

Approved for tabling in the House.

Bat SNA
8/6/2022

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- SIXTH SESSION (2022)

COMMITTEE ON DELEGATED LEGISLATION

THE NATIONAL ASSEMBLY	
DATE: 08 JUN 2022	DAY: Wednesday
TABLED BY: Chairperson, Committee on Delegated Legislation	
CHIEF OF THE TABLE: Maonah W. Mw	

REPORT ON THE CONSIDERATION OF THE SCRAP METAL DEALERS RULES,
2022 (LEGAL NOTICE NO. 84 OF 2022)

JUNE, 2022

The Directorate of Audit, Appropriations, and other Select Committees
The National Assembly
Parliament Buildings
NAIROBI.

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ABBREVIATIONS

LN	Legal Notice
RMA	Regulatory Making Authority
SI	Statutory Instruments
SO	Standing Order

CHAIRPERSON'S FOREWORD

The Scrap Metal Rules, 2022 are made pursuant to powers conferred to the Cabinet Secretary responsible for Industrialization, Trade and Enterprise Development under section 32(1) of the Scrap Metal Act, 2015 which is the enabling section that empowers the Cabinet Secretary to make the Regulations hence was properly invoked.

The Regulations were published in the Gazette as *LN No. 84 of 2022* on 5th May 2022 submitted and were laid on the table of the House on 31st May 2022 **being the tenth sitting day since publication hence out of the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.**

The Rules seek to regulate the dealings in scrap metal and provide for licensing of scrap metal dealers as a condition for lifting the moratorium on dealings in scrap metals issued on 20th January, 2022.

Having examined the Scrap Metal Rules, 2022 against the Constitution, the Interpretations and General Provisions Act (Cap 2), the Scrap Metal Act, 2015 and the Statutory Instruments Act (*No. 23 of 2013*), the Committee **resolved to recommend to the House to annul the Regulations in entirety** due to lack of conformity with the Scrap Metal Act, 2015, and the Statutory Instruments Act, 2013 (the Act) on the grounds *inter alia* that-

- a) contrary to section 11(1) of the Act, they were submitted out of the requisite seven sitting days Statutory timelines;
- b) contrary to section Article 10 and 118 of the Constitution read together with section 5A of the of the Act, there was no demonstration at all of public participation in the process of making the Regulations;
- c) contrary to section 6,7,8 and 9 of the Act, there was no Regulatory Impact Assessment conducted and consequently no Regulatory Impact Statement notified in the Kenya Gazette and two newspapers of wide circulation nor was the same submitted to Parliament.

In conclusion, I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4) (b) it is my pleasure and duty to present to the House, the Committee's **Report on the Consideration of Scrap Metal Rules , 2022 (Legal Notice No. 84 of 2022).**

HON. WILLIAM KASSAIT KAMKET, M.P.

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

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

1.2 Committee Membership

3. The Committee membership comprises –

The Hon. William Kassait Kamket, M.P. (Chairperson)

Tiaty Constituency

KANU

The Hon. Mariuki Njagagua, M.P. (Vice Chairperson)

Mbeere North Constituency

Jubilee Party

COMMITTEE MEMBERS

The Hon. Waihenya Ndirangu, M.P.

Roysambu Constituency

Jubilee Party

The Hon. William Cheptumo, M.P.

Baringo North Constituency

Jubilee Party

The Hon. Cecily Mbarire, MGH, M.P.

Nominated

Jubilee Party

The Hon. Alice Wahome, M.P.

Kandara Constituency

Jubilee Party

The Hon. Robert Mbui, M.P.

Kathiani Constituency

Wiper Democratic Movement -Kenya

The Hon. Daniel Maanzo, M.P.

Makueni Constituency

Wiper Democratic Movement -Kenya

The Hon. Timothy Wanyonyi, M.P.

Westlands Constituency

Orange Democratic Movement

The Hon. Ronald Tonui, M.P.

Bomet Central Constituency

Jubilee Party

The Hon. Martha Wangari, M.P.

Gilgil Constituency

Jubilee Party

The Hon. Gideon Mulyungi, M.P.

Mwingi Constituency

Wiper Democratic Movement – Kenya

The Hon. (Dr.) Wilberforce Oundo, M.P.

Funyula Constituency

Orange Democratic Movement

The Hon. George G. Murugara, M.P.

Tharaka Constituency

Democratic Party

The Hon. Jennifer Shamalla, M.P.

Nominated

Jubilee Party

The Hon. Munene Wambugu, M.P.

Kirinyaga Central Constituency

Jubilee Party

The Hon. Patrick Mariru, M.P.

Laikipia West Constituency

Jubilee Party

The Hon. Sammy Seroney, M.P.

Nominated

Wiper Democratic Movement – Kenya

The Hon. Tindi Mwale, M.P.
Butere Constituency
Amani National Congress

The Hon. Edith Nyenze, M.P.
Kitui West Constituency
Wiper Democratic Movement – Kenya

The Hon. Abdi Koropu Tepo, M.P.
Isiolo South Constituency
Kenya Patriots Party
The Hon. Robert Gichimu, M.P.
Gichugu Constituency
Jubilee Party

1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises -

Mr. Mohamed Jimale
Clerk Assistant II (Team Leader)

Ms. Ruth Mwihaki Gakuya
Clerk Assistant II

Mr. Dima Dima
Principal Legal Counsel

Mr. Josphat Motonu
Fiscal Analyst I

Ms. Fiona Musili
Research Assistant II

Ms. Noelle Chelangat
Media Relations Officer II

Mr. Anthony Wamae
Serjeant at Arms

Mr. Charles Ayari
Superintendent of Electronics

2.0 CONSIDERATION OF THE SCRAP METAL DEALERS RULES, 2022

2.1 Introduction

1. In exercise of the powers conferred by section 32 of the Scrap Metal Act, 2015, the Cabinet Secretary for Industrialization, Trade and Enterprise Development published Scrap Metal Rules, 2022 on 5th May, 2022.
2. The Rules were submitted to the Clerk of the National Assembly on 26th of May, 2022 and tabled before the House on 31st May, 2022.

2.2 Object and Purpose of the Rules

3. The Rules seek to regulate the dealings in scrap metal and provide for licensing of scrap metal dealers as a condition for lifting the moratorium on dealings in scrap metals issued on 20th January, 2022.

2.3 Summary of the Rules

PART I of the Rules provide for the preliminary provisions including the citation, interpretation of terms in the context within which they are used in the Rules, object and purpose of the Rules and application of the Rules.

PART II of the Rules provides for the nomination of members to the Scrap Metal Council and qualification for appointment as Chairperson and Council members.

PART III of the Rules deals with requirements to carry on business as a scrap metal dealer and application for licence to carry on business. The Part provides for the form of a licence and issues that the Council should consider when issuing a licence. It provides for remedies to dealers when the Council rejects their application for a licence, terms for a licence, variations and revocation of licences.

The part further provides for duties of a licensed dealer including the verification of suppliers' identity, requirement to keep proper records of receipt of scrap metal, and requirement to keep records for disposals of scrap metal. It also provides for the inspection of licensed dealerships, issuance of closure orders and appeals to such orders.

PART IV of the Rules deals with miscellaneous matters including registration of licensed dealers as business member organizations, restrictions in export of scrap metal and creating awareness on scrap metal dealings.

The **SCHEDULE** provides for the fee payable under the Rules.

2.4 Legal Basis for Scrutiny

4. The Committee examined the Scrap Metal Rules, 2022 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Scrap Metal Act 2015 and the Statutory Instruments Act (*No. 23 of 2013*).
5. The scrutiny was undertaken following publication in the Gazette vide Legal Notice No. 84 of 2022 on 5th May, 2022; submitted to the Clerk of the National Assembly on 26th May, 2022 and tabled before the House on 31st May, 2022.

3.0 COMMITTEE OBSERVATIONS

6. Having examined, against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Scrap Metals Act (*No. 1 of 2015*) and the Statutory Instruments Act (*No. 23 of 2013*), the Committee observed as follows –

3.1 Statutory Timelines – Section 11 of the SI Act

7. The Rules were tabled in Parliament outside the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act (No. 23 of 2013). The Rules were published in the Gazette as LN No. 84 of 2022 on 5th May 2022 and were laid on the table of the House on 31st May 2022 **being the ninth sitting day since publication hence out of the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.**
8. Section 11(4) of the Act stipulates that *if a copy of a statutory instrument that is required to be laid before the relevant House of 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.* Accordingly, the Rules ceased to effect on the 24th of May, 2022 by operation of law.
9. Part II of the Rules contain provisions on the Council including nomination and qualification for appointment as the Chairperson and Council members, which is *ultra vires* Part II of the Scrap Metals Act which properly deals with matters relating to the Council hence contrary to section 13(a) of the Statutory Instruments Act (No. 23 of 2013).
10. The explanatory memorandum submitted indicates that the Ministry for Industrialization subjected the Rules to public participation and sought for comments from various stakeholders but fails to give evidence of the consultation and its outcomes. contrary to section Article 10 and 118 of the Constitution read together with section 5A of the of the Act, there was no demonstration at all of public participation in the process of making the Regulations.
11. The regulatory making authority failed to submit the Regulatory Impact Statement as required under Section 6 of the Statutory Instruments Act 2013. The Rules make provisions for dealings in scrap metal, whose implementation may impose environmental and economic implications on the society. The Regulatory Impact Statement is to enable Parliament and stakeholders to be informed of the environmental, social and economic implications of the implementation of the proposed regulation. Contrary to section 6, 7, 8 and 9 of the Act, there was no Regulatory Impact Assessment conducted and consequently no Regulatory Impact Statement notified in the Kenya Gazette and two newspapers of wide circulation nor was the same submitted to Parliament.

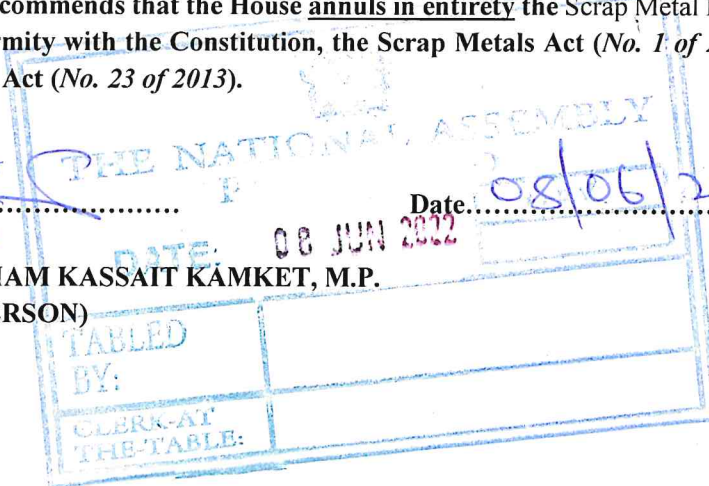
4.0 COMMITTEE RECOMMENDATION

Having examined the Scrap Metal Dealers Rules, 2022 against the Constitution, the Interpretations and General Provisions Act (Cap 2), the Scrap Metal Act, 2015 and the Statutory Instruments Act (No. 23 of 2013), **the Committee recommends that the House annuls in entirety the Scrap Metal Rules (No. 84 of 2022) for non-conformity with the Constitution, the Scrap Metals Act (No. 1 of 2015) and the Statutory Instruments Act (No. 23 of 2013).**

Signed.....

Date.....

