Delete the expression “Registrar-General” wherever it appears and substitute therefor the expression “Director-General”.
- s.18(1) Delete paragraphs (a) and (b) and substitute therefor the following new paragraphs—  
(a) is an advocate of the High Court of not less than ten years standing.  
(b) has at least five years’ working experience at a senior management position in public affairs or in a commercial environment.
- s.19(1) Insert the following new paragraph immediately after paragraph (d)—  
(e) failure to perform in accordance with agreed targets.
- s.19(2) Delete the expression “Registrar-General” wherever it appears and substitute therefor the expression “Director-General”.
- s.20(1) Delete the word “Registrar” and substitute therefor the word “directors”.
- s.21 Delete the expression “Registrar-General” wherever it appears and substitute therefor the expression “Director-General”.
- s.27(2) Delete the word “Board” and substitute therefor the word “Service”.
- s.28(3) Insert the words “who are engaged in the functions as set out under section 4(1)” immediately after the words “of this Act”.

Insert the words “of staff” immediately after the word “members” appearing in paragraph (e).

s.31 Delete and substitute therefor the following new section—

Secondment of staff

31. (1) Subject to subsection (2), all persons who, immediately before the commencement of this section were members of the Department of the Registrar-General engaged in the activities of the Service as set out in section 4(1) shall upon such commencement, be deemed to be on secondment to the Service.

(2) Notwithstanding the provisions of subsection (1), within twelve months after the commencement of this section, the Service shall review the qualifications of all persons deemed to be on secondment to the Service under that subsection, and may retain those found suitably qualified for employment by the Service subject to—

(a) such persons opting to remain in the service of the Service ; and

(b) such terms and conditions of service (not being to the disadvantage of such persons) as may be agreed with the Service.

(3) Any employee not retained by the Service under subsection (2) may exercise his option to either—

(a) retire from the service of the Government; or in cases where the employee has not reached retirement age, be redeployed within the public service.

(4) Where an employee enters into an agreement with the Service under subsection (2), his service with the Government shall be deemed to be terminated without the right to severance pay but without prejudice to all other remuneration and benefits payable upon the termination of his appointment with the Government.

s.32 Insert the words "in performing the services set out under section 4(1)" immediately after the expression "Registrar-General".

Schedule Delete the words "the vice-chairperson shall  
Para 1(6) preside, and in the absence of both the chairperson and the vice-chairperson"

The Companies  
Act 2015 (No.  
17 of 2015)

s.93(9) Insert the words "other than a public listed company" immediately after the word "company".

s.245(1) Delete the expression "Attorney-General" and substitute therefor the expression "Director-General".

(2) Delete the expression "Attorney-General" and substitute therefor the expression "Director-General".

s.468(2) Delete the expression "480" and substitute therefor the expression "470".

s.518 Insert the words "in relation to the nominal value of a public listed company's allotted share capital" immediately after the expression "authorised minimum".

s.520(4) Delete the words "may issue" and substitute therefor the words "may not issue".

- s.540(1) Delete the expression “549” and substitute therefor the expression “537”
- s.558 Delete the expression “553” and substitute therefor the expression “551”.
- s.560(1) Delete the expression “553” and substitute therefor the expression “551”.
- s.986(3) Delete paragraph (d).
- s.1024(7) Delete the expression “1025” and substitute therefor the expression “1026”.
- The Excise Duty Act, 2015 (No. 23 of 2015) Part I of the First Schedule Insert the words “locally assembled motor vehicles and” immediately after the words “excluding” appearing in the item titled “Motor vehicles excluding school of tariff heading 87.02, 87.03 and 87.04”.
- Part III of the First Schedule Insert the words “day of” immediately after the word “1<sup>st</sup>” appearing in the definition of “Adjustment day”
- The High Court (Organization and Administration) Act, 2015 (No. 27 of 2015) s.10(2) Delete paragraph (a) and substitute therefor the following new paragraph—  
 (a) from the 14th January to the second Wednesday before Good Friday  
 Delete paragraph (c) and substitute therefor the following new paragraph—  
 (c) from the 16th September to the 20th December.
- The Court of Appeal (Organization and Administration) Act 2015( No. 28 of 2015) s.26(1) Delete the word “Thursday” appearing in paragraph (a) and substitute therefor the word “Wednesday”.  
 Delete the expression “7th January” appearing in paragraph (c) and substitute therefor the expression “12th January”.
- The Legal Aid Act, 2016 (No. 6 of 2016) s.9(1) Insert the words “from among universities with an operational legal aid clinic” at the end of paragraph (i).
- s.43(1) Insert the following new subsection immediately after subsection (1)—  
 (1A) In determining whether substantial injustice referred to in paragraph (1)(b) likely to occur, the court shall take into consideration—

The Water  
Act, 2016 (No 43  
of 2016)

- (a) the severity of the charge and sentence;
  - (b) the complexity of the case; and
  - (c) the capacity of the accused to defend themselves.
- (4) Delete the words “the court may” and substitute therefor the words “the court shall”.
- s.37 Insert the following new subsection immediately after subsection(4)—
- (5). The provisions of this section and section 36 shall not apply in respect of the abstraction of sea water for use in the extraction of salt.
- s.74 Insert the following new subsection immediately after subsection (3)
- (3) This section does not apply to the provision or abstraction of sea water for the purposes of salt extraction
- s.85 (3) Insert the following new paragraph immediately after paragraph (c)—
- (d) the provision or abstraction of sea water for the purposes of salt extraction.

## MEMORANDUM OF OBJECTS AND REASONS

The Statute Law (Miscellaneous Amendments) Bill, 2016 is in keeping with the practice of making minor amendments which do not merit the publication of separate Bills and consolidating them into one Bill.

The Bill has proposals for amendments of the following statutes:

### **The Judicature Act (Cap 8)**

The Bill proposes to amend the Judicature Act to align it with the Article 167(1) of the Constitution on the retirement age for judges.

The proposal arises as a result of the need for clarity in the retirement age for Judges for avoidance of doubt.

### **The Advocates Act (Cap 16)**

The Bill proposes to amend the Advocates Act to define “unqualified person” for purposes of legal practice under the Act.

It also proposes the issuance of practice numbers to members of the Law Society of Kenya, to be endorsed on all documents prepared by practicing advocates together the stamp, admission number and signature of the advocate.

It makes it an act of professional misconduct for practicing advocate to fail to take out an annual practicing certificate.

This is an effort by the Law Society of Kenya to streamline legal practice and reduce the incidence of legal activity by unqualified persons.

The provision however preserves the validity of documents prepared by advocates without a practicing certificate in order to safeguard the interests of the client.

### **The Bills of Exchange Act (Cap. 27)**

The Bill proposes to amend the Bills of Exchange Act to include Rwanda and Burundi and other countries which become members of the East African Community for purposes of recognition of bills of exchange drawn therein as an inland bill under the Act.

### **The Probation of Offenders Act (Cap. 64)**

The Bill proposes to amend the Probation of Offenders Act to introduce the terms “Cabinet Secretary” and “Principal Secretary” in reference to the Minister and Permanent Secretary respectively. This is to harmonise the terminology with the Constitution.

### **The Prisons Act (Cap. 90)**

The Bill proposes to amend the Prisons the Act to harmonise the terms used in the Act with the Constitution. It is also intended to extend the police powers conferred on prisons officers to apply in the performance of all their functions under the Act. This is expected to enhance co-operation between the two Services.

It is also proposed to amend the Act to provide for the categorisation and custody of prisoners taking into account the safety of the prisoners and

the members of the public. It is also proposed to remove the concept of "hard labour" from the Act in case it is construed to mean servitude contrary to the United Nations Standard Minimum Rules for the Treatment of Prisoners ("Mandela Rules").

It is also proposed to widen the range of matters in respect of which the Minister may make regulations.

**The Explosives Act (Cap. 115)**

The Bill proposes to amend the Explosives Act to harmonise the titles of office holders applied therein with the Constitution.

**Income Tax Act (Cap. 470)**

The Bill proposes to amend the Income Tax Act to reinstate the introductory portion of an item in the Third Schedule which had been inadvertently omitted.

**The Insurance Act (Cap 487)**

The Bill proposes to amend Insurance confer additional functions to the Authority of educating the public on the right to elect an underwriter of their choice and also to regulate bank insurance.

**The Auctioneers Act (Cap. 526)**

The Bill proposes to amend the Auctioneers Act to provide for the incorporation of the Auctioneers Licensing Board and expand on its functions to include capacity building and maintaining the standards for the provision of auctioneers services.

**The Clinical Officers (Training, Registration and Licensing) Act, 1988 (No 9 of 1988)**

The Bill proposes to amend the Clinical Officers (Training, Registration and Licensing) Act, 1988 to make consequential changes to the terminologies arising out of the enactment of the Constitution of Kenya 2010.

**The Kenya Information and Communications Act, 1998. (No 2 of 1998)**

The Bill proposes to amend the Kenya Information and Communications Act to allow subscribers to be notified of any charge relating to their subscription to any premium rate service

**The Community Service Orders Act, 1998 (No. 10 of 1998)**

The Bill proposes to make minor amendments to the Community Service Orders Act, including harmonizing the terms applied in it to the Constitution.

**The Industrial Property Act, 2001 (No. 3 of 2001)**

The Bill proposes to amend the Industrial Property Act to align the membership of the Board of the Institute with the Mwongozo Code of Governance and to make several other minor amendments affecting the handling of applications for registration of patents by the Board. It also

provides for the publication of applications for utility model certificates in the Industrial Property Journal.

