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REPUBLIC OF KENYA

***KENYA GAZETTE SUPPLEMENT***

**NATIONAL ASSEMBLY BILLS, 2017**

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**THE STATUTE LAW (MISCELLANEOUS  
AMENDMENTS) (NO. 3) BILL, 2017**

**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, 2017. 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 Pensions Act (Cap. 189).	s.2	Insert the following new definition in proper alphabetical sequence—  “Minister” means the Cabinet Secretary responsible for matters relating to finance.
	s.5(3)	Delete the word “five” and substitute therefor the word “ten”.
The Pharmacy and Poisons Act (Cap. 244).	s.5(1)	Delete the words “Chief Pharmacist” and substitute therefor the words “the chief executive officer of the Board competitively recruited and appointed by the Board upon such terms and conditions of service as shall be determined by the Board upon the advice of the Salaries and Remuneration Commission”.
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 Environmental Management and Co-ordination Act, 1999 (No. 8 of 1999).

s.125(1) Delete the words “chairperson” appearing in paragraph (a) and substitute therefor the word “person”

Delete the words “Environment and Land” appearing in paragraph (b) and substitute therefor the word “High”

s.125(5) Delete the words “a Vice- Chairperson to the Tribunal “ and substitute therefor the words

“a Chairperson to the Tribunal from amongst the persons appointed under paragraphs (a), (b) and (c) of subsection (1) and a Vice Chairperson from to the Tribunal amongst all members”.

s.129 Delete and substitute therefor the following new section.

Appeals to the Tribunal by— **129.** (1) Any person who is aggrieved

- (a) the grant of a licence or permit or a refusal to grant a licence or permit, or the transfer of a licence or permit, under this Act or its regulations;
- (b) the imposition of any condition, limitation or restriction on the persons licence under this Act or its regulations;
- (c) the revocation, suspension or variation of the persons a licence under this Act or its regulations;
- (d) the amount of money required to paid as a fee under this Act or its regulations;

- (e) the imposition against the person of an environmental restoration order or environmental improvement order by the Authority under this Act or its Regulations,

may within sixty days after the occurrence of the event against which the person is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.

(2) Unless otherwise expressly provided in this Act, where this Act empowers the Director-General, the Authority or Committees of the Authority or its agents to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.

(3) Upon any appeal, the Tribunal may—

- (a) confirm, set aside or vary the order or decision in question;
- (b) exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought; or
- (c) make such other order, including orders to enhance the principles of sustainable development and an order for costs, as it may deem just;
- (d) if satisfied upon application by any party, issue orders maintaining the status quo of any matter or activity which is the subject of the appeal until the appeal is determined;
- (e) if satisfied upon application by any party, review any orders made under paragraph(a).

(4) Any status quo automatically maintained by virtue of the filing of any



- appeal prior to the commencement of subsection (3) shall lapse upon commencement of this section unless the Tribunal, upon application by a party to the appeal, issue fresh orders maintaining the status quo in accordance with subsection (3)(a).
- The Salaries and Remuneration Commission Act (No. 10 of 2011).
- s.4(3) Delete the words “shall serve on a part-time basis” and substitute therefor the words “other than those appointed under Article 230(2) (d) shall serve on a full time basis”
- S7 Delete subsections (3), (4), (5), (6), (7), (8), (9)
- s.7(10) Delete and substitute therefor the following—
- (10) The President shall, within seven days receipt of the names forwarded under subsection (2) nominate the members of the Commission from each category and forward the names of the nominees, together with the name of his nominee for Chairperson of the Commission, to the National Assembly”
- s.7(11) Delete the words “twenty one” and substitute therefor the words “fourteen”
- The Statutory Instruments Act (No. 23 of 2013)
- s.11(1) Insert the words “the relevant House of “ before the word “Parliament
- s.11(4) Insert the words “the relevant House of “ before the word “Parliament
- The Occupational Therapist's Training, Registration and Licensing Act 2017 (No. 31 of 2017)
- s.4(1)(a) Delete the expression “paragraph (i) and substitute therefor the expression “paragraph (g)”
- s.4(1)(g) Renumber paragraphs (a), (b), (c), (d) and (e) as (i), (ii), (iii), (iv) and (v) respectively.

## **MEMORANDUM OF OBJECTS AND REASONS**

The Statute Law (Miscellaneous Amendments) (No. 3) Bill, 2017 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 Pensions Act (Cap. 189)**

The Bill proposes to amend the Pensions Act to insert a new definition of the term Minister.

### **The Pharmacy and Poisons Act (Cap. 244)**

The Bill seeks to amend the Pharmacy and Poisons Act so as to provide for a Chief Executive Officer of the Board who shall be competitively recruited and appointed by the Board.