THE HON. WILLIAM KASSAIT KAMKET, M.P.
(CHAIRPERSON)



ANNEXURES

- 1. Adoption List**
- 2. Paper Laid: Legal Notice No. 84 of 2022 and Explanatory Memorandum**
- 3. Memorandum by the Kenya Association of Manufacturers**
- 4. Committee Minutes**

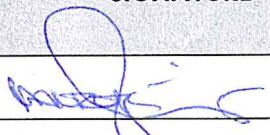


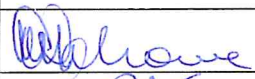

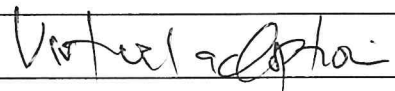
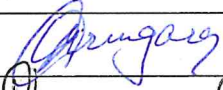
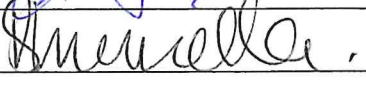


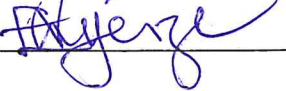
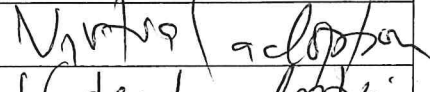
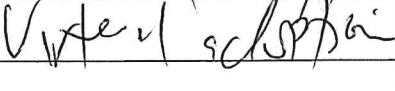
COMMITTEE ON DELEGATED LEGISLATION

ADOPTION LIST

Adoption of the Report on the Consideration of the Legal Notice No. 84: Scrap Metal Dealers, Rules, 2021

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: _____ COMMITTEE ON DELEGATED LEGISLATION

	HON. MEMBER	SIGNATURE
1.	Hon. Kassait Kamket, MP (Chairperson)	
2.	Hon. Muriuki Njagagua, MP (Vice Chairperson)	
3.	Hon. Isaac Waihenya Ndirangu, MP	
4.	Hon. Cecily Mbarire, MP	
5.	Hon. Alice Wahome, MP	
6.	Hon. Daniel Maanzo, MP	
7.	Hon. Robert Mbui, MP	
8.	Hon. Martha Wangari, MP	
9.	Hon. Ronald Kiprotich Tonui, MP	
10.	Hon. Timothy Wanyonyi, MP	
11.	Hon. Gideon Mulyungi, MP	
12.	Hon. George Gitonga Murugara, MP	
13.	Hon. Jennifer Shamalla, MP	
14.	Hon. Munene Wambugu, MP	
15.	Hon. Patrick Kariuki Mariru, MP	
16.	Hon. (Dr.) Wilberforce Oundo, MP	
17.	Hon. Abdi K. Tepo, MP	
18.	Hon. Edith Nyenze, MP	
19.	Hon. Robert Githinji Gichimu, MP	
20.	Hon. Sammy Seroney, MP	
21.	Hon. Tindi Mwale, MP	
22.	Hon. William Cheptumo, M.P	

MINUTES OF THE 25TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY 7TH JUNE, 2022 AT 10.30 AM IN THE COMMITTEE ROOM ON 4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS.

PRESENT

- | | | |
|---|---|--|
| 1. The Hon. Kassait Kamket, M.P. | - | Chairperson |
| 2. The Hon. Muriuki Njagagua, M.P. | - | Vice-Chairperson (<i>Virtual Attendance</i>) |
| 3. The Hon. Waihenya Ndirangu, M.P. | | |
| 4. The Hon. George Murugara, M.P. | | |
| 5. The Hon. (Dr.) Wilberforce Oundo, M.P. | | |
| 6. The Hon. Daniel Maanzo, M.P. | | |
| 7. The Hon. Abdi Tepo, M.P. | | |
| 8. The Hon. Edith Nyenze, M.P. | | |
| 9. The Hon. Nicholas Tindi Mwale, M.P. | | <i>Virtual Attendance</i> |
| 10. The Hon. Ronald Tonui, M.P. | | <i>Virtual Attendance</i> |
| 11. The Hon. Jennifer Shamalla, M.P. | | <i>Virtual Attendance</i> |
| 12. The Hon. Sammy Seroney, M.P. | | <i>Virtual Attendance</i> |

ABSENT WITH APOLOGY

1. The Hon. Patrick Mariru, M.P.
2. The Hon. Robert Mbui, M.P.
3. The Hon. Alice Wahome, M.P.
4. The Hon. Cecily Mbarire, MGH, M.P.
5. The Hon. Timothy Wanyonyi, M.P.
6. The Hon. Munene Wambugu, M.P.
7. The Hon. Robert Gichimu, M.P.
8. The Hon. Martha Wangari, M.P.
9. The Hon. Gideon Mulyungi, M.P.
10. The Hon. William Cheptumo, M.P.

IN-ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | |
|-----------------------|---|
| 1. Mr. Jimale Mohamed | - Clerk Assistant II |
| 2. Ms. Ruth M. Gakuya | - Clerk Assistant II |
| 3. Ms. Lynette Otieno | - Legal Counsel |
| 4. Mr. Charles Ayari | - Superintendent of Electronics (Audio) |

THE JUDICIAL SERVICE COMMISSION

- | | |
|---------------------------|-----------------|
| 1. Ms. Munyingi Diana M.N | - Advocate, JSC |
|---------------------------|-----------------|

THE PUBLIC SERVICE COMMISSION

- | | |
|-----------------------------|---------------|
| 1. Mr. Anthony Muchiri(Amb) | - Chairperson |
|-----------------------------|---------------|

- | | | | | |
|--------------------------|---|-----------------------------|------------------|---|
| 2. Ms. Jacqueline Manani | - | Director Legal Services | Ms. Joan Machayo | - |
| | | Director, HRM & Development | | |
| 3. Ms. Jackeline Manani | - | Director, Legal Services | | |
| 4. Ms. Adhiambo Evelyn | - | Principal HRM Officer | | |

THE SALARIES AND REMUNERATION COMMISSION

- | | | |
|-------------------------|---|-------------------------|
| 1. Mrs. Lyn C. Mengich | - | Chairperson |
| 2. Mrs. Anne R. Gitau | - | Chief Executive officer |
| 3. Mr. John K. Monyomho | - | Member |
| 4. Ms. Sophie Moturi | - | Commissioner |
| 5. Mr. James Sitienei | - | Head of Legal |

THE TEACHERS SERVICE COMMISSION

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Jamleck Muturi | - | Chairperson |
| 2. Mrs. Nancy Macharia | - | Chief Executive Officer |
| 3. Ms. Flora Manyasa | - | Legal Counsel |
| 4. Ms. Edwick Musongi | - | Legal Counsel |
| 5. Mr. Paul Njuguna | - | PA to CEO |
| 6. Dr. Julius O. Olayo | - | HRM and Development |

MIN.NO./NA/CDL/2022/130 PRAYER AND PRELIMINARIES

The Chairperson called the meeting to order at 11.00 am with the Prayer and thereafter invited all present to introduce themselves.

MIN.NO./NA/CDL/2022/131 ADOPTION OF THE AGENDA

The agenda was unanimously adopted having been proposed by the Hon. Abdi Tepo, M.P and Seconded by the Hon. Daniel Maanzo, M.P.

MIN.NO./NA/CDL/2022/132 CONFIRMATION OF MINUTES

Minutes of the 24th sitting held on Thursday 2nd June 2022 at 11.00 am were confirmed as a true record of the proceedings having been proposed by the Hon. Edith Nyenze, M.P. and seconded by the Hon. Tindi Mwale, M.P.

MIN.NO./NA/CDL/2022/133 MATTERS ARISING

No matters arose.

MIN.NO./NA/CDL/2022/134 JOINT MEETING WITH THE PUBLIC SERVICE COMMISSION (PSC), THE JUDICIAL SERVICE COMMISSION (JSC), THE TEACHERS SERVICE COMMISSION(TSC), AND THE SALARIES AND REMUNERATION COMMISSION(SRC) ON THE DRAFT SRC(REMUNERATION AND BENEFITS OF STATE AND OTHER PUBLIC OFFICERS) REGULATIONS, 2022

Submissions from the Public Service Commission (PSC)

The meeting was informed that following a request for written submissions on the draft regulations by the Salaries Remuneration Commission on 23rd February 2022, the Public Service Commission had submitted a written memorandum on the regulations. However, the Comments from the Commission had not been taken into consideration by the SRC in the draft Regulations submitted to Parliament nor did the SRC convene a stakeholder's validation forum on the draft regulations as presented.

The PSC had raised concerns about the following provisions in the draft regulations - Regulation 2, regulation 3 (b) (iii), regulation 6, regulations 7 (1) (g), regulation 7 (1)(h) and 2, regulation 8 (b), regulations 9 to 16, Regulation 19 (2), Regulation 24(4) & (5) and regulation 29, and had proposed various amendments on the basis that the proposals as contained in the regulations contravened the constitution and exceeded the constitutional and statutory functions of the SRC.

Submissions from the Teachers Service Commission (TSC)

The meeting was informed that the TSC had submitted a written memorandum to the SRC on the regulations. However, the comments from the Commission had not been taken into consideration by the SRC in the draft regulations submitted to Parliament.

TSC had raised concerns about the following provisions in the draft regulations - Regulation 6 and Regulation 21 and proposed the deletion of the regulations on the basis that the proposals as contained in the regulations contravened the constitution, encroached on the constitutional mandate of the TSC and exceeded the constitutional and statutory functions of the SRC.

Submissions from the Judicial Service Commission (JSC)

The meeting was informed that the JSC had raised objections on the draft regulations vide a letter to the SRC dated 19th May 2022. However, the objections raised had not been taken into consideration by the SRC in the draft regulations submitted to Parliament.

The JSC had objected to the draft regulations on the basis that the regulations contravened Articles 172 (1) (b), 249 (2), 160, and 230(4) of the constitution. Further, the regulations were against the finding of the supreme court in the case of Council of Governors and 47 others v the Attorney General and 3 others(2020) eKLR.

The JSC was objecting to the proposed regulations as they were unconstitutional and in excess of powers bestowed upon the SRC (Article 230 (4)(b) and violated the independence of the Judiciary(Article 160 and the functions of the Judicial Service Commission(Articles 172 (1) (b) and 249 (2).

Submissions from the Salaries and Remuneration Commission (SRC)

The meeting was informed that following the request for written memoranda on the draft regulations, the JSC, PSC and TSC had submitted their written memoranda to the Commission.

The Commission had considered and taken into consideration the proposals before submitting the draft Regulations to Parliament. The commission had however not conducted a stakeholder validation workshop on the draft regulations nor had it engaged the other constitutional commissions on their proposed amendments to the draft regulations.

Way Forward

The committee directed that the Salaries and Remuneration Commission to conduct a validation workshop for Public Service Commission, Teachers Service Commission and the Judicial Service Commission and all other Commissions and independent offices to harmonize the concerns raised on the draft regulations before submitting them to Parliament for approval.

MIN.NO./NA/CDL/2022/135 CONSIDERATION OF THE PUBLIC SERVICE COMMISSION (COUNTY APPEALS PROCEDURES) REGULATIONS, 2022

The committee having scrutinized the Regulations in line with the Constitution, the Interpretations and General Provisions Act(Cap 2) the Statutory Instruments Act 2013, and the Public Service Commission Act, 2017, resolved to **approve** them having been proposed by the Hon. Abdi Tepo and Seconded by the Hon. Tindi Mwale, M.P

MIN.NO./NA/CDL/2022/136 CONSIDERATION OF THE SCRAP METAL (THE SCRAP METAL DEALERS) RULES, 2022 (LEGAL NOTICE NO. 84 OF 2022)

The Committee was informed that –

- (i) The Regulations were published in the Gazette as *LN No. 84 of 2022* on 5th May 2022 submitted and were laid on the table of the House on 31st May 2022 being the ninth sitting day since publication hence out of the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.
- (ii) The Rules seek to regulate the dealings in scrap metal and provide for licensing of scrap metal dealers as a condition for lifting the moratorium on dealings in scrap metals issued on 20th January, 2022.
- (iii) The Rules seek to regulate the dealings in scrap metal and provide for licensing of scrap metal dealers as a condition for lifting the moratorium on dealings in scrap metals issued on 20th January 2022.

The Committee was further informed that -

PART I of the Rules provide for the preliminary provisions including the citation, interpretation of terms in the context within which they are used in the Rules, object and purpose of the Rules and application of the Rules.

PART II of the Rules provides for the nomination of members to the Scrap Metal Council and qualification for appointment as Chairperson and Council members.

PART III of the Rules deals with requirements to carry on business as a scrap metal dealer and application for licence to carry on business. The Part provides for the form of a licence and issues that the Council should consider when issuing a licence. It provides for remedies to dealers when the Council rejects their application for a licence, terms for a licence, variations and revocation of licences.

The part further provides for duties of a licensed dealer including the verification of suppliers' identity, requirement to keep proper records of receipt of scrap metal, and requirement to keep records for disposals of scrap metal. It also provides for the inspection of licensed dealerships, issuance of closure orders and appeals to such orders.

PART IV of the Rules deals with miscellaneous matters including registration of licensed dealers as business member organizations, restrictions in export of scrap metal and creating awareness on scrap metal dealings.

The **SCHEDULE** provides for the fee payable under the Rules.