**The Children Act, 2001 (No. 8 of 2001)**

The Bill proposes to amend the Children Act to clarify the membership of the National Council for Children's Services and confer functions related to the adoption of children. It also seeks to empower the Cabinet Secretary to restrict international adoptions of Kenyan Children.

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

The Bill proposes to amend the Copyright Act, 2001 to provide for structured compensation of performers and producers of sound recordings for private copying of works in line with international norms and practices.

**The Public Officer Ethics Act, 2003 (No. 4 of 2003)**

The Bill proposes to amend the Public Officer Ethics Act, 2003 to make the Witness Protection Advisory Board the responsible commission for the members of staff of the Agency. This is a proposal from the Witness Protection Agency.

**The Persons with Disabilities Act, 2003 (No. 14 of 2003)**

The Bill proposes to amend the Persons with Disabilities to align the appointment of the members of the National Council for Person with Disabilities with the State Corporations Act and the Mwongozo code of Governance. It places a requirement for equity in representation on the Council.

**The Sexual Offences Act, 2006 (No 6 of 2006)**

The Bill proposes to amend the Sexual Offences Act, 2006 to provide for and correct some expressions and words used in the Act. The Bill proposes to reduce the consensual age with regards to the offence of defilement from eighteen to sixteen years. It also seeks to protect the rights of a sexual offender for purposes of ensuring that all avenues of appeal against a conviction are exhausted before a court can declare a sexual offender a dangerous sexual offender. The Bill further provides that a register for sexual offenders should be updated on a monthly basis and also proposes to criminalize intentional and unlawful sexual acts in respect of persons who are lawfully married to each other.

**The Refugees Act, 2006 (No. 13 of 2006)**

The Bill proposes to amend the Refugees Act to streamline the terms applied to officials and officers under the Act.

**The Ant-Counterfeit Act, 2008 (No. 13 of 2008)**

The Bill proposes to amend the Anti-Counterfeit Act, 2008 to clarify the establishment of the Agency and to domicile the Agency in the Ministry of Trade.



**The Proceeds of Crime and Anti-money Laundering Act, 2009 (No. 9 of 2009)**

The Bill proposes to amend the Proceeds of Crime and Anti-money Laundering Act to remove the designation of Deputy Director of the Financial Reporting Centre, which the Treasury considers advisable for the smooth running of the Centre.

**The Competition Act, 2010 (No. 10 of 2010)**

The Bill proposes to amend the Competition Act 2010 to provide for the conduct of meetings in the absence of the chairperson of the Board.

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

The Bill proposes to amend the Judicial Service Act, 2011 to make provision for the performance of the duties of the Chief Justice in the absence of both the Chief Justice and the Deputy Chief Justice. Under the new provision the seniormost judge in the Supreme Court shall perform the administrative duties of the Chief Justice in the absence of both the Chief Justice and the Deputy Chief Justice.

**The National Police Service Act, 2011 (No. 11A of 2011)**

The Bill proposes to amend the National Police Service Act, 2011 to clarify the membership of the Kenya Police Service and also the deployment of county commanders from the service in the counties. It proposes the appointment of a suitable person to act as Deputy Inspector-General by the President on the recommendation of the National Police Service Commission in the case of a vacancy in that office. It also proposes to confer on the Service the function of collecting criminal intelligence. It also proposes the status of Deputy Inspector-General for the Director of Criminal Investigation. It also proposes a uniform retirement age for the members of the Service.

**The Kenya Citizenship and Immigration Act, 2011 (No. 12 of 2011)**

The Bill proposes to amend the Kenya Citizenship and Immigration Act 2011 to clarify the provisions relating to application for permanent residence status and extend the eligibility to children, widows and widowers of persons who already hold that status.

**The Independent Policing Oversight Act, 2011 (No. 35 of 2011)**

The Bill proposes to amend the IPOA Act 2011 to provide for confidentiality of documents or other information produced by serving or retired police officers summoned to appear before it.

**The National Construction Authority Act, 2001 (No. 41 of 2011)**

The Bill proposes to amend the National Construction Authority Act to make minor corrections in the referencing.

**The Kenya School of Government Act, 2012 (No. 9 of 2012)**

The Bill proposes to amend the Kenya School of Government Act, 2012, to clarify that the employment of the staff of the school is by the Council of the School and not by the Public Service commission.

**The Treaty-Making and Ratification Act, 2012 (No. 45 of 2012)**

The Bill proposes to amend the Treaty-Making and Ratification Act to domicile the Registry of Treaties in the office of the Attorney-General.

**The Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 (No. 8 of 2015)**

The Bill proposes to amend the Act to include a retired Chief Justice as one of the entitled persons under the Act.

**The Business Registration Service Act, 2015 (No. 15 of 2015)**

The Act proposes to amend the Business Registration Services Act to remove services which are not business-related from the mandate of the Service and retain them as functions of the Registrar-General. It also provides for the appointment of a chief executive officer by the Board of the service.

**The Companies Act, 2015 (No. 17 of 2015)**

The Bill proposes to amend the Companies Act 2015 to make several corrections in the numbering.

**The Excise Duty Act, 2015 (No. 23 of 2015)**

The Bill proposes to amend the Excise Duty Act, 2015 to exclude locally assembled motor vehicles from Excise duty.

**The High Court (Organisation and Administration) Act, 2015 (No. 27 of 2015)**

The Bill proposes to amend the High Court (Organisation and Administration) Act, 2015 to rectify the dates for the period of recess and synchronise them with those obtaining in the Court of Appeal.

**The Court of Appeal (Organisation and Administration) Act, 2015 (No. 28 of 2015)**

The Bill proposes to amend the Court of Appeal (Organisation and Administration) Act, 2015 to rectify the recess dates and synchronise them with those of the High Court.

**The Legal Aid Act, 2016 (No. 6 of 2016)**

The Bill proposes to amend the Legal Aid Act 2016 to make it mandatory for the state to provide an advocate for an accused person in certain circumstances.

**The Water Act, 2016**

The Bill proposes to amend the Water Act, 2016, (No 46 of 2016) so as to exclude sea water used for the extraction of salt from the requirements of permits and licenses under the Act so to avoid double taxation of sea water which attracts payment of royalties under the Mining Act

This Bill is not a Bill concerning County Governments and its enactment may occasion some additional expenditure of public funds, which shall be provided for in the estimates.

ADEN DUALE,  
*Leader of the Majority.*

**Sections to be amended**

*Section 9 of Cap. 8 which it is proposed to amend—*

**Retiring age.**

9. For the purposes of section 62(1) of the Constitution, the age at which a person holding the office of judge shall vacate his office shall be seventy-four years.

*Section 2 of Cap. 16 which it is proposed to amend—*

**Interpretation.**

2. “unqualified person” means a person not qualified under section 9 to act as an advocate.

*Section 4(3) of Cap. 27 which it is proposed to amend—*

**Inland and foreign bills**

4. (3) For the purposes of this section, “East Africa” means Kenya, Uganda and Tanzania.

*Section 16 of Cap. 64 which it is proposed to amend—*

**Appointments.**

16. (1). The Minister shall appoint—

- (a) a principal probation officer, who shall organise and supervise the probation service in accordance with rules made under this Act;
- (b) a sufficient number of probation officers, qualified by character and experience to be probation officers, who shall perform such duties as may be prescribed by rules made under this Act.

*Section 2 of Cap. 90 which it is proposed to amend—*

**Interpretation.**

2. “Commissioner” means the Commissioner of Prisons;

*Section 9 of Cap. 90 which it is proposed to amend—*

**Cases where prison officers have the powers and privileges of police officers**

9. While in charge of prisoners for the purpose of conveying any person to or from a prison, or for the purpose of apprehending any prisoner who may have escaped from a prison, or who may have escaped while being conveyed to or from a prison, or for the purpose of preventing the rescue of any persons in custody or an attack on a prison, every prison officer shall have all the powers, protection and privileges of a police officer.

*Section 30(1) of Cap. 90 which it is proposed to amend—*

**Prisoner in custody of officer in charge**

30. (1) Every prisoner confined in any prison shall be deemed to be in the lawful custody of the officer in charge of the prison.

*Section 43(1) of Cap. 90 which it is proposed to amend—*

**Labour of prisoners**

43. (1). Every prisoner under sentence of imprisonment with hard labour may be kept to labour, within or without the precincts of any prison, in such type of employment as the Commissioner may direct.

*Section 2 of Cap. 115 which it is proposed to amend—*

**Interpretation.**

2. “Commissioner” means the Commissioner (Mines and Geology), or any officer whom he may depute to exercise the powers conferred upon the Commissioner

*Section 2 of Cap. 526 which it is proposed to amend—*

**Interpretation**

2. “auctioneer” includes every person who sells by auction;

*Section 3 of Cap. 526 which it is proposed to amend—*

**Establishment and membership of the Board**

3. (1) There is established a Board to be known as the Auctioneers Licensing Board which shall consist of—

- (a) one person qualified for appointment as a judge of the High Court or the Court of Appeal under Part I of Chapter IV of the Constitution appointed by the Chief Justice, who shall be chairman;
- (b) the Permanent Secretary in the Office of the President for the time being responsible for matters relating to provincial administration, or his representative;
- (c) one Chief Magistrate to be appointed by the Chief Justice;
- (d) two advocates, of not less than ten years’ standing to be nominated by the Council of the Law Society;
- (e) four auctioneers of not less than five years’ standing, nominated by the Chief Justice on the recommendation of the association.