### **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 Environmental Management and Co-ordination Act, 1999 (No. 8 of 1999)**

The Bill seeks to amend the Environmental Management and Co-ordination Act, 1999 firstly so as to provide for the election of the chairperson of the Tribunal from amongst the three lawyers in the Tribunal and secondly to clarify the issue of the grant of a stay in proceedings before the Tribunal.

### **The Salaries and Remuneration Commission Act (No. 10 of 2011)**

The Bill seeks to amend the Salaries and Remuneration Commission Act, 2011 so as to provide for the Commissioners to be full time and also allow the President choice in making his nomination of the Chairperson as contemplated by Article 230(2) (a) the Constitution.

### **The Statutory Instruments Act (No. 23 of 2013)**

The Bill proposes to amend the Statutory Instruments Act so as to correct an inconsistency in section 11 of the Act and allow for the tabling of statutory instruments before the relevant House of Parliament.

**The Occupational Therapist's Training, Registration and Licensing Act, 2017 (No. 31 of 2017)**

The Bill seeks to amend the Occupational Therapist's Training, Registration and Licensing Act, 2017 so as to correct an error in section 4 of the Act relating to the persons from amongst whom the Chairperson of the Board should be elected.

This enactment of this Bill may occasion some additional expenditure of public funds, which shall be provided for in the estimates.

Dated the 13th November, 2017.

ADEN DUALE,  
*Leader of the Majority Party.*

**Sections to be amended**

*Section 5(3) of Cap. 189 which it is proposed to amend—*

**Pensions as of right**

5. (3) Where an officer has completed five years of pensionable service, the benefits accruing to the officer under this Act shall vest in that officer and shall become payable in such manner and at such times as may be determined under this Act.

*Section 5 Cap. 244 which it is proposed to amend—*

**5. The registrar**

(1) There shall be a registrar of the Board who shall be the Chief Pharmacist.

(2) The registrar shall perform such duties and exercise such powers, in addition to those required under the provisions of this Act to be performed and exercised, as the Board may from time to time direct.

*Section 125 of No. 8 of 1999 which it is proposed to amend—*

125(1) There is established a Tribunal to be known as the National Environment Tribunal which shall consist of the following members—

- (a) a Chairperson nominated by the Judicial Service Commission, who shall be a person qualified for appointment as a judge of the Environment and Land Court of Kenya;
- (b) an advocate of the Environment and Land Court of Kenya nominated by the Law Society of Kenya;
- (c) a lawyer with professional qualifications in environmental law appointed by the Cabinet Secretary; and
- (d) three persons with demonstrated competence in environmental matters, including but not limited to land, energy, mining, water, forestry, wildlife and maritime affairs.

(5) The members of the Tribunal shall, in their first meeting, elect from amongst themselves the Vice-Chairperson to the Tribunal.

*Section 129 of No. 8 of 1999 which it is proposed to amend—*

Appeals to  
the  
Tribunal. 129. (1) Any person who is aggrieved by—

- (a) the grant of a licence or permit or a refusal to grant a licence or permit, or the transfer of a licence or permit, under this Act or Regulations made thereunder;



- (b) the imposition of any condition, limitation or restriction on his licence under this Act or Regulations made thereunder;
- (c) the revocation, suspension or variation of his licence under this Act or Regulations made thereunder;
- (d) the amount of money which he is required to pay as a fee under this Act or Regulations made thereunder;
- (e) the imposition against him of an environmental restoration order or environmental improvement order by the Authority under this Act or Regulations made thereunder,

may within sixty days after the occurrence of the event against which he is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.

(2) Unless otherwise expressly provided in this Act, where this Act empowers the Director-General, the Authority or Committees of the Authority or its agents to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.

(3) Upon any appeal, the Tribunal may—

- (a) confirm, set aside or vary the order or decision in question;
- (b) exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought; or
- (c) make such other order, including orders to enhance the principles of sustainable development and an order for costs, as it may deem just.
- (d) if satisfied upon application by any party, issue orders maintaining the status quo of any matter or activity which is the subject of the appeal until the appeal is determined;
- (e) if satisfied upon application by any party, review any orders made under paragraph(a).

(4) Any status quo automatically maintained by virtue of the filing of any appeal prior to the commencement of subsection (4) shall lapse upon commencement of this section unless the Tribunal, upon application by a party to the appeal, issues fresh orders maintaining the status quo in accordance with subsection (4)(a).

*Section 4 of No. 10 of 2011 which it is proposed to amend—*

#### **Appointment of Chairperson and Members**

4 (1) The Chairperson and other members of the Commission shall be appointed in accordance with the provisions of Article 230 of the Constitution and this Act.