Committee Observations

The Committee made the following Observations –

Statutory Timelines – Section 11 of the SI Act

1. The Rules were tabled in Parliament outside the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act (*No. 23 of 2013*). The Rules were published in the Gazette as *LN No. 84 of 2022* on 5th May 2022 and were laid on the table of the House on 31st May 2022 **being the ninth sitting day since publication hence out of the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.**
2. Section 11(4) of the Act stipulates that *if a copy of a statutory instrument that is required to be laid before the relevant House of 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.* Accordingly, the Rules ceased to effect on the 24th of May, 2022 by operation of law.
3. Part II of the Rules contain provisions on the Council including nomination and qualification for appointment as the Chairperson and Council members, which is *ultra vires* Part II of the Scrap Metals Act which properly deals with matters relating to the Council hence contrary to section 13(a) of the Statutory Instruments Act (*No. 23 of 2013*).
4. The explanatory memorandum submitted indicates that the Ministry for Industrialization subjected the Rules to public participation and sought for comments from various stakeholders but fails to give evidence of the consultation and its outcomes. contrary to section Article 10 and 118 of the Constitution read together with section 5A of the of the Act, there was no demonstration at all of public participation in the process of making the Regulations.
5. The regulatory making authority failed to submit the Regulatory Impact Statement as required under Section 6 of the Statutory Instruments Act 2013. The Rules make provisions for

dealings in scrap metal, whose implementation may impose environmental and economic implications on the society. The Regulatory Impact Statement is to enable Parliament and stakeholders to be informed of the environmental, social and economic implications of the implementation of the proposed regulation. Contrary to section 6, 7, 8 and 9 of the Act, there was no Regulatory Impact Assessment conducted and consequently no Regulatory Impact Statement notified in the Kenya Gazette and two newspapers of wide circulation nor was the same submitted to Parliament.

Committee Resolution

Having examined the Scrap Metal Rules, 2022 against the Constitution, the Interpretations and General Provisions Act (Cap 2), the Scrap Metal Act, 2015, and the Statutory Instruments Act (No. 23 of 2013), and resolved to recommend to the House **to annul** the Regulations in entirety having been proposed by the Hon. Edith Nyenze and Seconded by the Hon. Abdi Tepo, M.P, due to lack of conformity with the Scrap Metal Act, 2015, and the Statutory Instruments Act, 2013, **for non-conformity with the Constitution, the Scrap Metals Act (No. 1 of 2015) and the Statutory Instruments Act (No. 23 of 2013).**

MIN.NO. /NA/CDL/2022/ 138

ANY OTHER BUSINESS

No any other matter arose.

MIN.NO. /NA/CDL/2022/ 139

ADJOURNMENT

The meeting was adjourned at 12.48 p.m. The next sitting will be held on notice.

Signed.....

Date.....09/06/2022.....

**HON. KASSAIT KAMKET, M.P.
(CHAIRPERSON)**

DLPS
Please deal.
26/05/22



REPUBLIC OF KENYA
MINISTRY OF INDUSTRIALIZATION, TRADE AND ENTERPRISE
DEVELOPMENT
Office of the Cabinet Secretary

Telephone: 020-2731531-9
0704097021/23, 0788484840/41
Fax: 020-2731511
Email: cs.moied@gmail.com
When replying please quote:

Social Security House BLK 'A'
Bishops Road, Capital Hill
P.O. Box 30418 - 00100
NAIROBI

REF: MITED/SDI/DECI/2/01

Mr. Michael Sialai, CBS
The Clerk
The National Assembly
NAIROBI

Dear Bwana Sialai

SUBMISSION OF THE SCRAP METAL RULES, 2022

Reference is made to the above subject.

The Ministry of Industrialization, Trade and Enterprise Development developed the above-mentioned Scrap Metal Rules in consultation with stakeholders. The Rules were then presented to the Attorney General for advice and approval which was granted (See attached documents).

The purpose of this letter therefore is to request you to table the Scrap Metal Rules, 2022 before the National Assembly and find also attached explanatory memorandum for the scrap metal rules, 2022 as required.

Yours Sincerely

Betty C. Maina, EGH
CABINET SECRETARY

Encls. (2)

② HOD, Table MTD
To receive and refer to committee.
26/5/22

25th May, 2022

31 MAY 2022

TUESDAY

MAJORITY WITH P
HON. WANGWE, MP
H. O. D-TABLE OFFICE



Copy to: **Amb. Kiriimi P. Kaberia, CBS**
Principal Secretary
State Department of Industrialization
Ministry of Industrialization, Trade &
Enterprise Development
NAIROBI

DLPS
Please deal
Sri 27/05/22

EXPLANATORY MEMORANDUM FOR THE SCRAP METAL RULES, 2022

I. The Purpose of Scrap Metal Rules, 2022.

1. The objects and purpose of these Rules is to govern matters relating to dealings in scrap metal.
2. These Regulations shall, unless otherwise provided for in the Act, apply to collectors, agents, dealers, millers, smelters, transporters, steel fabricators, stockists of second hand metal parts, motor vehicle salvage operators, electrical re-winders, local welding machines fabricators.

II. The Legislative Context:

1. Article 201 of the Constitution provides for principles of public finance, key among them openness and accountability, including public participation in financial matters; and that the public finance system shall promote an equitable society, and in particular public money shall be used in a prudent and responsible way; and financial management shall be responsible, and fiscal reporting shall be clear.

2. The Scrap Metal Council is established by an Act of Parliament; Scrap Metal Act No.1 of 2015 and the Council was inaugurated in 2020. The Act makes provision for the regulation of dealings in scrap metal, to provide for the establishment of a Scrap Metal Council and for connected purpose

3. "scrap metal" includes -

- (a) any old metal, second-hand metal, broken metal, defaced or old metal goods (including machinery and plant), whether wholly or partly manufactured, and any metal which is the property of the Government, or is privately owned, whether ferrous, non-ferrous or ferro-alloyed, but does not include gold, silver or any metals of the platinoid group; and
- (b) used automobile batteries;

4. The Scrap Metal Rules, 2022 was developed in order to operationalize the Scrap Metal Act 2022, as a result of widespread vandalism mainly on power and transmission lines across the country, the need to close gaps in enforcement and regulations, and self-regulation in the sector.

5. According to the Statutory Instruments Act, 2013 a *statutory instrument* among others means, regulation, form, tariff of costs or fees, by-law, guideline or other *statutory instrument issued, made or established in the execution of a power conferred by or*

THE NATIONAL ASSEMBLY	
DATE: 31 MAY 2022	TO: SPAC
TABLED BY: MAJORITY WHIP	NATIONAL ASSEMBLY RECEIVED
CLERK AT TEMERARY D.	26 MAY 2022
	DEPUTY CLERK
	P.O. Box 41942 - 00100, NAIROBI

Op.

under an Act of Parliament under which that statutory instrument or subsidiary legislation is expressly authorized to be issued.

6. In this regard, these Rules have been subjected to extensive public consultations to meet the threshold set out in the Statutory Instruments Act, 2013.

7. IN EXERCISE of the powers conferred by section 32(1) of the Scrap Metal Act, 2015, the Cabinet Secretary for Industrialization, Trade and Enterprise Development makes the following Rules —THE SCRAP METAL DEALERS RULES, 2022

1. The Cabinet Secretary for Industrialization, Trade and Enterprise Development has therefore fully complied with the provisions of the Constitution, Scrap Metal Act No.1 of 2015 and the Statutory Instruments Act, 2013 on the requirement for public consultations while preparing these Rules.

III. Policy Context

1. Since the enactment of Scrap Metal Act No.1 of 2015 the Council was operationalized in 2020 hence the sector has operated under with minimal regulations for a long time and given the sensitive nature of the trade there is need to continuously review the instruments in the sector to support the trade and ensure also that the National Critical infrastructure is protected.

IV. Public Consultations

1. A Multi-Agency Team comprising representatives of State Department of Industrialization, Scrap Metal Council, State Department of Trade, National Police Service, Kenya Urban Roads Authority, Kenya National Highways Authority, Kenya Railways Corporation, Kenya Revenue Authority, Directorate of Criminal Investigation, Kenya Iron And Scrap Metal Association, Kenya Power, Kenya Association of Manufacturers, Numerical Machining Complex, Metal Cottage Industries, Kenya Scrap And Waste Recyclers and Kenya consumer Protection Advisory Committee were involved in developing the Scrap Metal Rules, 2022

1.

2.

3. Consultations were structures initially in terms of the relevant Government Ministries, Agencies and Government Departments. The next level of consultation was done for all Associations involved thereafter a meeting of all stakeholders was held to validate the process and map the way forward. The Scrap Metal Council portal was also being used to provide access to additional information.

4. All the key stakeholders were consulted through physical and the Scrap Metal Council web portal. In addition, written memoranda were received from various stakeholders.

V. Policy Guidance

The Ministry of Industrialization, Trade and Enterprise Development namely State Department of Industrialization and the Scrap Metal Council will sensitize key stakeholders including Parliament, Government Agencies, Smelters, Millers, Agents, Scrap Metal Dealers, Collectors, Steel Fabricators and Motor Vehicle Salvage Operators on the Scrap Metal Rules 2022

VI. Performance Monitoring and Evaluation of the Scrap Metal Rules, 2022

1. The State Department of Industrialization and the Scrap Metal Council shall monitor the application, adherence and enforcement the Scrap Metal Rules including provisions of the respective Schedules thereof.

2. This will be done through periodic reviews to establish, among others, compliance with the prescribed code of ethics and professional standards and reports on governance.

VII. Contact Persons

The contact person at the Ministry of Industrialization, Trade and Enterprise Development is the Cabinet Secretary, Betty C. Maina, EGH or the Principal Secretary, Amb Kirimi, P. Kabaeria, CBS; and the contact person of the Scrap Metal Council shall be the Chairperson, Hon. Gakuru Monyo or the Head of Secretariat, Mr. George Makateto.



HON. GAKURE MONYO

CHAIRMAN SCRAP METAL COUNCIL

Date.....*23rd May*....., 2022

SPECIAL ISSUE

Kenya Gazette Supplement No. 78

(Legislative Supplement No. 36)

LEGAL NOTICE NO. 84

THE SCRAP METAL ACT

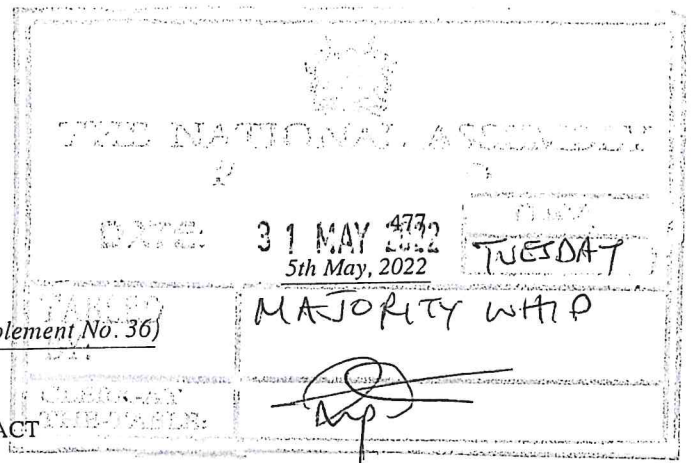
(No. 1 of 2015)

IN EXERCISE of the powers conferred by section 32(1) of the Scrap Metal Act, 2015, the Cabinet Secretary for Industrialization, Trade and Enterprise Development makes the following Rules —

THE SCRAP METAL DEALERS RULES, 2022

PART I - PRELIMINARY

1. These Rules may be cited as the Scrap Metal Dealers Rules, 2022. Citation.
2. In these Rules, unless the context otherwise requires — Interpretation.
 - "Act" means the Scrap Metal Act; No. 5 of 2015
 - "agent" has the meaning assigned to it under the Act;
 - "Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to industrialization;
 - "collector" means a person appointed by a licence to operate as a mobile collector in a designated area to gather, collect and buy scrap metal in order to sell to a licensed agent or dealer in quantities that do not exceed three thousand kilograms per transaction;
 - "Council" means the Scrap Metal Council established under section 3 of the Act;
 - "director" has the meaning assigned to it under the Companies Act, 2015; No. 17 of 2015
 - "dealing" has the meaning assigned to it under the Act;
 - "electrical rewinder" means a person who deals in the repair or rewinding of electric motors;
 - "inspector" has the meaning assigned to it under the Act;
 - "licence" has the meaning assigned to it under the Act;
 - "licensed dealer" has the meaning assigned to it under the Act;
 - "miller" has the meaning assigned to it under the Act;
 - "smelter" means an installation or factory for smelting a metal from its ore or a person engaged in the business of smelting"
 - "steel fabricators" means an installation or factory for the production of metal structures using a range of processes such as



cutting, bending and assembling which for the purposes of the act generates scrap metal in their processes.