*Section 4 of Cap. 526 which it is proposed to amend—*

**Object and functions of the Board**

4. (2) Without prejudice to the generality of subsection (1), the Board shall—

- (a) license and regulate the business and practice of auctioneers;
  - (b) supervise and discipline licensed auctioneers;
  - (c) to carry out training programmes for licensed auctioneers,
- and such secretary shall hold office for a renewable term of three years.

*Section 10 of Cap. 526 which it is proposed to amend—*

**Eligibility for licence**

**10. (1)** Subject to subsection (2) of this section and to section 11, a person who satisfies the Board that he—

- (a) is a Kenyan citizen;
- (b) has sufficient knowledge and experience in the business and practice of an auctioneer;
- (c) has not been convicted in the ten years immediately preceding the application of an offence involving fraud, dishonesty or immorality and is otherwise of good character and reputation;
- (d) is not disqualified under the provisions of this Act from obtaining or holding a licence, may, on application to the Board, be licensed to carry on the business of an auctioneer.

(3) A person who is a Member of Parliament or a Councillor shall be entitled to hold a general licence enabling him to realise securities and carry out repossessions in such parts of the country as may be specified therein.

*Section 11 of Cap. 526 which it is proposed to amend—*

**Issue of licence in special circumstances**

**11.** Notwithstanding the provisions of section 10, the Board may issue a licence to a person who—

- (a) at the commencement of this Act is aged sixty-five years or more but is otherwise eligible to be licensed and has held an auctioneer's licence for the three years immediately preceding the commencement, to carry on business for a period not exceeding twelve months from the 1st January next following the date of commencement; or.

*Section 14(2) of Cap. 526 which it is proposed to amend—*

**Conditions of licence**

**14. (2)** A licensed auctioneer shall carry on business in his own name or in the name of a firm all of whose partners are licensed auctioneers:

Provided that such licensed auctioneer or firm of auctioneers may employ a licensed auctioneer who shall nevertheless continue to be personally accountable to the Board.

*Section 15 of Cap. 526 which it is proposed to amend—*

**Condition with respect to sole proprietors**

**15. (1)** A licensed auctioneer who—

- (a) carries on business as a sole proprietor; or

(b) is the sole surviving partner in a firm of auctioneers, shall, within ninety days of being licensed, nominate for approval by the Board, two licensed auctioneers who shall be responsible for winding up his business in the event of his death or the revocation of his licence.

*Section 18(6) of Cap. 526 which it is proposed to amend—*

#### **Revocation of licence**

**18.** (6) The Board shall, within fourteen days of the revocation of a licence, cause the name of the auctioneer whose licence is revoked to be published in the Gazette and in one local daily newspaper circulating in the area where the auctioneer carries on business.

*Section 20(1) of Cap. 526 which it is proposed to amend—*

#### **Register of licences**

**20.** (1) The Board shall keep a register, in such form as it may determine, of all licences issued under this Act and shall enter therein in respect of every licence—

- (a) the full names and identity card number of the auctioneer;
- (b) the place of business in respect of which the licence is granted;
- (c) the district or districts to which the licence relates;
- (d) the date of expiry of the licence;
- (e) particulars of any amendment to the licence;
- (f) particulars of any revocation or suspension of the licence;
- (g) any other particulars the Board may require to be recorded.

*Section 3 of No 9 of 1988 which it is proposed to amend—*

#### **3. Clinical Officers Council**

(1) For the purposes of this Act, there shall be a Council to be known as the Clinical Officers Council, which shall be composed of the following members—

- (a) the Director of Medical Services or his representative;
- (b) the Registrar;
- (c) two medical officers of health appointed by the Minister;
- (d) at least two and not more than four clinical officers appointed by the Minister;
- (e) one clinical officer nominated by the Faculty of Clinical Medicine at the Kenya Medical Training College;
- (f) seven clinical officers, three of whom shall be licensed to engage in private practice who shall be elected to the Council by the Kenya Clinical Officers Association from among the members of the Association.

(2) There shall be a chairman of the Council appointed by the Minister from amongst the members of the Council.

(3) All appointments, nominations and elections to the Council under this section shall be notified in the *Gazette*.

(4) The Council shall elect a deputy chairman from amongst its members.

(5) The members referred to in paragraphs (c), (d), (e) and (f) of subsection (1) shall hold office for a term of three years from the date their appointment, nomination or election is notified in the *Gazette* under subsection (3), but shall be eligible for re-appointment, re-nomination or re-election.

(6) The chairman or in his absence the deputy chairman, shall preside over the meetings of the Council but if both the chairman and deputy chairman are absent, the members present shall choose one amongst them to preside over the meeting.

(7) If any of the members of the Council dies or is incapacitated by illness or is permanently unable to attend the meetings for any reason whatsoever, the Minister may, after consulting the Council, appoint a suitable person to fill the vacancy for the remaining period.

(8) Seven members of the Council including the chairman or the person presiding where the chairman or deputy chairman are absent shall form a quorum at any meeting of the Council, and, subject to subsection (9) of section 15, all facts, matters or business authorized or required to be done by the Council may be decided at any meeting at which a quorum is present.

(9) The Council shall meet as and when convened by the chairman to discharge any business but such meetings shall not be less than four in each year.

(10) The chairman or in his absence the deputy chairman shall convene an extraordinary meeting of the Council on receiving written requests from at least five members of the Council.

(11) Subject to this Act and to any regulations as to procedure made under section 16, the Council shall have the power to regulate its own procedure.

(12) Each member of the Council shall have a deliberative vote and the chairman shall, in addition to his deliberative vote, have a casting vote.

***Section 7 of No 9 of 1988 which it is proposed to amend-***

**7. Registration and effect of registration**

(1) A person shall be entitled to registration if he satisfies the Council that he—

(a) has successfully undergone a prescribed course of training at an approved training institution;

- (b) has applied for registration in the prescribed form;
- (c) has paid the prescribed fees for registration; and
- (d) is a fit and proper person to be registered.

(2) Any person who is aggrieved by the decision of the Council not to register him may appeal to the High Court within sixty days of such refusal and the High Court may confirm, annul or vary the Council's decision.

(3) The Registrar shall, with the approval of the Council, issue to every person registered under this Act a certificate of registration in the prescribed form.

(4) A person who has been registered by the Council shall be entitled to render medical or dental services in any medical institution in Kenya approved for the purposes of this section by the Minister by notice in the *Gazette*.

### **13. Limitations of private practice**

(1) A clinical officer who is licensed to engage in private practice shall only treat the ailments listed in the First Schedule.

(2) A clinical officer who is licensed to engage in private practice shall only handle and shall only issue prescriptions for the drugs and equipment listed in the Second Schedule.

(3) No clinical officer engaged in private practice shall keep open his clinic unless he is personally present for more than eight hours a day.

(4) The Third Schedule shall have effect with respect to the minimum requirements for a private practice clinic.

(5) No clinical officer engaged in private practice shall undertake to treat the diseases and ailments listed in the Fourth Schedule, but he may render the necessary First Aid and thereafter, without undue delay, refer such cases to the nearest medical officer or medical practitioner or dentist in private practice on referral.

(6) The Minister may, in consultation with the Council, amend the First, Second, Third and Fourth Schedules.

(7) A clinical officer who fails to comply with the requirements of subsections (1), (2), (3) and (5) shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both

### ***Section 6 of No 9 of 1988 which it is proposed to amend-***

#### **Regulations**

The Minister may, after consultation with the Council, make regulations generally for the better carrying out of the provisions of this Act and any such regulations may, without prejudice to the generality of the foregoing, include power to—



- (a) prescribe the procedure to be followed by the Council under section 15;
- (b) prescribe any forms to be used in connection with this Act;
- (c) prescribe any fees to be paid for registration, private practice licence, or any other fees to be charged under the provisions of this Act;

prescribe anything required by this Act to be prescribed.

***Section 17 of No 9 of 1988 which it is proposed to amend-***

**17. Finance**

The Minister may—

- (a) make to the Council such grants as may be necessary to enable it to discharge its functions under this Act; and
- (b) make such other payments as may be necessary to give effect to the provisions of this Act.

***Section 24 of No. 27A of 1998 which it is proposed to amend—***

**27A. Duties of telecommunications operators**

- (1) Before a telecommunications operator sells a SIM-card or otherwise provides telecommunication services to a person, it shall obtain—
- (a) from natural persons, the person's full name, identity card number, date of birth, gender, physical and postal address;
  - (b) from corporate persons or statutory bodies, official name, postal and physical address, particulars of registration, incorporation, enabling legislation or *gazette* notice, as the case may be; and
  - (c) such other information as may be prescribed from time to time.
- (2) A telecommunication operator shall ensure that—
- (a) existing subscribers register their SIM-cards within such time period as may be prescribed;
  - (b) proper physical or electronic records are kept of the information referred to in subsection (1) and any change in such information;
  - (c) the registration details of a subscriber are kept in a secure and confidential manner, and shall not be disclosed without the written consent of the subscriber.
- (3) Notwithstanding the provisions of subsection (2)(c), a telecommunications operator may disclose the registration particulars of a subscriber—
- (a) for the purpose of facilitating the performance of any statutory functions of the Authority;

(b) in connection with the investigation of any criminal offence or for the purpose of any criminal proceedings; or

(c) for the purpose of any civil proceedings under the Act.