(2) The member of the Commission under Article 230(2)(c)(iii) of the Constitution shall be nominated by a joint forum of professional bodies represented by the Association of Professional Societies of East Africa.

(3) The Chairperson and members shall serve on part-time basis for a non-renewable term of six years.

*Section 7 of No. 10 of 2011 which it is proposed to amend—*

#### **Procedure for Nominations**

7(1) Within fourteen days of the commencement of this Act, or of the occurrence of a vacancy in the Commission relating to the members under Article 230(2)(b) and (c) of the Constitution, the relevant nominating body shall, by advertisement in at least two local daily newspapers of national circulation, invite applications from persons who qualify for nomination under the Constitution and this Act for nomination as a member of the Commission.

(2) The relevant nominating body shall consider the applications received under subsection (1) to determine their compliance with the provisions of the Constitution and this Act, interview the applicants and forward the names of two persons so qualified, who shall be of opposite gender, to the Cabinet Secretary for onward transmission to the President.

(3) Within fourteen days of the commencement of this Act, or of the occurrence of a vacancy in the office of the Chairperson, the President shall convene a selection panel (hereinafter referred to as “the panel”) for the purpose of selecting suitable candidates for appointment as the Chairperson.

(4) Until the first general election after the commencement of this Act, the President shall consult with the Prime Minister on the nomination of the selection panel under subsection (3).



(5) The panel shall comprise a chairperson and four other members drawn from the executive and professional organisations.

(6) The panel shall, subject to this section, determine its own procedure and the Ministry responsible for Public Service shall provide it with such facilities and other support as it may require for the discharge of its functions.

(7) The panel shall, within seven days of its convening, invite applications from qualified persons and publish the names and qualifications of all applicants in the Gazette and two daily newspapers of national circulation.

(8) The selection panel shall consider the applications, and shortlist and interview the applicants.

(9) After carrying out the interviews, the panel shall select three persons qualified to be appointed as chairperson of the Commission and forward the names to the President.

(10) Until after the first general election after the commencement of this Act, the President, in consultation with the Prime Minister shall, within seven days of receipt of the names forwarded under subsections (2) and (9), nominate a chairperson and other members of the Commission and forward the names of the nominees to the National Assembly.

(11) The National Assembly shall, within twenty-one days of the day it next sits after receipt of the names of the nominees under subsection (9), consider all nominations and may approve or reject any nomination.

(12) Where the National Assembly approves the nominees, the Speaker shall forward the names of the approved nominees to the President for appointment.

(13) The President shall, within seven days of the receipt of the approved nominees from the National Assembly, by notice in the Gazette, appoint the chairperson and members approved by the National Assembly.

(14) Where the National Assembly rejects any nomination, the Speaker shall communicate the decision to the President to submit fresh nominations.

(15) In appointing members under this section, the President shall observe the principle of gender equity, regional and ethnic balance and equal opportunities for persons with disabilities and shall ensure that at least one-third of the members are of either gender.

*Section 11 of No. 23 of 2013 which it is proposed to amend—*

(1) Every Cabinet Secretary responsible for a regulation-making Authority shall within seven (7) sitting days after the publication of a

statutory instrument, ensure that a copy of the statutory instrument is transmitted to the responsible Clerk for Tabling before Parliament.

(2) An explanatory memorandum in the manner prescribed in the Schedule shall be attached to any statutory instrument laid or Tabled under subsection (1).

(3) The responsible Clerk shall register or cause to be registered every statutory instrument transmitted to the respective House for Tabling or laying under this Part.

(4) If a copy of a statutory instrument that is required to be laid before Parliament is not so laid in accordance with this section, the statutory instrument shall cease to have effect immediately after the last day for it to be so laid but without prejudice to any act done under the statutory instrument before it became void.

*Section 4 of No. 31 of 2017 which it is proposed to amend—*

4.(1) The Council shall consist of the following persons-

- (a) the Chairperson, appointed by the Cabinet Secretary from among the persons nominated under paragraph (i);
- (b) the Director of Medical Services or his or her representative;
- (c) the Registrar who shall be an *ex officio* member of the Council without a right to vote;
- (d) the Chief Occupational Therapist;
- (e) the Director, Kenya Medical Training College or his or her representative;
- (f) the Chairperson of the Association;
- (g) six occupational therapists competitively and transparently nominated by the Association, who shall include—
  - (i) two occupational therapists employed in the public service one of whom shall be employed in a County Government;
  - (ii) one occupational therapist employed in the private sector;
  - (iii) one occupational therapist with disability;
  - (iv) one occupational therapist from the gender least represented in the Council; and
  - (v) one occupational therapist employed in a University in Kenya which awards qualifications recognized by the Council."