“mobile collector” means a person who—

- (a) carries on business as a scrap metal dealer otherwise than at a site, and
- (b) regularly engages, in the course of that business, in collecting waste materials and old, broken, worn out or defaced articles by means of visits from door to door.

“platinoid group” means metals that possess a silvery white colour except osmium, and includes ruthenium, rhodium, palladium, osmium, iridium, and platinum;

“rewinding” means removal or stripping of the coils of a motor and replacing them with new coils made from wire of the same type and gauge;

“site” means any premises used in the course of carrying on business as a scrap metal dealer, whether or not metal is kept there;

“site manager” in relation to a site at which a scrap metal dealer carries on business, means the person who exercises day-to-day control and management of activities at the site; and

“transporter” means a person appointed by an agent, dealer, or collector using a registered vehicle to transport scrap metal.

3. The objects of these Rules is to govern matters relating to dealings in scrap metal.

Objects of the Rules.

4. These Rules shall, unless otherwise provided for in the Act, apply to collectors, agents, dealers, millers, smelters, transporters, steel fabricators, stockists of second hand metal parts, motor vehicle salvage operators, electrical rewinders and local welding machine fabricators.

Application of the Rules.

PART II – SCRAP METAL COUNCIL

5. (1) When nominating members to be appointed to the Council under section 4(1) of the Act, each organization shall submit to the Cabinet Secretary the curriculum vitae of the member being nominated.

Nomination of Council members.

(2) When appointing members to the Council, the Cabinet Secretary shall ensure that no more than two-thirds of the members are of the same gender and the membership reflects regional and ethnic diversity.

6. (1) A person shall not be appointed as a chairperson of the Council unless that person —

Qualifications of Council members.

- (a) possesses a university degree in metallurgy or other relevant field from a university recognized in Kenya;
- (b) has knowledge and relevant experience of not less than ten years in a management position in the public service;
- (c) has knowledge and experience of not less than ten years in any of the following fields —

- (i) procurement and supply chain management;
 - (ii) finance;
 - (iii) law;
 - (iv) accounting; or
 - (v) economics; and
- (d) meets the requirements of Chapter Six of the Constitution.
- (2) A person shall be eligible for appointment as a member of the Council if that person —
- (a) holds a university degree from a recognized university in Kenya;
 - (b) has knowledge and relevant experience of not less than five years in a management position; and
 - (c) meets the requirements of Chapter Six of the Constitution.

PART III - ADMINISTRATION

7. (1) A person carries on business as a scrap metal dealer if the person — Scrap metal business.

- (a) carries on a business which consists wholly or partly in buying or selling scrap metal, whether or not the metal is sold in the form in which it was bought, or
- (b) carries on business as a motor salvage operator, so far as that does not fall within paragraph (a).

(2) For the purposes of sub rule (1) (a), a manufacturer does not sell scrap metal if he or she sells scrap metal only as a by-product of the manufacturing process or where surplus material not required for manufacturing is disposed.

(3) For the purposes of sub-rule (1) (b), a person carries on business as a motor salvage operator if the business consists —

- (a) wholly or partly, in recovering salvageable parts from motor vehicles for re-use or sale and subsequently selling or otherwise disposing of the rest of the vehicle for scrap;
- (b) wholly or mainly, in buying written-off vehicles and subsequently repairing and reselling them;
- (c) wholly or mainly, in buying or selling motor vehicles which are to be the subject, whether immediately or on a subsequent re-sale, of any of the activities set out in paragraphs (a) or (b); or
- (d) wholly or mainly, of any activities falling within paragraphs (a) or (b).

8. (1) Persons dealing in scrap metal shall include collectors, Scrap metal dealers.
agents, millers, smelters, transporters, steel fabricators, stockists of second hand metal parts, motor vehicle salvage operators, electrical rewinders and local welding machine fabricators.

(2) The respective persons under sub rule (1) shall pay to the Council the fees set out in the Schedule.

(3) The Council shall publish a list of all persons licensed to deal in scrap metal on its website.

9. (1) Where a person applies for a licence under section 10 of the Act, before the Council makes a decision, the inspectors appointed under rule 30 shall inspect the proposed business premises and vet the applicants to establish suitability for purposes of licensing.

Application of
licence.

(2) The licence shall be in respect to the person and premises for carrying on scrap metal dealings.

(3) The application for a licence shall specify and be accompanied by the following —

- (a) in the case of an individual, the full name, date of birth, postal address, telephone or mobile number, place of residence, copy of the national identification card, Kenya Revenue Authority personal identification number, tax compliance certificate, certificate of good conduct of not more than six months and physical location and physical address of the business;
 - (b) in the case of a partnership —
 - (i) the name, physical location, postal address, telephone or mobile number of the business and partnership deed; and
 - (ii) for each of the partners, the full name, date of birth, copy of the national identification card, Kenya Revenue Authority personal identification number, tax compliance certificate, certificate of good conduct of not more than six months, postal address, telephone or mobile number and place of residence;
 - (c) in the case of a company, the name and registration certificate, Kenya Revenue Authority personal identification number, tax compliance certificate, company directorship details (Form CR12), company address and contact details including email, mobile and telephone number;
 - (d) the physical address (Land Registry Number and the road) at which the applicant carries on the business of collecting, buying, selling or smelting scrap metal;
 - (e) the details of relevant environmental permit or registration indicating any applicable environmental impact assessment of the business premises and waste management certificate or a summary project report as provided under the Environmental (Impact Assessment and Audit) Regulations, 2003; and
 - (f) the applicant's membership certificate to a scrap metal dealers association.
- (4) The application for licensing shall be accompanied by proof of payment of the prescribed fees.

L.N. 101/2003

(b) to revoke or vary a licence issued under the Act,

the Council shall give the applicant or licensee a notice which sets out what the Council proposes to do and the reasons for it.

(2) A notice under sub-rule (1) shall state that, within the period specified in the notice, the applicant or licensee may either —

- (a) make representations about the proposal, or
- (b) inform the Council that the applicant or licensee wishes to make representations.

(3) The period specified in the notice shall be not less than fourteen days from the date on which the notice is given to the applicant.

(4) The Council may decline the application for a licence, or revoke or vary the licence, if —

- (a) within the period specified in the notice, the applicant or licensee informs the Council that he or she does not wish to make representations, or
- (b) the period specified in the notice expires and the applicant or licensee has not made representations or informed the Council that he or she intends to make the representations.

(5) Where, within the period specified in the notice, the applicant or licensee informs the Council that he or she wishes to make representations, the Council —

- (a) shall allow the applicant or licensee a further reasonable period to make representations, or
- (b) may refuse the application, revoke or vary the licence, if the applicant or licensee fails to make representations within that period.

(6) If the applicant or licensee makes representations within the period specified in the notice or within the further period under sub rule (5), the Council shall consider the representations.

(7) If the applicant or licensee informs the authority that he or she wishes to make oral representations, the Council shall give the applicant or licensee the opportunity of appearing before and being heard by the Council.

16. (1) Where the Council declines to issue a licence under section 10(3) and (4) of the Act, the Council shall notify the applicant of the refusal and reasons for the refusal within thirty days from the date of the submission of the application.

Notice of decision of Council.

(2) The notification under sub-rule (1) shall give the applicant fourteen days from the date of the notice to lodge an appeal to the Cabinet Secretary.

(3) A notice under this rule shall state —

- (a) that the applicant or licensee may appeal against the decision of the Council;

- (b) in the case of a revocation or variation, the date on which the revocation or variation is to take effect.

17. (1) Pursuant to section 10(4) and 14 of the Act, an applicant may appeal to the Cabinet Secretary where the Council —

Appeal to the
Cabinet Secretary.

- (a) refuses to grant or renew a licence; or
- (b) imposes a condition on the licence.

(2) A licensee may appeal to the Cabinet Secretary against—

- (a) the inclusion of a condition in a licence; or
- (b) the revocation or variation of a licence.

(3) An appeal under this rule shall be made within twenty one days of receipt of the notice of the decision of the Council by the applicant.

(4) The Cabinet Secretary may —

- (a) confirm, vary or reverse the Council's decision; and
- (b) give such directions as he or she considers appropriate.

(5) The Council shall comply with any directions given by the Cabinet Secretary under sub-rule (4).

18. (1) Pursuant to section 11 (b) of the Act, a licence expires at the end of the period of one year beginning with the day on which it is issued or renewed.

Term of licence.

(2) Where an application to renew a licence is received before the licence expires, the licence continues in effect and —

- (a) if the application is withdrawn, the licence expires at the end of the day on which the application is withdrawn;
- (b) if the application is denied, the licence expires when an appeal under section 15 of the Act is finally determined or withdrawn; or
- (c) if the licence is renewed, it expires at the end of the period of one year beginning on the date it is renewed.

19. (1) The Council may on application vary a licence if there is a change in licensed business premises as provided in sections 11(d) and 13(2) of the Act.

Variation of licence.

(2) The application shall contain particulars of the changes to be made to the licence.

(3) The applicant shall pay the prescribed fees set out in the Sixth Schedule to the Act.

(4) A licensee who fails to comply with this rule commits an offence and is liable on conviction to the penalty set out section 20(4) of the Act.

(5) It is a defence for a person charged with an offence under this rule to prove that he or she took all reasonable steps to avoid committing the offence.

20. The Council may revoke a licence issued under this Act where—

Revocation of licence.

- (a) the licensee is an undischarged bankrupt or is a company in liquidation;
- (b) the business premises are not suitable for carrying out scrap metal business and the applicant has not demonstrated that there will be adequate procedures in place to ensure that the provisions of the Act shall be complied with;
- (c) the licensee makes a statement knowing it is false in the application for licensing; or
- (d) the licensee prevents inspectors from accessing the business premises.

21. (1) An applicant for a licence, renewal or variation of a licence, shall notify the Council of any changes which materially affect the accuracy of the information which he or she has provided relating to the application.

Notification requirements.

(2) A licensee who is no longer carrying on business as a scrap metal dealer in the premises authorized by the Council shall notify the Council of that fact.

(3) A notification under sub rule (2) shall be given within twenty eight days of the change of premises.

(4) Where a licensee carries on business under a new name, the licensee shall notify the Council of any change to the name.

(5) A notification under sub rule (4) shall be given within twenty eight days of the change of name.

(6) An applicant or licensee who fails to comply with this rule commits an offence and is liable on conviction to the penalty provided in section 20(4) of the Act.

(7) It is a defence for a person charged with an offence under this rule to prove that he or she took all reasonable steps to avoid committing the offence.

22. (1) A licensed dealer shall conspicuously display a copy of the licence at each site specified in the licence.

Display of licence.

(2) A licensed dealer who fails to comply with sub-rule (1) commits an offence and is liable on conviction to the penalty provided in section 31 of the Act.

23. (1) Pursuant to section 16 of the Act, every licensee shall conspicuously display a signboard within his or her premises which shall —

Display of signboard.

- (a) display the full business name of the licensee;
- (b) display the licence number;
- (c) bear the words "LICENSED SCRAP METAL DEALER" in capital letters;
- (d) be a minimum of 6ft in width and 4ft in height; and
- (e) display the logo of the Council.

(2) This rule shall not apply to a person who internally generates scrap metal as a result of their internal processes.

24. (1) A licensed dealer shall not receive scrap metal from a person without verifying the person's full name and address.

Verification of
suppliers identity.

(2) The verification under sub rule (1) shall be by reference to documents, data or other information obtained from a reliable and independent source.

(3) Where a licensed dealer receives scrap metal in breach of sub rule (1), each of the following commits an offence—

- (a) the licensed dealer;
- (b) if the metal is received at a site, the site manager; and
- (c) any person who, pursuant to administrative arrangements made by the person set out in paragraphs (a) or (b), has the responsibility of verifying the name and address required under sub-rule (1).