(4) Any telecommunications operator who contravenes this section commits an offence and shall be liable on conviction to a fine not exceeding five million shillings

*Section 7 of No. 19 of 1998 which it is proposed to amend—*

**The National Community Service Orders Committee**

7. (1) There shall be a committee to be known as the National Community Service Orders Committee (in this Act referred to as “the National Committee”) which shall consist of—

(a) a chairman who shall be a judge of the High Court appointed by the Chief Justice;

(b) the Director of Public Prosecutions or his nominee;

(c) the Permanent Secretary in the Ministry for the time being responsible for matters relating to provincial administration and internal security or his nominee;

(d) the Permanent Secretary in the Ministry for the time being responsible for matters relating to public works or his nominee;

(e) the Commissioner of Police or his nominee;

(f) the Commissioner of Prisons or his nominee;

*Section 11(3) of No. 3 of 2001 which it is proposed to amend—*

**Managing Director**

11. (3) The Managing Director shall—

(a) be an ex-officio member of the Board but shall have no right to vote at any meeting of the Board;

(b) be the secretary to the Board; and

*Section 12 of No. 3 of 2001 which it is proposed to amend—*

**Staff of the Institute**

12. The Board may appoint such Deputy Managing Directors, Assistant Managing Directors, examiners and such officers or other staff of the Institute as are necessary for the proper discharge of its functions under this Act or any other written law, upon such terms and conditions of service as the Board may determine.

*Section 22 of No. 3 of 2001 which it is proposed to amend—*

**Patentable inventions**

22. An invention is patentable if it is new, involves an inventive step, is industrially applicable or is a new use.

*Section 28(4) of No. 3 of 2001 which it is proposed to delete—*

**Restriction on applications abroad by Kenya residents**

28. (4) In this section—

- (a) any reference to an application for a patent includes a reference to an application for other protection for an invention;
- (b) any reference to either kind of application is a reference to an application under this Act, under the law of any country other than Kenya or under any international treaty or convention to which Kenya is a party.

*Section 36(2) of No. 3 of 2001 which it is proposed to amend—*

**Amendment and division of application**

36. (2) The applicant may divide the initial application into one or more applications (hereinafter referred to as “divisional applications”) provided that each divisional application shall not go beyond the disclosure in the initial application.

*Section 41(1) of No. 3 of 2001 which it is proposed to amend—*

**Filing date and examination of application as to form, etc.**

41. (1) The Managing Director shall accord as the filing date the date of receipt of the application, provided at the time of receipt, the documents filed contain—

- (a) the name of the applicant;
- (b) a part which on the face of it appears to be a description; and
- (c) a part which on the face of it appears to be a claim or claims.

(6) Where the request is accompanied by the statement on the right to the patent, the Managing Director shall send a copy of the statement to the inventor and the inventor shall have the right to inspect the application and to receive, at his own expense, a copy thereof.

(7) The Managing Director shall cause an examination to be carried out as to whether there are any of the following defects with respect to the application—

- (d) the applicant has not complied with a request of the Managing Director under section 38; or

*Section 44 of No. 3 of 2001 which it is proposed to amend—*

**Examination as to substance**

44. (1) The Managing Director may, by notice in the Kenya Gazette or in the Industrial Property Journal—

- (a) direct that applications for patents relating to a specified field or specified technical fields shall be the subject of an examination as to substance; or

(b) amend any direction issued pursuant to paragraph (a).

(2) Where an application for a patent satisfies the requirements specified in subsection (7) of section 41 and the subject matter thereof does not fall within a technical field specified under subsection (1) of this section, the Managing Director shall so notify the applicant who shall, within three years from the filing date of the application, submit a request in the prescribed form for the examination of the application pursuant to the provisions of subsection (3):

Provided that where no request is made within the prescribed period, the application shall be deemed to be abandoned.

(3) Where a request is filed under subsection (2), the Managing Director shall cause an examination of the application to be made as to whether—

(a) the invention in respect of which the application is made is patentable within the meaning of this Act; and

(b) the application complies with the requirements of subsections (5) and (6) of section 34.

(4) For the purposes of the examination under subsection (3), the Managing Director may submit the application together with the relevant documents to an examiner or other competent authority for examination as to the patentability of the claimed invention and the examiner or other competent authority shall submit a report of the findings of the examination to the Managing Director who shall submit a copy thereof to the applicant.

(5) Save where an application is subject to an international-type search under section 43, the Managing Director shall cause an examination to be carried out as to whether the application complies with the requirements of unity of invention prescribed under section 35 and the rules pertaining thereto.

(6) If the Managing Director is of the opinion that the requirements of unity of invention have not been complied with, he shall invite the applicant to restrict or divide the application:

Provided that where the applicant fails to do so, the Managing Director shall reject the application.

(7) Where, taking due account of the conclusions of any report referred to in subsection (5), the Managing Director is of the opinion that any of the conditions referred to in subsection (2) are not fulfilled, he shall notify the applicant accordingly and invite him to submit his observations and, where applicable, to amend his application.

(8) Where, despite any observation or amendment submitted by the applicant, the Managing Director finds that any of the conditions referred to in subsection (2) are not fulfilled, he shall refuse the grant of a patent and notify the applicant accordingly.

*Section 45(1) of No. 3 of 2001 which it is proposed to amend—*

**Grant, registration and publication of a patent**

**45.** (1) Unless an application has been rejected under or a patent has been refused under section 44, a patent shall be granted and issued to the applicant in the prescribed form.

*Section 54(2) of No. 3 of 2001 which it is proposed to amend—*

**Rights of owner of patent**

**54.** (2) The rights conferred on the owner of the patent under this section shall not apply to acts by third parties necessary to obtain approval or registration of a product from the Institute, for the purpose of commercialising the product after expiry of the patent.

*Section 82(2) of No. 3 of 2001 which it is proposed to amend—*

**Special provisions relating to utility model certificates**

**82.** (2) Section 22, 24, 43, 44 and 60 shall not apply in the case of applications for utility model certificates.

*Section 103(2) of No. 3 of 2001 which it is proposed to delete—*

**Revocation or invalidation**

**103.** (2) An interested person may, within a period of nine months from the date of the publication of the grant of a patent, utility model or industrial design request the Tribunal to revoke or invalidate the patent, utility model or industrial design registration.

*Section 113(6) of No. 3 of 2001 which it is proposed to amend—*

**Industrial Property Tribunal**

**113.** (6) The Board shall appoint a suitable legal officer to be secretary to the Tribunal.

*Section 31 of No. 8 of 2001 which it is proposed to amend.*

**Composition of Council**

**31.** (1) The Council shall consist of—

- (a) a chairperson who shall be an eminent person who is knowledgeable in, or has actively contributed to the promotion of the rights and welfare of children, and who shall be appointed by the President;
- (b) the Permanent Secretary in the Ministry responsible for matters relating to Children;
- (c) the Permanent Secretary in the Ministry responsible for matters relating to Education;
- (d) the Permanent Secretary in the Ministry responsible for Local Authorities;

- (e) the Permanent Secretary in the Ministry responsible for health;
- (f) the Permanent Secretary in the Ministry responsible for finance;
- (g) the Attorney-General;
- (gg) the Director of Public Prosecutions;
- (h) the Permanent Secretary in the Ministry responsible for Labour;
- (i) the Commissioner of Police;
- (j) six persons representing non-governmental organisations engaged in child welfare activities nominated by the Minister in accordance with such procedure may be prescribed:

Provided that membership under this paragraph shall be representative of the interest of all stakeholders and shall take into account the principle of gender parity;

- (k) three persons representing religious organisations, nominated by the Episcopal Conference, the National Council of Churches of Kenya and Supreme Council of Kenya Muslims, respectively;
- (l) two representatives of the private sector appointed by the Minister being persons knowledgeable in or who have actively contributed to the promotion of the rights and welfare of children;
- (m) the Director of Children's Services who shall be the Secretary to the Council.

(2) The members of the Council nominated under paragraph (j) of subsection (1) shall hold office for three years but may be nominated for a further term of three years.

*Section 156(1) of No. 8 of 2001 which it is proposed to amend—*

#### **Preliminaries**

**156.** (1) No arrangement shall be commenced for the adoption of a child unless the child is at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with this rules prescribed in that behalf.

*Section 4 of No. 14 of 2003 which it is proposed to amend—*

#### **Membership**

**4.** (1) The Council shall consist of the following members appointed by the Minister—

- (a) not more than eight persons nominated in a manner approved by the Minister, by organisations representing persons with various categories of disabilities;
- (b) three members appointed from a panel of names submitted to the Minister by organizations for persons with disabilities;

- (c) eight members representing the Ministries responsible for the following—
  - (i) culture and social services;
  - (ii) local government;
  - (iii) health;
  - (iv) education;
  - (v) economic planning;
  - (vi) housing;
  - (vii) transport; and
  - (viii) labour;
- (d) one member representing the Attorney General;
- (e) one member appointed from a list of not less than three persons submitted by an organization which the Minister responsible for labour deems to be representative of employers in Kenya;
- (f) one member appointed in consultation with the organization for the time being recognized by the Government as the umbrella organization representing the interests of workers in the country; and
- (g) such other members as may be co-opted by the Council with the approval of the Minister:

Provided that—

- (i) the membership of the Council shall not exceed twenty-seven persons, out of whom at least twenty members shall be persons with disabilities;
- (ii) the members nominated under paragraph (a) shall equitably represent the types of disabilities occurring in the country; and
- (iii) one of the members of the Council shall be from a rural-based organization.

(2) The Minister shall appoint one of the members appointed under subsection (1)(a) as the chairman.

(3) The Minister shall appoint one of the members, other than a member appointed under subsection (1)(c) or (d), as the vice-chairman.

(4) The member appointed under subsection (1)(c) to represent the Ministry of Education shall be a child psychologist.

*Section 5 of No. 14 of 2003 which it is proposed to delete—*

#### **Tenure of office**

**5.** (1) The chairman, vice-chairman and members appointed under paragraphs (a), (b), (e), (f) and (g) of section 4(1) shall hold office for a

period not exceeding three years and shall be eligible for re-appointment for a further term not exceeding two years.

(2) The provisions of the Schedule shall have effect with respect to the membership and procedures of the Council.

*Section 2 of No.3 of 2006 which it is proposed to amend-*

## **2. Interpretation**

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

**“act which causes penetration”** means an act contemplated under this Act;

**“child”** has the meaning assigned thereto in the Children Act (Cap. 141);

**“complainant”** means the Republic or the alleged victim of a sexual offence and in the case of a child or a person with mental disabilities, includes a person who lodges a complaint on behalf of the alleged victim where the victim is unable or inhibited from lodging and following up a complaint of sexual abuse;

**“consent”** has the meaning assigned to it under this Act;

**“DNA”** means deoxyribonucleic acid, the genetic code unique to every living organism, including human beings and **“DNA Test”** shall be construed accordingly;

**“gang”** means two or more persons;

**“genital organs”** includes the whole or part of male or female genital organs and for purposes of this Act includes the anus;

**“gang rape”** deleted by Act No. 7 of 2007;

**“HIV”** means the Human Immunodeficiency Virus which causes AIDS;

**“HIV test”** means the test which determines whether a person is infected with HIV;

**“indecent act”** means an unlawful intentional act which causes—

(a) any contact between any part of the body of a person with the genital organs, breasts or buttocks of another, but does not include an act that causes penetration;

(b) exposure or display of any pornographic material to any person against his or her will;

**“intermediary”** means a person authorized by a court, on account of his or her expertise or experience, to give evidence on behalf of a vulnerable witness and may include a parent, relative, psychologist, counsellor, guardian, children’s officer or social worker;



**“law enforcement officer”** means any person whose duties involve law enforcement and includes but is not limited to a police officer as defined under the Police Act;

**“person with mental disabilities”** means a person affected by any mental disability irrespective of its cause, whether temporary or permanent, and for purposes of this Act includes a person affected by such mental disability to the extent that he or she, at the time of the alleged commission of the offence in question, was—

- (a) unable to appreciate the nature and reasonably foreseeable consequences of any act described under this Act;
- (b) able to appreciate the nature and reasonably foreseeable consequences of such an act but unable to act in accordance with that appreciation;
- (c) unable to resist the commission of any such act; or
- (d) unable to communicate his or her unwillingness to participate in any such act;

**“Minister”** means the Minister for the time being responsible for matters relating to legal affairs and public prosecutions;

**“penetration”** means the partial or complete insertion of the genital organs of a person into the genital organs of another person;

**“sexual offence”** means any offence prescribed in this Act; and

**“vulnerable person”** means a child, a person with mental disabilities or an elderly person and **“vulnerable witness”** shall be construed accordingly

*Section 3 of No.3 of 2006 which it is proposed to amend-*

### **3. Rape**

- (1) A person commits the offence termed rape if—
  - (a) he or she intentionally and unlawfully commits an act which causes penetration with his or her genital organs;
  - (b) the other person does not consent to the penetration; or
  - (c) the consent is obtained by force or by means of threats or intimidation of any kind.
- (2) In this section the term “intentionally and unlawfully” has the meaning assigned to it in section 43 of this Act.
- (3) A person guilty of an offence under this section is liable upon conviction to imprisonment for a term which shall not be less than ten years but which may be enhanced to imprisonment for life.

*Section 4 of No.3 of 2006 which it is proposed to amend-*

**4. Attempted rape**

Any person who attempts to unlawfully and intentionally commit an act which causes penetration with his or her genital organs is guilty of the offence of attempted rape and is liable upon conviction for imprisonment for a term which shall not be less than five years but which may be enhanced to imprisonment for life.

*Section 8 of No.3 of 2006 which it is proposed to amend-*

**8. Defilement**

(1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.

(2) A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.

(3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.

(4) A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.

(5) It is a defence to a charge under this section if—

(a) it is proved that such child, deceived the accused person into believing that he or she was over the age of eighteen years at the time of the alleged commission of the offence; and

(b) the accused reasonably believed that the child was over the age of eighteen years.

(6) The belief referred to in subsection (5)(b) is to be determined having regard to all the circumstances, including any steps the accused person took to ascertain the age of the complainant.

(7) Where the person charged with an offence under this Act is below the age of eighteen years, the court may upon conviction, sentence the accused person in accordance with the provisions of the Borstal Institutions Act (Cap. 92) and the Children's Act (Cap. 141).

(8) The provisions of subsection (5) shall not apply if the accused person is related to such child within the prohibited degrees of blood or affinity.

*Section 22 of No.3 of 2006 which it is proposed to amend-*

**22. Test of relationship**

(1) In cases of the offence of incest, brother and sister includes half brother, half sister and adoptive brother and adoptive sister and a father includes a half father and an uncle of the first degree and a mother

includes a half mother and an aunt of the first degree whether through lawful wedlock or not.

(2) In this Act—

- (a) “**uncle**” means the brother of a person’s parent and “aunt” has a corresponding meaning;
- (b) “**nephew**” means the child of a person’s brother or sister and “niece” has a corresponding meaning;
- (c) “**half-brother**” means a brother who shares only one parent with another;
- (d) “**half-sister**” means a sister who shares only one parent with another; and
- (e) “**adoptive brother**” means a brother who is related to another through adoption and “adoptive sister” has a corresponding meaning.

(3) An accused person shall be presumed, unless the contrary is proved, to have had knowledge, at the time of the alleged offence, of the relationship existing between him or her and the other party to the incest.

(4) In cases where the accused person is a person living with the complainant in the same house or is a parent or guardian of the complainant, the court may give an order removing the accused person from the house until the matter is determined and the court may also give an order classifying such a child as a child in need of care and protection and may give further orders under the Children’s Act (Cap.141).

*Section 23 of No.3 of 2006 which it is proposed to amend-*

### **23. Sexual harassment**

(1) Any person, who being in a position of authority, or holding a public office, who persistently makes any sexual advances or requests which he or she knows, or has reasonable grounds to know, are unwelcome, is guilty of the offence of sexual harassment and shall be liable to imprisonment for a term of not less than three years or to a fine of not less than one hundred thousand shillings or to both.

(2) It shall be necessary to prove in a charge of sexual harassment that—

- (a) the submission or rejection by the person to whom advances or requests are made is intended to be used as basis of employment or of a decision relevant to the career of the alleged victim or of a service due to a member of the public in the case of a public officer;
- (b) such advances or requests have the effect of interfering with the alleged victim’s work or educational performance or creating an offensive working or learning environment for the alleged victim or denial of a service due to the member of the;

(c) public from a public office.

*Section 39 of No.3 of 2006 which it is proposed to amend-*

**39. Supervision of dangerous sexual offenders**

(1) A court may declare a person who has been convicted of a sexual offence a dangerous sexual offender if such a person has—

- (a) more than one conviction for a sexual offence;
- (b) been convicted of a sexual offence which was accompanied by violence or threats of violence; or
- (c) been convicted of a sexual offence against a child.

(2) Whenever a dangerous sexual offender has been convicted of a sexual offence and sentenced by a court to imprisonment without an option of a fine, the court shall order, as part of the sentence, that when such offender is released after serving part of a term of imprisonment imposed by a court, the prisons department shall ensure that the offender is placed under long-term supervision by an appropriate person for the remainder of the sentence.

(3) For purposes of subsection (2), long term supervision means supervision of a rehabilitative nature for a period of not less than five years.

(4) A court may not make an order referred to in subsection (2) unless the court has had regard to a report by a probation officer, social worker, or other persons designated by the court for the purposes of this section as such, which report shall contain an exposition of—

- (a) the suitability of the offender to undergo a long-term supervision order;
- (b) the possible benefits of the imposition of a long-term supervision order on the offender;
- (c) a proposed rehabilitative programme for the offender;
- (d) information on the family and social background of the offender;
- (e) recommendations regarding any conditions to be imposed upon the granting of a long-term supervision order; and
- (f) any other matter directed by the court.

(5) An order referred to in subsection (2) shall specify—

- (a) that the offender is required to take part in a rehabilitative programme;
- (b) the nature of the rehabilitative programme to be attended;
- (c) the number of hours per month that the offender is required to undergo rehabilitative supervision; and

(d) that the offender is required, where applicable, to refrain from using or abusing alcohol or drugs.

(6) An order referred to in subsection (2) may specify that the offender is required to—

(a) refrain from visiting a specified location;

(b) refrain from seeking employment of a specified nature; and

(c) subject himself or herself to a specified form of monitoring.

(7) A long-term supervision order made by a court in terms of this section shall be reviewed by that court within three years from the date on which the order was made or within such shorter period as the court may direct upon referral by the Commissioner of Prisons of such an order to that court for review.

(8) Upon making a long-term supervision order in terms of this section, the court shall explain to the victim, including the next of kin of a deceased victim, that they have the right to be present at the review proceedings referred to in subsection (7) and may make representations.