(4) It is a defence for a person who is charged with an offence pursuant to sub-rule (3) to prove that he or she —

- (a) made arrangements to ensure that the metal was not received in breach of sub-rule(1), and
- (b) took all reasonable steps to ensure that those arrangements were complied with.

(5) Any person who fails to comply with this rule commits an offence and is liable on conviction to the penalty provided in section 18(3) of the Act.

(6) A person who, on delivering scrap metal to a licensed dealer, gives a false name or false address, commits an offence and is liable on conviction to the penalty provided in section 18(3) of the Act.

25. Every entry required to be prepared or kept under rules 26 and 27 shall be deemed, unless the contrary is shown, to have been made with the authority of the respective licensee.

Presumption as to
records.

26. (1) This rule applies if a licensed dealer receives any scrap metal in the course of the dealer's business.

Record of receipt of
scrap metal by
licensee.

(2) All licensed dealers shall keep records of all receipts of any scrap metal acquired in the course of the business.

(3) The licensed dealer shall record the following information —

- (a) the description of the metal, including its type or types if mixed, form, condition, weight and any marks identifying previous owners or other distinguishing features;
 - (b) the date and time of its receipt;
 - (c) if the metal is delivered in or on a vehicle, the registration details of the vehicle, personal identification details and mobile phone contacts of the driver;
 - (d) if the metal is received from a person, the full name, identification card copy, mobile contacts and address of that person;
 - (e) if the dealer pays for the metal, the full name of the person who makes the payment acting for the dealer;
 - (f) the previous use of the scrap metal; and
 - (g) the consideration of the transaction.
- (4) Every entry shall be made at the time of the transaction.
- (5) The record shall be —
- (a) signed by the licensee and person delivering the scrap metal; and
 - (b) availed for inspection by an authorized person whenever required.
- (6) The licensee shall make quarterly returns to the Council at least ten days after the end of each quarter.
- (7) No licensee shall allow scrap metal whose origin is unknown into his or her licensed premises or otherwise.
- (8) The licensee shall keep the record under this rule for a minimum of seven years.
- (9) Any licensee who fails to comply with this rule commits an offence and is liable on conviction to the fine provided in section 23(2) of Act.
- (10) The licensed dealers shall automate their record keeping systems for real time monitoring and submission of returns to the Council within one year from the date of publication of these Rules.
- (11) Where a licensed dealer pays for the scrap metal by —
- (a) cheque, the licensed dealer shall keep a copy of the cheque; or
 - (b) electronic transfer, the licensed dealer shall keep the receipt identifying the transfer, or if no receipt identifying the transfer was obtained, the licensed dealer shall record particulars identifying the transfer.
- (12) All transactions of scrap metal shall be cashless.
27. (1). All licensed dealers shall keep records of all disposals of any scrap metal in the course of business.

Records for the disposal of metal.

- (2) All disposals of scrap metal shall be made to licensed dealers.
- (3) The licensed dealers shall record the following information—
 - (a) the licence number of the person or business the scrap metal is disposed to;
 - (b) the description of the scrap metal, including its type or types if mixed, form, condition, weight and any marks identifying previous owners;
 - (c) the date and time of disposal;
 - (d) where the scrap metal is ferried in or on a vehicle, the registration details of the vehicle, name, national identification card number and mobile phone contacts of driver; and
 - (e) the consideration for the transaction.
- (4) Every entry required to be made shall be made at the time of the transaction.
- (5) The records specified under this rule shall be signed by the licensee and person or business purchasing the scrap metal.
- (6) The records specified under this rule shall be availed for inspection by an authorized person whenever required.
- (7) The licensee shall make quarterly returns to the Council, at least ten days after end of each quarter.
- (8) The licensee shall keep the record specified under this rule for a maximum of seven years.
- (9) Any licensee who fails to comply with this rule commits an offence and is liable on conviction to the penalty provided in section 18(3) Act.
- (10) The licensed dealers shall automate their record keeping systems for real time monitoring and submission of returns to the Council within one year from the date of publication of these Rules.

28. (1) The information referred to in rules 26 and 27 shall be recorded in a manner that allows the information and the scrap metal to which it relates to be readily identified by reference to each other.

Records
identification.

(2) The records in sub rule (1) shall be marked so as to identify the scrap metal to which they relate.

(3) The dealer shall keep the information and other records referred to in this rule for a period of three years from the day in which the metal is received or as the case may be, disposed of.

(4) If a licensed dealer fails to comply with this rule, each of the following commits an offence —

- (a) the scrap metal dealer;
- (b) if the metal is received at or dispatched from a site, the site manager;

- (c) any person who pursuant to administrative arrangements made by the person set out in paragraphs (a) or (b) has responsibility for fulfilling the requirement.

(5) It is a defence for a person who is charged with an offence pursuant to sub rule (4) to prove that he or she —

- (a) made arrangements to ensure that the requirement was fulfilled, and
- (b) took all reasonable steps to ensure that the arrangements were complied with.

(6) A person who fails to comply with this rule commits an offence and is liable on conviction to the penalty set out in section 18(3) of the Act.

29. (1) Any licensed dealers found dealing with scrap metal from infrastructure designed for roads, bridges, railways, pipelines, telecommunications, electricity, water and sewerage, utilities or stolen private property, shall have their licence cancelled or revoked and prosecuted.

Infrastructure.

(2) In the event that a licensed dealer comes into possession, control, is offered, or is shown any property fitting the description of vandalized infrastructure, utilities or stolen private property, the licensee shall immediately report such incident to the nearest police station or inspector and supply the name; identity card number; mobile number and address of the person or business that acquired or saw such property or infrastructure.

(3) Any person or licensed dealer who contravenes this rule commits an offence and is liable on conviction to the penalty provided in section 24(2) of the Act.

30. Pursuant to section 29(3) and (5) of the Act, the Cabinet Secretary may by notice in the Gazette appoint public officers from the following entities to be inspectors for purposes of the Act —

Appointment of inspectors.

- (a) the National Police Service;
- (b) the Kenya Railways Corporation;
- (c) the Kenya Electricity Transmission Company Limited;
- (d) the Kenya National Highways Authority;
- (e) the Kenya Urban Roads Authority;
- (f) the Communications Authority of Kenya;
- (g) the Kenya Revenue Authority;
- (h) the National Government Administrative Office;
- (i) the Office of the Director of Public Prosecutions;
- (j) the National Environment Management Authority; and
- (k) the Kenya Power and Lighting Company.

31. Where the affairs of a body corporate are managed by members, the provisions of section 28 of the Act shall apply. Offences by bodies corporate.

32. (1) An inspector may issue a closure notice where he or she is satisfied that the business premises where scrap metal business is being undertaken is not licensed. Closure notice.

(2) The notice issued under sub rule (1) shall —

- (a) specify the reasons for issuing the notice; and
- (b) indicate that the inspector may apply to the court for a closure order.

(3) The inspector shall issue the closure order to —

- (a) the person who appears to the inspector to be the site manager of the premises, or
- (b) any person who appears to the inspector to be a director, manager or other senior officer of the business,

and upload the notice in the official website of the Council.

(4) Notwithstanding sub rule (3), the inspector may give the notice to any person who has an interest in the premises.

33. (1) The Council may cancel a closure notice issued by an inspector. Cancellation of closure notice.

(2) A cancellation notice takes effect when it is given to any of the persons to whom the closure notice was given.

(3) The cancellation notice shall be issued to any other person to whom the closure notice was given and uploaded on the official website of the Council.

34. (1) Where a closure notice has been given under these Rules, an inspector may make an application to the court for a closure order. Application for closure order.

(2) An application under this rule shall not be made —

- (a) less than seven days after the date on which the closure notice was given, or
- (b) more than six months after that date.

(3) An application under this rule shall not be made if the inspector or Council is satisfied that —

- (a) the premises are no longer being used by a licensed dealer to undertake scrap metal business; and
- (b) there is no reasonable likelihood that the premises will be used to undertake scrap metal business in the future.

35. (1) The court may grant a closure order pursuant to the application under rule 34 where it is satisfied that — Closure order.

- (a) the premises continue to be used by a scrap metal dealer in the course of business; or

- (b) there is a reasonable likelihood that the premises will be used to undertake scrap metal business in the future.

(2) A closure order may require—

- (a) that the premises be closed immediately to the public;
- (b) that the use of the premises for scrap metal business be discontinued immediately; and
- (c) that the defendant pays into court such sum as the court determines and that the sum shall not be released by the court until the other requirements of the order are met.

(3) A closure order may include such other conditions as the court considers appropriate relating to —

- (a) the admission of persons onto the premises;
- (b) the access by persons to another part of any building or other structure of which the premises form part.

(4) As soon as practicable after a closure order is made, the complainant shall fix a copy of the order in a conspicuous position in the premises.

36. (1) Any of the following persons may by apply to the court for an order that a closure order be discharged —

Discharge of closure notice by court.

- (a) any person to whom the closure notice was given under these Rules; and
- (b) any person who has an interest in the premises but to whom the closure notice was not given.

(2) The court shall not make a discharge order unless it is satisfied that there is no longer a need for the closure order.

37. (1) An appeal may be made to the court against—

Appeal of closure order.

- (a) a closure order;
- (b) a decision not to make a closure order;
- (c) a discharge order; or
- (d) a decision not to make a discharge order.

(2) Any appeal under this rule shall be made within twenty one days from the date on the order or the date the decision was made.

(3) An appeal under this rule against a closure order or a decision not to make a discharge order may be made by —

- (a) any person to whom the relevant closure notice was given under rule 32; or
- (b) any person who has an interest in the premises but to whom the closure notice was not given.

38. (1) A person commits an offence if the person, without reasonable excuse —

Enforcement of closure order.

- (a) permits premises to be opened in contravention of a closure order; or
 - (b) otherwise fails to comply with or does an act in contravention of a closure order.
- (2) If a closure order has been made in respect of any premises, an inspector may —
- (a) enter the premises at any reasonable time; and
 - (b) having entered the premises, do anything reasonably necessary for the purpose of securing compliance with the order.
- (3) Sub-rule (4) applies if an inspector seeks to exercise powers under this rule in relation to any premises.
- (4) If the owner, occupier or other person in charge of the premises requires the inspector to produce—
- (a) evidence of the inspector's identity; or
 - (b) evidence of the inspector's authority to exercise those powers,
- the inspector shall produce that evidence.
- (5) A person who intentionally obstructs an inspector in the exercise of powers under this rule, commits an offence and liable on conviction to the penalty provided in section 30(6) of the Act.
39. (1) Every licensed dealer shall carry a certified copy of the licence of the dealer and the recipient of the scrap metal on any vehicle that is being used to transport any scrap metal.
- (2) Copies of the certified licences shall be provided when requested by an inspector.
- (3) Every vehicle transporting scrap metal shall have an authorization letter from the licensee indicating the —
- (a) source of the scrap metal and destination;
 - (b) type and quantity of scrap metal; and
 - (c) name, identification card number and contact details of the driver.
- (4) The details in sub-rule (3) shall be submitted online on the Council's portal.
- (5) Every licensed dealer shall comply with the prescribed hours of operation between half-past six o'clock in the morning and half-past six o'clock in the evening for the purposes of transporting scrap metal.
- (6) A scrap metal dealer who does not comply with this rule commits an offence and is liable on conviction to the penalty provided in section 31 of the Act.

Transportation of
scrap metal.

PART IV - MISCELLANEOUS

40. (1) Every licensed dealer shall be a member of a scrap metal dealers association.

Scrap metal dealers
association.

(2) Each scrap metal dealers' association shall submit to the Council the membership list, database and returns annually.

(2) Each scrap metal dealers' association shall establish self-regulating mechanisms to prevent and regulate trade in scrap metal from vandalized public infrastructure, utilities and stolen private property.

(3) Each scrap metal dealers' association shall create awareness to all its members on the relevant laws on dealings in scrap metal.

41. The Council shall pursuant to section 6(1)(ii) and (v) of the Act, conduct public awareness campaigns —

Creation of
awareness.

- (a) for all stakeholders including scrap metal dealers on matters of licensing, transportation, record keeping and prevention of vandalism and theft; and
- (b) government departments and the general public on the handling, reporting and prevention of vandalism and theft of public infrastructure utilities and private property.