(9) A court which has granted a long-term supervision order in terms of this section may, upon evidence that a dangerous sexual offender has failed to comply with the order or with any condition imposed in connection with such order, direct that such an offender be—

(a) ordered to appear before that court or another court of similar or higher jurisdiction at a specified place and on a specified date and time; or

(b) arrested and brought before such court.

(10) Upon the appearance of a dangerous sexual offender at a court pursuant to the provisions of subsection (9), the court shall direct the accused person to show cause for failure to comply with a long-term supervision order or with any condition imposed in connection with such order and the court may—

(a) confirm the original order and any conditions imposed in connection with such order;

(b) vary or withdraw such order or any conditions imposed;

(c) impose an additional condition or conditions; or

(d) make any other order as the court deems fit.

(11) If a court has directed that a dangerous sexual offender is required to take part in a rehabilitative programme contemplated in this section, the court may order that the offender, upon being found by the court to have adequate means, shall contribute to the costs of such programme to the extent specified by the court.

(12) A person who has been declared a dangerous sexual offender and who does not comply with a supervision order in accordance with this

section is guilty of an offence and is liable upon conviction to imprisonment for a term of not less than three years or to a fine of not less than fifty thousand shillings or to both.

(13) A register for convicted sexual offenders shall be maintained by the Registrar of the High Court and any person who has reasonable cause to so examine it may examine the register.

*Section 43 of No.3 of 2006 which it is proposed to amend-*

**43. Intentional and unlawful acts**

- (1) An act is intentional and unlawful if it is committed—
  - (a) in any coercive circumstance;
  - (b) under false pretences or by fraudulent means; or
  - (c) in respect of a person who is incapable of appreciating the nature of an act which causes the offence.
- (2) The coercive circumstances, referred to in subsection (1)(a) include any circumstances where there is—
  - (a) use of force against the complainant or another person or against the property of the complainant or that of any other person;
  - (b) threat of harm against the complainant or another person or against the property of the complainant or that of any other person; or
  - (c) abuse of power or authority to the extent that the person in respect of whom an act is committed is inhibited from indicating his or her resistance to such an act, or his or her unwillingness to participate in such an act.
- (3) False pretences or fraudulent means, referred to in subsection (1)(b), include circumstances where a person—
  - (a) in respect of whom an act is being committed, is led to believe that he or she is committing such an act with a particular person who is in fact a different person;
  - (b) in respect of whom an act is being committed, is led to believe that such an act is something other than that act; or
  - (c) intentionally fails to disclose to the person in respect of whom an act is being committed, that he or she is infected by HIV or any other life threatening sexually transmittable disease.
- (4) The circumstances in which a person is incapable in law of appreciating the nature of an act referred to in subsection (1) include circumstances where such a person is, at the time of the commission of such act—
  - (a) asleep;
  - (b) unconscious;

- (c) in an altered stated of consciousness;
- (d) under the influence of medicine, drug, alcohol or other substance to the extent that the person's consciousness or judgment is adversely affected;
- (e) mentally impaired; or
- (f) a child.

(5) This section shall not apply in respect of persons who are lawfully married to each other.

*Section 6 of No. 13 of 2006 which it is proposed to amend—*

**Establishment of Department**

6. (1) There is established a Department of Refugee Affairs which shall be a public office.

*Section 8(3) of No. 13 of 2006 which it is proposed to amend—*

**Establishment of Committee**

8. (3) The Committee shall consist of—

- (a) the chairperson who shall be appointed by the Minister;
- (b) one representative from the Ministry responsible for provincial administration and internal security;
- (c) one representative from the Ministry responsible for refugee affairs;
- (d) one representative from the ministry responsible for foreign affairs;
- (e) one representative from the Ministry responsible for local government;
- (f) a representative of the Attorney-General;
- (g) one representative from the Ministry responsible for health;
- (h) one representative of the Ministry responsible for finance or planning;
- (i) one representative from the Department of Immigration;
- (j) one representative from the Department of Police;
- (k) one representative from the National Security Intelligence Service; and
- (l) one representative from the Department of National Registration Bureau.

*Section 6(1) of No. 13 of 2008 which it is proposed to amend—*

**Board of the Agency**

6. (1) The management of the Agency shall vest in the Board which shall consist of—

- (a) a Chairman appointed by the Cabinet Secretary from amongst the members appointed under paragraph (h);
- (b) the Principal Secretary in the Ministry for the time being responsible for matters relating to industrialisation or his or her representative;
- (c) the Principal Secretary in the ministry for the time being responsible for matters relating to finance or his or her representative;
- (cc) the Attorney-General or his representative;
- (d) deleted by Act No. 25 of 2015, Sch.
- (e) the Commissioner-General of the Kenya Revenue Authority, who may be represented by the Commissioner of Customs;
- (f) the Managing Director of the Kenya Bureau of Standards.

*Section 2 of No. 9 of 2009 which it is proposed to amend—*

**Interpretation**

2. “Deputy Director” means the Deputy Director appointed under section 25;

*Section 25 of No. 9 of 2009 which it is proposed to amend—*

**Appointment of Director and Deputy Director**

25. (1) There shall be a Director and a Deputy Director of the Centre.

(2) The Director and the Deputy Director shall be fit, competent and proper persons, recommended by the Board and approved by the National Assembly for appointment to their respective positions.

(3) On approval of a person by the National Assembly under subsection (2), the Minister shall appoint that person to the office in respect of which the approval was given.

(4) A person shall not be appointed as a Director or Deputy Director unless that person—

- (a) holds a degree in law, economics or finance from a recognised institution;
- (b) has at least seven years work experience in the relevant field; and
- (c) meets such other requirements that may be prescribed by the Board.

(5) The persons appointed as the Director and the Deputy shall hold office—

- (a) for a term of four years and three years, respectively, subject to renewal for one further term of four years and three years, respectively; and



(b) on such terms and conditions as may be determined by the Board and set out in the instrument of appointment which shall include specific and measurable performance targets.

(6) The provisions of subsection (3) shall apply to the renewal of an appointment under subsection (5)(a).

*Section 26(1) of No. 9 of 2009 which it is proposed to amend—*

**Resignation of Director or Deputy Director**

26. (1) The Director or the Deputy Director may resign by a written resignation addressed to the Minister.

*Section 27 of No. 9 of 2009 which it is proposed to amend—*

**Removal from office**

27. (1) The Minister may, in consultation with the Board, remove the Director or Deputy Director from office on the grounds of gross misconduct, mental or physical incapacity or failure to satisfy the terms and conditions of service set forth in section 25(5)(b), or

- (a) where there is proof of a financial conflict of interest with any reporting institution;
- (b) if he is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors; or
- (c) if he has been convicted of an offence for which one may be sentenced to imprisonment for a term exceeding six months.

(2) The Minister may, in consultation with the Board, suspend the Director or Deputy Director from office pending determination of any inquiry as to whether grounds of misconduct, incapacity or incompetence exist.

*Section 30 of No. 9 of 2009 which it is proposed to delete—*

**When Deputy Director may act**

30. The Deputy Director may act for the Director and shall exercise all the powers and perform all the functions conferred on the Director under this Act whenever the Director is temporarily absent, and shall perform such other functions as the Director may, from time to time, assign to him.

*Section 32 of No. 9 of 2009 which it is proposed to amend—*

**Oath of confidentiality**

32. The Director, the Deputy Director and staff of the Centre shall—

- (a) before they begin to perform any duties under this Act, take and subscribe before a Magistrate or Commissioner for Oaths the oath of confidentiality prescribed in the Third Schedule;

- (b) maintain, during and after their employment, the confidentiality of any matter which they came across during their tenure of office.

*Paragraph 3(4) of the Schedule to No. 10 of 2010 which it is proposed to amend—*

#### **Meetings of the Authority**

3. (4) The Chairman shall preside at meetings of the Authority and the members may appoint from amongst themselves a Deputy Chairman to preside at meetings in his absence.

*Section 2 of No. 11A of 2011 which it is proposed to amend—*

#### **Interpretation**

2. “member of the Service” includes civilian members of staff of the Service.

*Section 10(1) of No. 11A of 2011 which it is proposed to amend—*

#### **Functions and powers of the Inspector-General**

10. (1) The functions of the Inspector-General shall be to—

(na) designate from among the county commanders in each county the most Senior Officer from either the Kenya Police Service or the Administration Police Service, who shall coordinate in consultation with the two Deputy Inspector-Generals, the operational command and control of the county, and the officer so designated shall, with respect to coordination, execute operational command and control in a manner that respects the command structure set out in Article 245(3) of the Constitution.

*Section 29(1) of No. 11A of 2011 which it is proposed to amend—*

#### **Qualifications of the Director of Criminal Investigations**

29. (1) There shall be a Director of Criminal Investigations who shall be appointed by the President in accordance with section 30.

*Section 76(3) of No. 11A of 2011 which it is proposed to amend—*

#### **Retirement from the Service**

76. (3) An officer below the rank of sergeant may voluntarily retire from the service upon completion of twelve or twenty years of service.

*Section 79(2) of No. 11A of 2011 which it is proposed to amend—*

#### **Training policy and curriculum**

79. (2) The Commission shall regularly review the training curricula to ensure its relevance to policing requirements.