SCHEDULE

(r. 8(1))

FEES PAYABLE BY SCRAP METAL DEALERS

S/NO	TYPE OF USER	AMOUNT OF SCRAP METAL IN KGS	AMOUNT OF FEES IN KSHS
1	(a) LICENSED DEALER, (b) MILLER (c) SMELTER	OVER 5,000	250,000
2	AGENT	5,000	150,000
3	(a) COLLECTOR, (b) JUA KALI,	3,000	50,000
4	(a) STEEL FABRICATOR, (b) MOTOR VEHICLE SALVAGE OPERATORS (c) STOCKISTS OF SECOND HAND METAL PARTS, ELECTRICAL REWINDERS, LOCAL WELDING MACHINE FABRICATORS	ANY AMOUNT	50,000

Made on the 22nd April, 2022.

BETTY C. MAINA,
Cabinet Secretary for Industrialization,
Trade and Enterprise development.

SPECIAL ISSUE

Kenya Gazette Supplement No. 78

477

5th May, 2022

(Legislative Supplement No. 36)

LEGAL NOTICE No. 84

THE SCRAP METAL ACT

(No. 1 of 2015)

IN EXERCISE of the powers conferred by section 32(1) of the Scrap Metal Act, 2015, the Cabinet Secretary for Industrialization, Trade and Enterprise Development makes the following Rules —

THE SCRAP METAL DEALERS RULES, 2022

PART I - PRELIMINARY

1. These Rules may be cited as the Scrap Metal Dealers Rules, 2022.

Citation.

2. In these Rules, unless the context otherwise requires —

Interpretation.

"Act" means the Scrap Metal Act;

No. 5 of 2015

"agent" has the meaning assigned to it under the Act;

"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to industrialization;

"collector" means a person appointed by a licence to operate as a mobile collector in a designated area to gather, collect and buy scrap metal in order to sell to a licensed agent or dealer in quantities that do not exceed three thousand kilograms per transaction;

"Council" means the Scrap Metal Council established under section 3 of the Act;

"director" has the meaning assigned to it under the Companies Act, 2015;

No. 17 of 2015

"dealing" has the meaning assigned to it under the Act;

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

"inspector" has the meaning assigned to it under the Act;

"licence" has the meaning assigned to it under the Act;

"licensed dealer" has the meaning assigned to it under the Act;

"miller" has the meaning assigned to it under the Act;

"smelter" means an installation or factory for smelting a metal from its ore or a person engaged in the business of smelting"

"steel fabricators" means an installation or factory for the production of metal structures using a range of processes such as

cutting, bending and assembling which for the purposes of the act generates scrap metal in their processes.

“mobile collector” means a person who—

- (a) carries on business as a scrap metal dealer otherwise than at a site, and
- (b) regularly engages, in the course of that business, in collecting waste materials and old, broken, worn out or defaced articles by means of visits from door to door.

“platinoid group” means metals that possess a silvery white colour except osmium, and includes ruthenium, rhodium, palladium, osmium, iridium, and platinum;

“rewinding” means removal or stripping of the coils of a motor and replacing them with new coils made from wire of the same type and gauge;

“site” means any premises used in the course of carrying on business as a scrap metal dealer, whether or not metal is kept there;

“site manager” in relation to a site at which a scrap metal dealer carries on business, means the person who exercises day-to-day control and management of activities at the site; and

“transporter” means a person appointed by an agent, dealer, or collector using a registered vehicle to transport scrap metal.

3. The objects of these Rules is to govern matters relating to dealings in scrap metal.

Objects of the Rules.

4. These Rules shall, unless otherwise provided for in the Act, apply to collectors, agents, dealers, millers, smelters, transporters, steel fabricators, stockists of second hand metal parts, motor vehicle salvage operators, electrical rewinders and local welding machine fabricators.

Application of the Rules.

PART II – SCRAP METAL COUNCIL

5. (1) When nominating members to be appointed to the Council under section 4(1) of the Act, each organization shall submit to the Cabinet Secretary the curriculum vitae of the member being nominated.

Nomination of Council members.

(2) When appointing members to the Council, the Cabinet Secretary shall ensure that no more than two-thirds of the members are of the same gender and the membership reflects regional and ethnic diversity.

6. (1) A person shall not be appointed as a chairperson of the Council unless that person —

Qualifications of Council members.

- (a) possesses a university degree in metallurgy or other relevant field from a university recognized in Kenya;
- (b) has knowledge and relevant experience of not less than ten years in a management position in the public service;
- (c) has knowledge and experience of not less than ten years in any of the following fields —

- (i) procurement and supply chain management;
 - (ii) finance;
 - (iii) law;
 - (iv) accounting; or
 - (v) economics; and
- (d) meets the requirements of Chapter Six of the Constitution.
- (2) A person shall be eligible for appointment as a member of the Council if that person —
- (a) holds a university degree from a recognized university in Kenya;
 - (b) has knowledge and relevant experience of not less than five years in a management position; and
 - (c) meets the requirements of Chapter Six of the Constitution.

PART III - ADMINISTRATION

7. (1) A person carries on business as a scrap metal dealer if the person —
- Scrap metal business.
- (a) carries on a business which consists wholly or partly in buying or selling scrap metal, whether or not the metal is sold in the form in which it was bought, or
 - (b) carries on business as a motor salvage operator, so far as that does not fall within paragraph (a).
- (2) For the purposes of sub rule (1) (a), a manufacturer does not sell scrap metal if he or she sells scrap metal only as a by-product of the manufacturing process or where surplus material not required for manufacturing is disposed.
- (3) For the purposes of sub-rule (1) (b), a person carries on business as a motor salvage operator if the business consists —
- (a) wholly or partly, in recovering salvageable parts from motor vehicles for re-use or sale and subsequently selling or otherwise disposing of the rest of the vehicle for scrap;
 - (b) wholly or mainly, in buying written-off vehicles and subsequently repairing and reselling them;
 - (c) wholly or mainly, in buying or selling motor vehicles which are to be the subject, whether immediately or on a subsequent re-sale, of any of the activities set out in paragraphs (a) or (b); or
 - (d) wholly or mainly, of any activities falling within paragraphs (a) or (b).
8. (1) Persons dealing in scrap metal shall include collectors, agents, millers, smelters, transporters, steel fabricators, stockists of second hand metal parts, motor vehicle salvage operators, electrical rewinders and local welding machine fabricators.
- Scrap metal dealers.

(2) The respective persons under sub rule (1) shall pay to the Council the fees set out in the Schedule.

(3) The Council shall publish a list of all persons licensed to deal in scrap metal on its website.

9. (1) Where a person applies for a licence under section 10 of the Act, before the Council makes a decision, the inspectors appointed under rule 30 shall inspect the proposed business premises and vet the applicants to establish suitability for purposes of licensing.

Application of
licence.

(2) The licence shall be in respect to the person and premises for carrying on scrap metal dealings.

(3) The application for a licence shall specify and be accompanied by the following —

- (a) in the case of an individual, the full name, date of birth, postal address, telephone or mobile number, place of residence, copy of the national identification card, Kenya Revenue Authority personal identification number, tax compliance certificate, certificate of good conduct of not more than six months and physical location and physical address of the business;
- (b) in the case of a partnership —
 - (i) the name, physical location, postal address, telephone or mobile number of the business and partnership deed; and
 - (ii) for each of the partners, the full name, date of birth, copy of the national identification card, Kenya Revenue Authority personal identification number, tax compliance certificate, certificate of good conduct of not more than six months, postal address, telephone or mobile number and place of residence;
- (c) in the case of a company, the name and registration certificate, Kenya Revenue Authority personal identification number, tax compliance certificate, company directorship details (Form CR12), company address and contact details including email, mobile and telephone number;
- (d) the physical address (Land Registry Number and the road) at which the applicant carries on the business of collecting, buying, selling or smelting scrap metal;
- (e) the details of relevant environmental permit or registration indicating any applicable environmental impact assessment of the business premises and waste management certificate or a summary project report as provided under the Environmental (Impact Assessment and Audit) Regulations, 2003; and
- (f) the applicant's membership certificate to a scrap metal dealers association.

L.N. 101/2003

(4) The application for licensing shall be accompanied by proof of payment of the prescribed fees.

(5) The application shall be submitted to the Council through the Council's website.

10. (1) Every person who deals with copper, aluminum or their alloys shall be vetted separately.

Provision relating to copper, aluminum or their alloys.

(2) A separate register for copper, aluminum or their alloys shall be maintained by licensed dealers in copper, aluminum or their alloys.

(3) Any premises where dealings in copper, aluminum or their alloys are undertaken shall have strict enhanced features including closed circuit television cameras.

11. (1) The Council may at any time request that the applicant to provide such further information as the Council considers relevant for the purpose of considering the application for a licence.

Further information.

(2) If an applicant fails to provide information requested under sub-rule (1), the Council may decline to proceed with the application.

12. An applicant who in an application or in response to a request under made under rule 11 —

Making false statement.

(a) makes a statement knowing it be false in a material particular, or

(b) recklessly makes a statement which is false in a material particular,

commits an offence and is liable on conviction to the penalty provided in section 31 of the Act.

13. (1) A licence issued by the Council under section 11 of the Act shall specify —

Form of licence.

(a) the name of the licensee;

(b) the business premises authorized for undertaking scrap metal dealings and in particular specify the land registration number and road on which the premises is located; and

(c) the date of expiry of the licence.

(2) A licence issued under the Act authorizes the licensee to carry on business on any premises authorized by the Council.

(3) The Council shall issue only one licence with respect to an applicant.

14. (1) The Council shall not issue or renew a licence unless it is satisfied that the applicant is a suitable person to carry on business as a scrap metal dealer.

Issue of licence.

(2) In determining whether the applicant is a suitable person, the Council shall take into account the conditions specified under section 10(4) of the Act.

(3) Notwithstanding the generality of sub rule (2), the Council shall consider the following information —

(a) whether the applicant has been the subject of any relevant enforcement action;

- (b) any previous refusal of an application for the issue or renewal of a scrap metal licence and the reasons for the refusal;
 - (c) any previous refusal of an application for a relevant environmental permit or registration and the reasons for the refusal;
 - (d) any previous revocation of a scrap metal licence and the reasons for the revocation; or
 - (e) whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of the Act are complied with.
- (4) In determining whether a company is a suitable person as provided in sub-rules (2) and (3), the Council shall consider whether any of the following officers is a suitable person —
- (a) a director of the company; and
 - (b) the company secretary of the company.
- (5) In determining whether a partnership is a suitable person as provided in sub-rules (2) and (3), the Council shall consider whether each of the partners is a suitable person.
- (6) The Council shall take into account any guidance issued by the Cabinet Secretary for purposes of determining suitability under these Rules.
- (7) The Council may consult other entities or persons regarding the suitability of an applicant, including in particular —
- (a) any devolved unit;
 - (b) the National Environment Management Authority;
 - (c) the National Police Service;
 - (d) a national government administrative officer;
 - (e) an industrial development officer; and
 - (f) an inspector gazetted by the Cabinet Secretary pursuant to the Act.
- (8) Where the applicant has been convicted of a relevant offence, the Council may include in the licence one or both of the following conditions—
- (a) that the dealer shall not receive scrap metal except between 9 a.m. and 5 p.m. on any day;
 - (b) that all scrap metal received shall be kept in the form in which it is received for a specified period, minimum of seven days, commencing on the date when it is received.
15. (1) If the Council proposes —
- (a) to refuse an application made for the issuance or renewal of a licence; or

Right to make
representations.

(5) The application shall be submitted to the Council through the Council's website.

10. (1) Every person who deals with copper, aluminum or their alloys shall be vetted separately.

Provision relating to copper, aluminum or their alloys.

(2) A separate register for copper, aluminum or their alloys shall be maintained by licensed dealers in copper, aluminum or their alloys.

(3) Any premises where dealings in copper, aluminum or their alloys are undertaken shall have strict enhanced features including closed circuit television cameras.

11. (1) The Council may at any time request that the applicant to provide such further information as the Council considers relevant for the purpose of considering the application for a licence.

Further information.

(2) If an applicant fails to provide information requested under sub-rule (1), the Council may decline to proceed with the application.

12. An applicant who in an application or in response to a request under made under rule 11 —

Making false statement.

(a) makes a statement knowing it be false in a material particular, or

(b) recklessly makes a statement which is false in a material particular,

commits an offence and is liable on conviction to the penalty provided in section 31 of the Act.

13. (1) A licence issued by the Council under section 11 of the Act shall specify —

Form of licence.

(a) the name of the licensee;

(b) the business premises authorized for undertaking scrap metal dealings and in particular specify the land registration number and road on which the premises is located; and

(c) the date of expiry of the licence.

(2) A licence issued under the Act authorizes the licensee to carry on business on any premises authorized by the Council.

(3) The Council shall issue only one licence with respect to an applicant.

14. (1) The Council shall not issue or renew a licence unless it is satisfied that the applicant is a suitable person to carry on business as a scrap metal dealer.

Issue of licence.

(2) In determining whether the applicant is a suitable person, the Council shall take into account the conditions specified under section 10(4) of the Act.

(3) Notwithstanding the generality of sub rule (2), the Council shall consider the following information —

(a) whether the applicant has been the subject of any relevant enforcement action;

- (b) any previous refusal of an application for the issue or renewal of a scrap metal licence and the reasons for the refusal;
- (c) any previous refusal of an application for a relevant environmental permit or registration and the reasons for the refusal;
- (d) any previous revocation of a scrap metal licence and the reasons for the revocation; or
- (e) whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of the Act are complied with.

(4) In determining whether a company is a suitable person as provided in sub-rules (2) and (3), the Council shall consider whether any of the following officers is a suitable person —

- (a) a director of the company; and
- (b) the company secretary of the company.

(5) In determining whether a partnership is a suitable person as provided in subrules (2) and (3), the Council shall consider whether each of the partners is a suitable person.

(6) The Council shall take into account any guidance issued by the Cabinet Secretary for purposes of determining suitability under these Rules.

(7) The Council may consult other entities or persons regarding the suitability of an applicant, including in particular—

- (a) any devolved unit;
- (b) the National Environment Management Authority;
- (c) the National Police Service;
- (d) a national government administrative officer;
- (e) an industrial development officer; and
- (f) an inspector gazetted by the Cabinet Secretary pursuant to the Act.

(8) Where the applicant has been convicted of a relevant offence, the Council may include in the licence one or both of the following conditions—

- (a) that the dealer shall not receive scrap metal except between 9 a.m. and 5 p.m. on any day;
- (b) that all scrap metal received shall be kept in the form in which it is received for a specified period, minimum of seven days, commencing on the date when it is received.

15. (1) If the Council proposes —

- (a) to refuse an application made for the issuance or renewal of a licence; or

Right to make
representations.

(b) to revoke or vary a licence issued under the Act,

the Council shall give the applicant or licensee a notice which sets out what the Council proposes to do and the reasons for it.

(2) A notice under sub-rule (1) shall state that, within the period specified in the notice, the applicant or licensee may either —

(a) make representations about the proposal, or

(b) inform the Council that the applicant or licensee wishes to make representations.

(3) The period specified in the notice shall be not less than fourteen days from the date on which the notice is given to the applicant.

(4) The Council may decline the application for a licence, or revoke or vary the licence, if —

(a) within the period specified in the notice, the applicant or licensee informs the Council that he or she does not wish to make representations, or

(b) the period specified in the notice expires and the applicant or licensee has not made representations or informed the Council that he or she intends to make the representations.

(5) Where, within the period specified in the notice, the applicant or licensee informs the Council that he or she wishes to make representations, the Council —

(a) shall allow the applicant or licensee a further reasonable period to make representations, or

(b) may refuse the application, revoke or vary the licence, if the applicant or licensee fails to make representations within that period.

(6) If the applicant or licensee makes representations within the period specified in the notice or within the further period under sub rule (5), the Council shall consider the representations.

(7) If the applicant or licensee informs the authority that he or she wishes to make oral representations, the Council shall give the applicant or licensee the opportunity of appearing before and being heard by the Council.

16. (1) Where the Council declines to issue a licence under section 10(3) and (4) of the Act, the Council shall notify the applicant of the refusal and reasons for the refusal within thirty days from the date of the submission of the application.

Notice of decision of Council.

(2) The notification under sub-rule (1) shall give the applicant fourteen days from the date of the notice to lodge an appeal to the Cabinet Secretary.

(3) A notice under this rule shall state —

(a) that the applicant or licensee may appeal against the decision of the Council;

- (b) in the case of a revocation or variation, the date on which the revocation or variation is to take effect.

17. (1) Pursuant to section 10(4) and 14 of the Act, an applicant may appeal to the Cabinet Secretary where the Council — Appeal to the
Cabinet Secretary.

- (a) refuses to grant or renew a licence; or
- (b) imposes a condition on the licence.

(2) A licensee may appeal to the Cabinet Secretary against—

- (a) the inclusion of a condition in a licence; or
- (b) the revocation or variation of a licence.

(3) An appeal under this rule shall be made within twenty one days of receipt of the notice of the decision of the Council by the applicant.

(4) The Cabinet Secretary may —

- (a) confirm, vary or reverse the Council's decision; and
- (b) give such directions as he or she considers appropriate.

(5) The Council shall comply with any directions given by the Cabinet Secretary under sub-rule (4).

18. (1) Pursuant to section 11 (b) of the Act, a licence expires at ^{Term of licence.} the end of the period of one year beginning with the day on which it is issued or renewed.

(2) Where an application to renew a licence is received before the licence expires, the licence continues in effect and —

- (a) if the application is withdrawn, the licence expires at the end of the day on which the application is withdrawn;
- (b) if the application is denied, the licence expires when an appeal under section 15 of the Act is finally determined or withdrawn; or
- (c) if the licence is renewed, it expires at the end of the period of one year beginning on the date it is renewed.

19. (1) The Council may on application vary a licence if there is a change in licensed business premises as provided in sections 11(d) and 13(2) of the Act. Variation of licence.

(2) The application shall contain particulars of the changes to be made to the licence.

(3) The applicant shall pay the prescribed fees set out in the Sixth Schedule to the Act.

(4) A licensee who fails to comply with this rule commits an offence and is liable on conviction to the penalty set out section 20(4) of the Act.

(5) It is a defence for a person charged with an offence under this rule to prove that he or she took all reasonable steps to avoid committing the offence.

20. The Council may revoke a licence issued under this Act where—

Revocation of licence.

- (a) the licensee is an undischarged bankrupt or is a company in liquidation;
- (b) the business premises are not suitable for carrying out scrap metal business and the applicant has not demonstrated that there will be adequate procedures in place to ensure that the provisions of the Act shall be complied with;
- (c) the licensee makes a statement knowing it is false in the application for licensing; or
- (d) the licensee prevents inspectors from accessing the business premises.

21. (1) An applicant for a licence, renewal or variation of a licence, shall notify the Council of any changes which materially affect the accuracy of the information which he or she has provided relating to the application.

Notification requirements.

(2) A licensee who is no longer carrying on business as a scrap metal dealer in the premises authorized by the Council shall notify the Council of that fact.

(3) A notification under sub rule (2) shall be given within twenty eight days of the change of premises.

(4) Where a licensee carries on business under a new name, the licensee shall notify the Council of any change to the name.

(5) A notification under sub rule (4) shall be given within twenty eight days of the change of name.

(6) An applicant or licensee who fails to comply with this rule commits an offence and is liable on conviction to the penalty provided in section 20(4) of the Act.

(7) It is a defence for a person charged with an offence under this rule to prove that he or she took all reasonable steps to avoid committing the offence.

22. (1) A licensed dealer shall conspicuously display a copy of the licence at each site specified in the licence.

Display of licence.

(2) A licensed dealer who fails to comply with sub-rule (1) commits an offence and is liable on conviction to the penalty provided in section 31 of the Act.

23. (1) Pursuant to section 16 of the Act, every licensee shall conspicuously display a signboard within his or her premises which shall —

Display of signboard.

- (a) display the full business name of the licensee;
- (b) display the licence number;
- (c) bear the words "LICENSED SCRAP METAL DEALER" in capital letters;
- (d) be a minimum of 6ft in width and 4ft in height; and
- (e) display the logo of the Council.

(2) This rule shall not apply to a person who internally generates scrap metal as a result of their internal processes.

24. (1) A licensed dealer shall not receive scrap metal from a person without verifying the person's full name and address.

Verification of
suppliers identity.

(2) The verification under sub rule (1) shall be by reference to documents, data or other information obtained from a reliable and independent source.

(3) Where a licensed dealer receives scrap metal in breach of sub rule (1), each of the following commits an offence—

- (a) the licensed dealer;
- (b) if the metal is received at a site, the site manager; and
- (c) any person who, pursuant to administrative arrangements made by the person set out in paragraphs (a) or (b), has the responsibility of verifying the name and address required under sub-rule (1).

(4) It is a defence for a person who is charged with an offence pursuant to sub-rule (3) to prove that he or she —

- (a) made arrangements to ensure that the metal was not received in breach of sub-rule(1), and
- (b) took all reasonable steps to ensure that those arrangements were complied with.

(5) Any person who fails to comply with this rule commits an offence and is liable on conviction to the penalty provided in section 18(3) of the Act.

(6) A person who, on delivering scrap metal to a licensed dealer, gives a false name or false address, commits an offence and is liable on conviction to the penalty provided in section 18(3) of the Act.

25. Every entry required to be prepared or kept under rules 26 and 27 shall be deemed, unless the contrary is shown, to have been made with the authority of the respective licensee.

Presumption as to
records.

26. (1) This rule applies if a licensed dealer receives any scrap metal in the course of the dealer's business.

Record of receipt of
scrap metal by
licensee.

(2) All licensed dealers shall keep records of all receipts of any scrap metal acquired in the course of the business.

(3) The licensed dealer shall record the following information —

- (a) the description of the metal, including its type or types if mixed, form, condition, weight and any marks identifying previous owners or other distinguishing features;
- (b) the date and time of its receipt;
- (c) if the metal is delivered in or on a vehicle, the registration details of the vehicle, personal identification details and mobile phone contacts of the driver;
- (d) if the metal is received from a person, the full name, identification card copy, mobile contacts and address of that person;
- (e) if the dealer pays for the metal, the full name of the person who makes the payment acting for the dealer;
- (f) the previous use of the scrap metal; and
- (g) the consideration of the transaction.

(4) Every entry shall be made at the time of the transaction.

(5) The record shall be —

- (a) signed by the licensee and person delivering the scrap metal; and
- (b) availed for inspection by an authorized person whenever required.

(6) The licensee shall make quarterly returns to the Council at least ten days after the end of each quarter.

(7) No licensee shall allow scrap metal whose origin is unknown into his or her licensed premises or otherwise.

(8) The licensee shall keep the record under this rule for a minimum of seven years.

(9) Any licensee who fails to comply with this rule commits an offence and is liable on conviction to the fine provided in section 23(2) of Act.

(10) The licensed dealers shall automate their record keeping systems for real time monitoring and submission of returns to the Council within one year from the date of publication of these Rules.

(11) Where a licensed dealer pays for the scrap metal by —

- (a) cheque, the licensed dealer shall keep a copy of the cheque; or
- (b) electronic transfer, the licensed dealer shall keep the receipt identifying the transfer, or if no receipt identifying the transfer was obtained, the licensed dealer shall record particulars identifying the transfer.

(12) All transactions of scrap metal shall be cashless.

27. (1). All licensed dealers shall keep records of all disposals of any scrap metal in the course of business.

Records for the disposal of metal.

- (2) All disposals of scrap metal shall be made to licensed dealers.
- (3) The licensed dealers shall record the following information—
 - (a) the licence number of the person or business the scrap metal is disposed to;
 - (b) the description of the scrap metal, including its type or types if mixed, form, condition, weight and any marks identifying previous owners;
 - (c) the date and time of disposal;
 - (d) where the scrap metal is ferried in or on a vehicle, the registration details of the vehicle, name, national identification card number and mobile phone contacts of driver; and
 - (e) the consideration for the transaction.
- (4) Every entry required to be made shall be made at the time of the transaction.
- (5) The records specified under this rule shall be signed by the licensee and person or business purchasing the scrap metal.
- (6) The records specified under this rule shall be availed for inspection by an authorized person whenever required.
- (7) The licensee shall make quarterly returns to the Council, at least ten days after end of each quarter.
- (8) The licensee shall keep the record specified under this rule for a maximum of seven years.
- (9) Any licensee who fails to comply with this rule commits an offence and is liable on conviction to the penalty provided in section 18(3) Act.
- (10) The licensed dealers shall automate their record keeping systems for real time monitoring and submission of returns to the Council within one year from the date of publication of these Rules.