*Section 11 of No. 12 of 2011 which it is proposed to amend—*

**Citizenship by marriage**

11. A person who has been married to a citizen of Kenya for a period of at least seven years shall be entitled, on application, in the prescribed manner to be registered as a citizen of Kenya, if—

- (a) the marriage was solemnized under a system of law recognized in Kenya, whether solemnized in Kenya or outside Kenya;
- (b) the applicant has not been declared a prohibited immigrant under this Act or any other law;
- (c) the applicant has not been convicted of an offence and sentenced to imprisonment for a term of three years or longer;
- (d) the marriage was not entered into for the purpose of acquiring a status or privilege in relation to immigration or citizenship; and
- (e) the marriage was subsisting at the time of the application.

*Section 15(2) of No. 12 of 2011 which it is proposed to amend—*

**Stateless persons**

15. (2) Applications under this section shall be made within a period of five years from the date of commencement of this Act and may by notice in the gazette be extended by the Cabinet Secretary for an additional period of three years.

*Section 16(2) of No. 12 of 2011 which it is proposed to amend—*

**Migrants**

16. (2) Applications under this section shall be made within a period of five years from the date of commencement of this Act and may by notice in the gazette be extended by the Cabinet Secretary for an additional period of three years.

*Section 19(1) of No. 12 of 2011 which it is proposed to amend—*

**Voluntary renunciation of Kenyan citizenship**

19. (1) Where a Kenyan citizen by birth voluntarily makes a declaration of renunciation of Kenyan citizenship, in the prescribed manner, the Cabinet Secretary shall cause the declaration to be registered.

*Section 37 of No. 12 of 2011 which it is proposed to amend—*

**Permanent residence**

37. The following persons, their children and spouses shall be eligible upon application in the prescribed manner for grant of permanent residence status in Kenya—

- (a) persons who were citizens by birth but have since renounced or otherwise lost their citizenship status and are precluded by the

laws of the countries of their acquired domicile from holding dual citizenship;

- (b) persons who have held work permits for at least seven years and have been continuously resident in Kenya for the three years immediately preceding the making of the application;
- (c) children of citizens who are born outside Kenya and have acquired citizenship of the domicile; and
- (d) the spouses of Kenyan citizen married for at least three years.

*Section 31(1) of No. 12 of 2011 which it is proposed to amend—*

**Confiscation or suspension of a passport or travel document**

**31.** (1) An immigration officer or any other law enforcement officer may suspend or confiscate a passport or other travel document where—

- (a) the holder permits another person to use his passport or travel document;
- (b) the holder has been deported or repatriated to Kenya at the expense of the Government;
- (c) the holder is convicted for drug trafficking, money laundering, trafficking in persons and smuggling, acts of terrorism or any other international crime;
- (d) a warrant of arrest has been issued against the holder and there is a risk of absconding;
- (e) the holder is a person against whom there is a court order restricting movement or authorizing denial, confiscation, or suspension of the passport or travel document;
- (f) the holder is involved in passport or document fraud, passport or document forgery or transnational crimes; and
- (g) it is necessary to examine the passport or travel document for a period not exceeding seven days.
- (h) subject to the Constitution, any other circumstances which in the opinion of the Director would be prejudicial to the interest of the State or holder of the passport.

*Section 40(10) of No. 12 of 2011 which it is proposed to amend—*

**Issuance of permits**

**40.** (10) Any person who is aggrieved by a decision made under this section may appeal to the High Court.

*Section 41(1) of No. 12 of 2011 which it is proposed to amend—*

**Invalidation of a work or residence permit**

**41.** (1) Where a permit has been issued to a person, and that person—

- (a) fails, without the written approval of the Director, to engage within ninety days of the date of issue of the permit or of that person's entry into Kenya, whichever is the earlier, in the employment, occupation, trade, business or profession in respect of which the permit was issued or take up residence;

*Section 49(6) of No. 12 of 2011 which it is proposed to amend—*

#### **Power of arrest and search of persons**

**49.** (6) Notwithstanding any provisions of this Act, all persons against who a deportation order has been issued shall be removed from Kenya within a period of ninety days from the day such final removal order is made or after appeal and further detention shall be extended by a court of law for not more than thirty days;

*Section 50 of No. 12 of 2011 which it is proposed to amend—*

#### **Holding facility**

**50.** The Service shall establish a holding facility at ports of entry and exit and any other immigration operation areas which shall be used for holding persons ordered to be removed to their countries under section 26A of the Penal Code ordered deported under section 43 of this Act, persons whose citizenship has not been established, deportees in transit, and persons denied entry awaiting return and who are not under carrier liability.

*Section 53 of No. 12 of 2011 which it is proposed to amend—*

#### **General offences**

**53.** (1) A person who—

(n) employs any person, whether or not for reward, whom he knows or has reasonable cause to believe is committing an offence under paragraph (n) by engaging in that employment;

*Section 18(5) of No. 41 of 2011 which it is proposed to amend—*

#### **Registration of foreign contractors**

**18.** (5) Notwithstanding the provisions of this section and sections 14 and 16, the Minister, in consultation with the Board, shall make regulations stipulating ownership structures of foreign firms seeking registration under this Act, clearly stating the categories of contracts for which foreign firms may apply and those which shall be strictly reserved for local contractors.

*Section 42(2) of No. 41 of 2011 which it is proposed to amend—*

#### **Power to make Regulations**

**42.** (2) Without prejudice to the generality of the foregoing, regulation made under this section may provide for—

- (a) the manner of payment of the levy imposed under section 29;

*Section 13(3A) of No. 9 of 2012 which it is proposed to amend—*

**Director-General**

13. (3A) The officers and employees necessary for the conduct of the work of the school shall be appointed in accordance with the rules, regulations and procedures of the Public Service Commission.

*Section 21(4) of No. 9 of 2012 which it is proposed to amend—*

**Transitional provisions**

21. (4) Despite subsection (3), all the members of staff of the Kenya Institute of Administration, Government Training Institutes and the Kenya Development Learning Centre in the employment immediately before the commencement of this Act shall, upon the commencement of this Act, be given an option to serve in the School and if not appointed by the Commission be redeployed in the Public Service.

*Section 2 of No. 45 of 2012 which it is proposed to amend—*

**Interpretation**

2. "Cabinet Secretary" means the Cabinet Secretary responsible for the time being responsible for matters relating to foreign affairs;

*Section 13 of No. 45 of 2012 which it is proposed to amend—*

**Registry of Treaties**

13. (1) There shall be a Registry of Treaties which shall be a department within the State Department responsible for matters relating to foreign affairs.

(2) The Registry shall—

- (a) be the depository of all treaties to which Kenya is a party;
- (b) contain a record of all treaties in such manner as may be prescribed;
- (c) contain the status of all treaties pending ratification or domestication and the timelines for such ratification or domestication;
- (d) perform such other function as may be assigned to it by the Cabinet Secretary.

*Section 14 of No. 45 of 2012 which it is proposed to delete—*

**Registrar**

14. (1) The Registry shall be headed by the Registrar of Treaties who shall be appointed by the Cabinet Secretary through an open and competitive process, with the approval of the Public Service Commission.

*Long title of No. 8 of 2015 which it is proposed to amend—*

AN ACT of Parliament to provide for the granting of pension and other retirement benefits to persons who hold the office of the Deputy

President and persons who have served as Prime Minister, Vice-President or Speaker after the 1st January, 1993, and for connected purposes.

*Section 3 of No. 8 of 2015 which it is proposed to amend—*

### **Persons entitled to benefits**

3. Subject to sections 5(3) and 15, the persons entitled to the benefits conferred by this Act shall be persons who, at any time after the 1st January, 1993, retire as Deputy President, Prime Minister, Vice-President or Speaker.

*Title of the First Schedule to No. 8 of 2015 which it is proposed to amend—*

Additional Retirement Benefits for a Retired Speaker of the National Assembly or the Senate.

*Section 2 of No. 15 of 2015 which it is proposed to amend—*

### **Interpretation**

2. "Registrar-General" means the Registrar-General appointed under section 17.

*Section 4(1) of No. 15 of 2015 which it is proposed to delete—*

### **Functions of the Service.**

4. (1) The Service shall, under the general supervision of the Cabinet Secretary, be responsible for the implementation of policies, laws and other matters relating to the registration of companies, partnerships and firms, individuals and corporations carrying on business under a business name, bankruptcy, societies, hire purchase, trade unions, chattels transfers, adoptions, coat of arms, books and newspapers, the National flag, emblems and names.

*Section 5(2) of No. 15 of 2015 which it is proposed to amend—*

### **The Board of the Service.**

5. (2) The Board shall consist of —

- (a) a chairperson;
- (b) the Solicitor-General or his representative;
- (c) the Principal Secretary in the Ministry for the time being responsible for matters relating to trade;
- (d) the Principal Secretary in the National Treasury;
- (e) four other members; and
- (f) the Registrar-General who shall be an ex officio member and secretary to the Board.

*Section 17 of No. 15 of 2015 which it is proposed to delete—*

**17. Registrar-General.**

The Cabinet Secretary shall appoint a Registrar-General on the recommendation of the Board and on the terms and conditions specified in the instrument of appointment.

*Section 18 of No. 15 of 2015 which it is proposed to amend—*

**Appointment of Registrar-General.**

**18. (1)** A person is qualified for appointment as the Registrar-General if the person —

- (a) is qualified as an advocate of the High Court of Kenya;
- (b) has at least ten years' experience in public affairs and management; and
- (c) meets the requirements of Chapter Six of the Constitution.

*Section 19 of No. 15 of 2015 which it is proposed to amend—*

**Removal of Registrar-General**

**19. (2)** The Board shall, before removing the Registrar-General under subsection (1)—

- (a) inform the Registrar-General in writing of the reasons for the intended removal; and
- (b) give the Registrar-General an opportunity to be heard in accordance with the principle of fair administrative action prescribed under Article 47 of the Constitution.