28. (1) The information referred to in rules 26 and 27 shall be recorded in a manner that allows the information and the scrap metal to which it relates to be readily identified by reference to each other.

Records
identification.

(2) The records in sub rule (1) shall be marked so as to identify the scrap metal to which they relate.

(3) The dealer shall keep the information and other records referred to in this rule for a period of three years from the day in which the metal is received or as the case may be, disposed of.

(4) If a licensed dealer fails to comply with this rule, each of the following commits an offence —

- (a) the scrap metal dealer;
- (b) if the metal is received at or dispatched from a site, the site manager;

(c) any person who pursuant to administrative arrangements made by the person set out in paragraphs (a) or (b) has responsibility for fulfilling the requirement.

(5) It is a defence for a person who is charged with an offence pursuant to sub rule (4) to prove that he or she —

(a) made arrangements to ensure that the requirement was fulfilled, and

(b) took all reasonable steps to ensure that the arrangements were complied with.

(6) A person who fails to comply with this rule commits an offence and is liable on conviction to the penalty set out in section 18(3) of the Act.

29. (1) Any licensed dealers found dealing with scrap metal from infrastructure designed for roads, bridges, railways, pipelines, telecommunications, electricity, water and sewerage, utilities or stolen private property, shall have their licence cancelled or revoked and prosecuted.

Infrastructure.

(2) In the event that a licensed dealer comes into possession, control, is offered, or is shown any property fitting the description of vandalized infrastructure, utilities or stolen private property, the licensee shall immediately report such incident to the nearest police station or inspector and supply the name; identity card number; mobile number and address of the person or business that acquired or saw such property or infrastructure.

(3) Any person or licensed dealer who contravenes this rule commits an offence and is liable on conviction to the penalty provided in section 24(2) of the Act.

30. Pursuant to section 29(3) and (5) of the Act, the Cabinet Secretary may by notice in the Gazette appoint public officers from the following entities to be inspectors for purposes of the Act —

Appointment of inspectors.

- (a) the National Police Service;
- (b) the Kenya Railways Corporation;
- (c) the Kenya Electricity Transmission Company Limited;
- (d) the Kenya National Highways Authority;
- (e) the Kenya Urban Roads Authority;
- (f) the Communications Authority of Kenya;
- (g) the Kenya Revenue Authority;
- (h) the National Government Administrative Office;
- (i) the Office of the Director of Public Prosecutions;
- (j) the National Environment Management Authority; and
- (k) the Kenya Power and Lighting Company.

31. Where the affairs of a body corporate are managed by members, the provisions of section 28 of the Act shall apply.

Offences by bodies corporate.

32. (1) An inspector may issue a closure notice where he or she is satisfied that the business premises where scrap metal business is being undertaken is not licensed.

Closure notice.

(2) The notice issued under sub rule (1) shall —

- (a) specify the reasons for issuing the notice; and
- (b) indicate that the inspector may apply to the court for a closure order.

(3) The inspector shall issue the closure order to —

- (a) the person who appears to the inspector to be the site manager of the premises, or
- (b) any person who appears to the inspector to be a director, manager or other senior officer of the business,

and upload the notice in the official website of the Council.

(4) Notwithstanding sub rule (3), the inspector may give the notice to any person who has an interest in the premises.

33. (1) The Council may cancel a closure notice issued by an inspector.

Cancellation of closure notice.

(2) A cancellation notice takes effect when it is given to any of the persons to whom the closure notice was given.

(3) The cancellation notice shall be issued to any other person to whom the closure notice was given and uploaded on the official website of the Council.

34. (1) Where a closure notice has been given under these Rules, an inspector may make an application to the court for a closure order.

Application for closure order.

(2) An application under this rule shall not be made —

- (a) less than seven days after the date on which the closure notice was given, or
- (b) more than six months after that date.

(3) An application under this rule shall not be made if the inspector or Council is satisfied that —

- (a) the premises are no longer being used by a licensed dealer to undertake scrap metal business; and
- (b) there is no reasonable likelihood that the premises will be used undertake scrap metal business in the future.

35. (1) The court may grant a closure order pursuant to the application under rule 34 where it is satisfied that —

Closure order.

- (a) the premises continue to be used by a scrap metal dealer in the course of business; or

- (b) there is a reasonable likelihood that the premises will be used to undertake scrap metal business in the future.

(2) A closure order may require—

- (a) that the premises be closed immediately to the public;
- (b) that the use of the premises for scrap metal business be discontinued immediately; and
- (c) that the defendant pays into court such sum as the court determines and that the sum shall not be released by the court until the other requirements of the order are met.

(3) A closure order may include such other conditions as the court considers appropriate relating to —

- (a) the admission of persons onto the premises;
- (b) the access by persons to another part of any building or other structure of which the premises form part.

(4) As soon as practicable after a closure order is made, the complainant shall fix a copy of the order in a conspicuous position in the premises.

36. (1) Any of the following persons may apply to the court for an order that a closure order be discharged —

Discharge of closure notice by court.

- (a) any person to whom the closure notice was given under these Rules; and
- (b) any person who has an interest in the premises but to whom the closure notice was not given.

(2) The court shall not make a discharge order unless it is satisfied that there is no longer a need for the closure order.

37. (1) An appeal may be made to the court against—

Appeal of closure order.

- (a) a closure order;
- (b) a decision not to make a closure order;
- (c) a discharge order; or
- (d) a decision not to make a discharge order.

(2) Any appeal under this rule shall be made within twenty one days from the date on the order or the date the decision was made.

(3) An appeal under this rule against a closure order or a decision not to make a discharge order may be made by —

- (a) any person to whom the relevant closure notice was given under rule 32; or
- (b) any person who has an interest in the premises but to whom the closure notice was not given.

38. (1) A person commits an offence if the person, without reasonable excuse —

Enforcement of closure order.

- (a) permits premises to be opened in contravention of a closure order; or
 - (b) otherwise fails to comply with or does an act in contravention of a closure order.
- (2) If a closure order has been made in respect of any premises, an inspector may —
- (a) enter the premises at any reasonable time; and
 - (b) having entered the premises, do anything reasonably necessary for the purpose of securing compliance with the order.
- (3) Sub-rule (4) applies if an inspector seeks to exercise powers under this rule in relation to any premises.
- (4) If the owner, occupier or other person in charge of the premises requires the inspector to produce—
- (a) evidence of the inspector's identity; or
 - (b) evidence of the inspector's authority to exercise those powers,
- the inspector shall produce that evidence.
- (5) A person who intentionally obstructs an inspector in the exercise of powers under this rule, commits an offence and liable on conviction to the penalty provided in section 30(6) of the Act.
39. (1) Every licensed dealer shall carry a certified copy of the licence of the dealer and the recipient of the scrap metal on any vehicle that is being used to transport any scrap metal.
- (2) Copies of the certified licences shall be provided when requested by an inspector.
- (3) Every vehicle transporting scrap metal shall have an authorization letter from the licensee indicating the —
- (a) source of the scrap metal and destination;
 - (b) type and quantity of scrap metal; and
 - (c) name, identification card number and contact details of the driver.
- (4) The details in sub-rule (3) shall be submitted online on the Council's portal.
- (5) Every licensed dealer shall comply with the prescribed hours of operation between half-past six o'clock in the morning and half-past six o'clock in the evening for the purposes of transporting scrap metal.
- (6) A scrap metal dealer who does not comply with this rule commits an offence and is liable on conviction to the penalty provided in section 31 of the Act.

Transportation of
scrap metal.

PART IV - MISCELLANEOUS

40. (1) Every licensed dealer shall be a member of a scrap metal dealers association.

Scrap metal dealers association.

(2) Each scrap metal dealers' association shall submit to the Council the membership list, database and returns annually.

(2) Each scrap metal dealers' association shall establish self-regulating mechanisms to prevent and regulate trade in scrap metal from vandalized public infrastructure, utilities and stolen private property.

(3) Each scrap metal dealers' association shall create awareness to all its members on the relevant laws on dealings in scrap metal.

41. The Council shall pursuant to section 6(1)(ii) and (v) of the Act, conduct public awareness campaigns —

Creation of awareness.

- (a) for all stakeholders including scrap metal dealers on matters of licensing, transportation, record keeping and prevention of vandalism and theft; and
- (b) government departments and the general public on the handling, reporting and prevention of vandalism and theft of public infrastructure utilities and private property.

SCHEDULE

(r. 8(1))

FEES PAYABLE BY SCRAP METAL DEALERS

S/NO	TYPE OF USER	AMOUNT OF SCRAP METAL IN KGS	AMOUNT OF FEES IN KSHS
1	(a) LICENSED DEALER, (b) MILLER (c) SMELTER	OVER 5,000	250,000
2	AGENT	5,000	150,000
3	(a) COLLECTOR, (b) JUA KALI,	3,000	50,000
4	(a) STEEL FABRICATOR, (b) MOTOR VEHICLE SALVAGE OPERATORS (c) STOCKISTS OF SECOND HAND METAL PARTS, ELECTRICAL REWINDERS, LOCAL WELDING MACHINE FABRICATORS	ANY AMOUNT	50,000

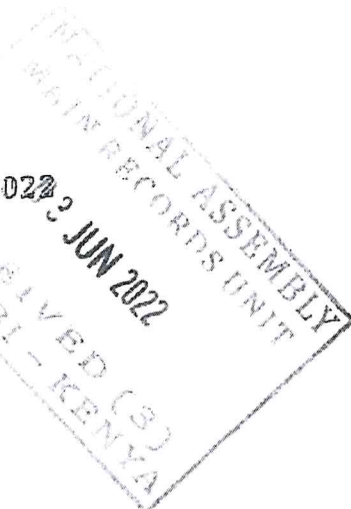
Made on the 22nd April, 2022.

BETTY C. MAINA,
Cabinet Secretary for Industrialization,
Trade and Enterprise development.



Our Ref: KAM/10/27/mm/dk/mb/jw/PW/2022 02nd June 2022

Hon. William Kamket Kassait, MP
The Chairperson
Committee on Delegated Legislation
Parliament of Kenya, Parliament Buildings
P.O Box 41842 - 00100
NAIROBI



Dear Hon. William Kamket Kassait, MP,

RE: NOTICE OF INTENTION TO SUBMIT KAM MEMORANDUM AND OBJECTION TO
THE APPROVAL OF THE DRAFT SCRAP METAL DEALERS' RULES, 2022

Kenya Association of Manufacturers (KAM) presents her compliments on behalf of its members and appreciates your continued support.

The Kenya Association of Manufacturers (KAM) is the leading business membership organization in East Africa that plays a key advocacy role on behalf of manufacturers in Kenya and in the region through its strong linkages with all sectors of the economy. KAM has over 1500 members and represents over 40 percent of Kenya's manufacturing value-add industries.

Reference is made to the draft Scrap Metal Dealers Rules, 2022 recently gazetted on the 20th of May 2022 vide Legal Notice 84 of 2022, and which has come to our attention is currently before the National Assembly. The said Rules propose significant amendments which will adversely impact the Metal and Allied manufacturing sector. We, therefore, request an extension of time to review the Rules with our affected membership to submit our memorandum on the same in line with Article 10 of the Constitution, 2010 which promotes public participation and the Statutory Instruments Act requirements.

The purpose of this letter is to, therefore:

1. Object to the approval of the Draft Scrap Metal Dealers Rules, 2022 on behalf of manufacturers in the Metal and Allied Sector before consideration of their feedback as key stakeholders in this matter and who will be adversely affected by the proposed Draft Rules. This is in line with Article 10 of the Constitution, 2010 which promotes public participation and the Statutory Instruments Act requirements.
2. Request for an extension of time to submit the KAM Memorandum on the draft Scrap Metal Dealers Rules, 2022 on behalf of manufacturers in the Metal and Allied Sector. We intend to submit it within fourteen (14) working days from the date of this letter to allow us sufficient time to gather and consolidate our members' views.
3. Additionally, we request an urgent physical meeting with the relevant Committee assigned to consider these Rules.

Advance feedback can be sent through info@kam.co.ke or call +254 20 2324817/8.

We look forward to your consideration.

Yours Sincerely,



Phyllis Wakiaga
CHIEF EXECUTIVE

CC.

Mr. Michael Sialai, CBS
The Clerk, National Assembly
Parliament of Kenya, Parliament B **igs**
P.O Box 41842 - 00100
NAIROBI

5/11/2022