*Section 20(1) of No. 15 of 2015 which it is proposed to amend—*

**Appointment of staff.**

**20. (1)** The Service may appoint such Registrars and other staff as may be necessary for the proper discharge of its functions under this Act, on such terms and conditions of service as the Board may determine.

*Section 21 of No. 15 of 2015 which it is proposed to amend—*

**Delegation powers of Registrar-General.**

**21.** The Registrar-General may, with the approval of the Board, delegate in writing any of his or her functions under this Act or any other written law to any other officer or member of staff on the terms specified in the instrument of delegation.

*Section 27(2) of No. 15 of 2015 which it is proposed to amend—*

**Investments of funds.**

**27. (2)** The Board may place on deposit with such bank or banks as it may determine, any money not immediately required for the purposes of the Board.



*Section 28(3) of No. 15 of 2015 which it is proposed to amend—*

**Annual reports.**

**28.** (3) The annual report shall contain, in respect of the year to which it relates —

- (a) the financial statements of the Service;
- (b) a description of the activities of the Service;
- (c) such other statistical information as the Board may consider appropriate relating to the functions of the Service;
- (d) the impact of the exercise of the mandate or functions of the Service;
- (e) the progress and the welfare of the members of the Service, including matters relating to housing, insurance, safety equipment and the conditions of service;
- (f) the gender, regional and ethnic diversity in the Service; and
- (g) any other information relating to the functions of the Service that the Board considers necessary

*Section 31 of No. 15 of 2015 which it is proposed to delete—*

**Transfer of staff.**

**31.** The staff of the Department of the Registrar-General employed by the Government immediately before the commencement of this Act, shall be the staff of the Service.

*Section 32 of No. 15 of 2015 which it is proposed to amend—*

**Transfer of assets and liabilities.**

**32.** All property, except such property as the Cabinet Secretary may specify in writing, which, immediately before the commencement of this Act, was vested in the Government for the use of the Department of the Registrar-General for the purposes of giving effect to the relevant laws, shall, on the date of commencement of this Act, vest in the Service subject to all interests, liabilities, charges, obligations and trusts affecting that property.

*Paragraph 1(6) of the Schedule to No. 15 of 2015 which it is proposed to amend—*

**Meeting of Board.**

**1. (6)** The chairperson shall preside at every meeting of the Board at which he or she is present and in the absence of the chairperson at a meeting, the vice-chairperson, shall preside and in the absence of both the chairperson and the vice-chairperson, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.

*Section 93(9) of No. 17 of 2015 which it is proposed to amend—*

**Company to keep register of members**

**93.** (9) A company shall lodge with the Registrar a copy of any amendment to its register of members within fourteen days after making the amendment.

*Section 245 of No. 17 of 2015 which it is proposed to amend—*

**Direction requiring public company to appoint secretary**

**245.** (1) If satisfied that a public company is failing to comply with section 244, the Attorney-General may give the company a direction under this section.

(2) The Attorney General shall state in the direction that the company appears to be failing to comply with section 244 and—

- (a) what the company is required to do in order to comply with the direction;
- (b) the period within which it is to comply; and
- (c) the consequence of failing to comply with the direction.

*Section 469(2) of No. 17 of 2015 which it is proposed to amend—*

**What profits are available**

**469.** (2) Whether a company has any profits so available; and the amount of any such profits, are to be determined in accordance with section 480 instead of in accordance with Part XVII.

*Section 518 of No. 17 of 2015 which it is proposed to amend—*

**The authorised minimum**

**518.** For the purposes of sections 516 and 517, the authorised minimum is six million seven hundred and fifty thousand shillings.

*Section 520(4) of No. 17 of 2015 which it is proposed to amend—*

**Power of limited company to issue redeemable shares**

**520.** (4) A company may issue redeemable shares only if there are no issued shares of the company that are not redeemable.

*Section 540(1) of No. 17 of 2015 which it is proposed to amend—*

**Consequences of order imposing restrictions**

**540.** (1) The effect of an order under section 549 that shares are subject to restrictions is as follows—

- (a) a transfer of the shares is void.

*Section 558 of No. 17 of 2015 which it is proposed to amend—*

**Removal of entries from register: old entries**

**558.** A company may remove an entry from the register kept under 553 if more than six years have elapsed since the entry was made.

*Section 560(1) of No. 17 of 2015 which it is proposed to amend—*

**Adjustment of entry relating to share acquisition agreement**

**560.** (1) If a person who is identified in the register kept by a company under section 553 as being a party to an agreement to which section 566 applies ceases to be a party to the agreement, the person may apply to the company for the inclusion of that information in the register.

*Section 986(3) of No. 17 of 2015 which it is proposed to amend—*

**Registered foreign company to give notice of certain changes relating to its constitution, directors and business in Kenya**

**986.** (3) If a registered foreign company fails to lodge with the Registrar a notice of a change of the kind referred to in subsection (1), the company and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding two hundred thousand shillings.

*Section 1024(7) of No. 17 of 2015 which it is proposed to amend—*

**Continuity of the law**

**1024.** (7) This section has effect subject to any specific savings or transitional provision contained in the Sixth Schedule or in savings and transitional regulations made under section 1025.

*Part I of the First Schedule to No. 23 of 2015 which it is proposed to amend—*

Motor vehicles of tariff heading 87.02, 87.03 and 87.04 — Less than three years old from the date of first registration Kshs. 150,000 per unit

*Section 10(2) of No. 27 of 2015 which it is proposed to amend—*

**Sittings and recess sessions of the Court**

**10.** (2) Without prejudice to the generality of subsection (1), the sittings of the Court shall be—

(a) from the 7th of January to the Thursday before Good Friday;

(b) from the Wednesday after Easter to the 31st of July; and

(c) from the 15th of August to the 20th of December, of every year.

*Section 26(1) of No. 28 of 2015 which it is proposed to amend—*

**Court recess**

**26.** (1) The Court shall go on recess annually as follows —

(a) from the Thursday before Good Friday to the Wednesday after Easter Monday, inclusive;

(b) from 1st August to 15th August, inclusive; and

(c) from 21st December to 7th January, inclusive.

*Section 9(1) of No. 6 of 2016 which it is proposed to amend—*

**Establishment of Board of Service**

9. (1) The Service shall be governed by a board which shall consist of—

- (a) a person appointed by the President from among persons qualified to be appointed as a judge of the High Court, who shall be the chairperson;
- (b) a judge of the High Court nominated by the Chief Justice;
- (c) the Principal Secretary in the Ministry for the time being responsible for matters relating to justice;
- (d) the Principal Secretary in the Ministry for the time being responsible for matters relating to finance;
- (e) the Principal Secretary in the Ministry for the time being responsible for the interior and co-ordination of National Government;
- (f) the Director of Public Prosecutions or his representative;
- (g) one person nominated by the Law Society of Kenya;
- (h) one person nominated by the Kenya National Commission on Human Rights;
- (i) one person nominated by the Council for Legal Education;
- (j) one person elected by a joint forum of Public Benefit Organizations offering legal aid to the public, including women, youth and children;
- (k) one person nominated by the National Council of Persons with Disabilities; and
- (l) the Director.

*Section 43 of No. 6 of 2016 which it is proposed to amend—*

**Duties of the court**

43. (1) A court before which an unrepresented accused person is presented shall—

- (a) promptly inform the accused of his or her right to legal representation;
- (b) if substantial injustice is likely to result, promptly inform the accused of the right to have an advocate assigned to him or her; and
- (c) inform the Service to provide legal aid to the accused person.

(4) Where an accused person is brought before the court and is charged with an offence punishable by death, the court may, where the accused is unrepresented, order the Service to provide legal representation for the accused.

*Section 36 of No. 46 of 2016 which it is proposed to amend—*

**36.** A permit is required for any of the following purposes— Water permit.

- (a) any use of water from a water resource, except as provided by section 37;
- (b) the drainage of any swamp or other land;
- (c) the discharge of a pollutant into any water resource; and
- (d) any other purpose, to be carried out in or in relation to a water resource, which is prescribed by Regulations made under this Act to be a purpose for which a permit is required.

*Section 74 of No. 46 of 2016 which it is proposed to amend—*

74. (1) A person shall not be licensed as a water service provider unless such person makes an application under this section to the Regulatory Board and submits a copy of the application to the county government within whose area of jurisdiction it intends to provide water services.

(2) Prior to determination of the application, the Regulatory Board shall publicise the application and shall take into consideration the views of stakeholders including the county government, within whose area of jurisdiction the applicant intends to provide water services.

(3) The Regulatory Board shall issue a licence if the applicant meets the licensing requirements

*Section 85 of No. 46 of 2016 which it is proposed to amend—*

85. (1) A person shall not provide water services except under a licence issued by the Regulatory Board, upon submission of an application and such supporting documents as the Board may require. Provision of water services.

(2) A person who provides water services in contravention of this section commits an offence.

(3) Nothing in this section prohibits the provision of water services —

- (a) by a person to their employees;
- (b) on the premises of an institution including a hospital, factory, school, hotel, research station or other comparable institution, in cases where the source of supply of the water is lawfully under the control of the institution or where the water is supplied to such institution in bulk by a licensee; or

(c) in circumstances which are prescribed by Regulations made by the Regulatory Board to be exempt from the requirement of a licence.