

## **SPECIAL ISSUE**

*Kenya Gazette Supplement No. 233 (National Assembly Bills No. 73)*



REPUBLIC OF KENYA

# ***KENYA GAZETTE SUPPLEMENT***

**NATIONAL ASSEMBLY BILLS, 2023**

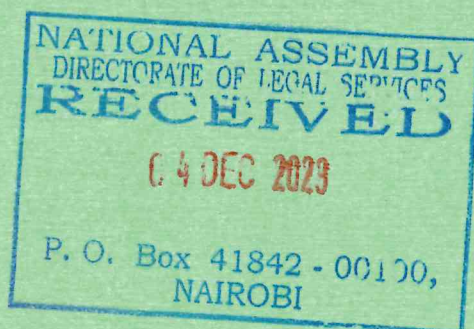
**NAIROBI, 24th November, 2023**

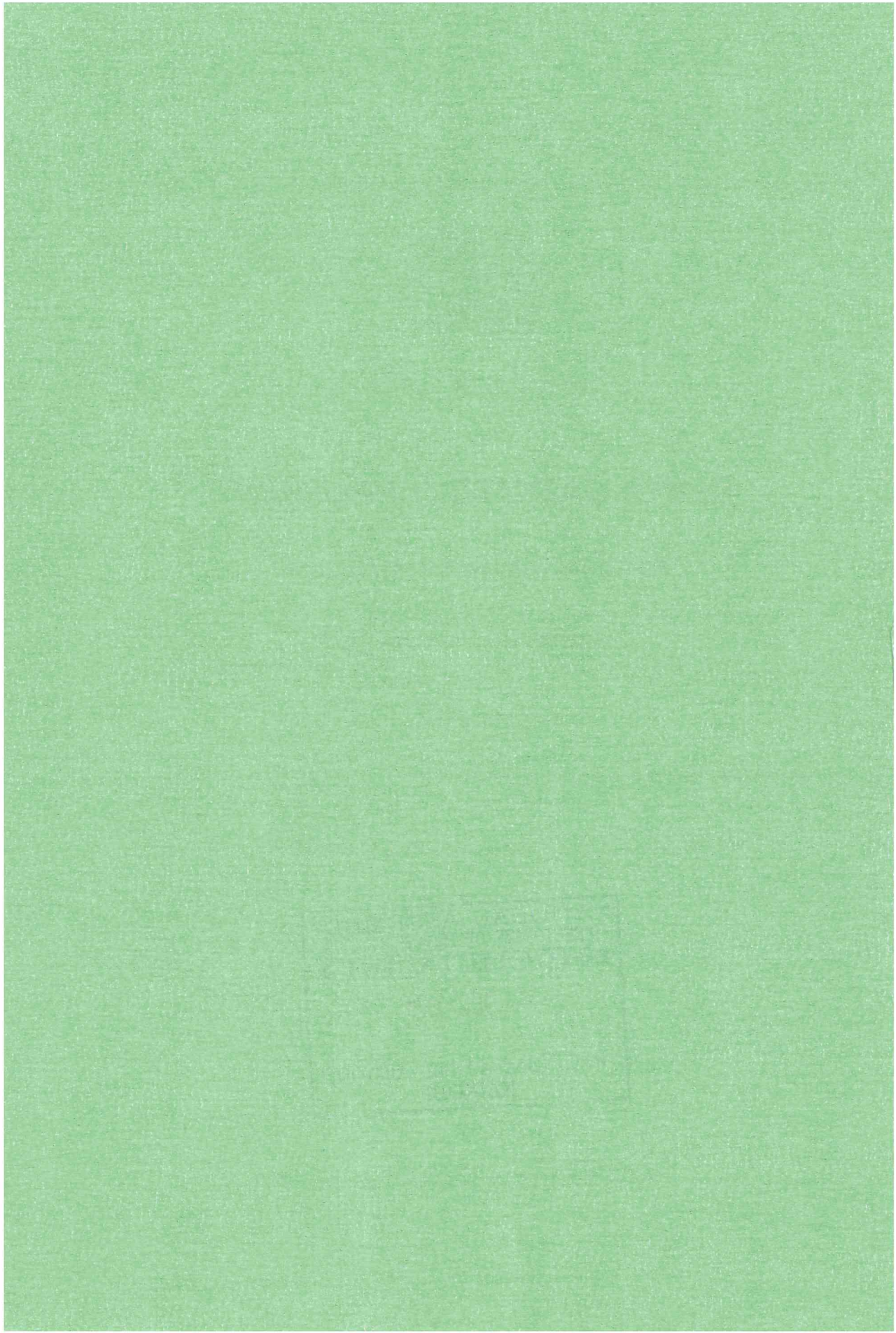
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**THE NATIONAL GOVERNMENT  
ADMINISTRATION LAWS (AMENDMENT) BILL,  
2023**

**A Bill for**

**AN ACT of Parliament to make various amendments to  
statute law on national government administration,  
and for connected purposes**

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

1. This Act may be cited as the National Government Administration Laws (Amendment) Act, 2023.

Short title.

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

Amendment of  
written laws.

**SCHEDULE**

<i>Written law</i>	<i>Provision</i>	<i>Amendment</i>
The Assumption of the Office of President Act, 2012 (No. 21 of 2012).	s. 5(2) New	Insert the following new paragraphs immediately after paragraph (c)—  (ca) the National Security Advisor; (cb) the Principal Secretary in the State Department responsible for matters relating to defence.
	s. 5(2)(r)	Delete and substitute therefor the following new paragraph: (r) six persons nominated by the President-elect.
The National Security Council Act, 2012 (No. 23 of 2012).	s. 2	Insert the following new definitions in their proper alphabetical sequence—

“Committee” means the National Security Council Committee established by section 5;

“National Security Advisor” means the National Security Advisor appointed under section 7.

s. 5

Delete and substitute therefor the following new section—

Committees of  
the Council.

5. (1) There is established a committee of the Council which shall be known as the National Security Council Committee.

(2) The Committee shall consist of—

- (a) the Head of the Public Service, who shall be the Chairperson;
- (b) the Chief of the Kenya Defence Forces;
- (c) the Director-General of the National Intelligence Service;
- (d) the Inspector-General of the National Police Service;
- (e) the Solicitor-General;
- (f) Principal Secretary in the

State Department responsible for matters relating to Defence;

(g) the Principal Secretary in the State Department responsible for matters relating to internal security;

(h) the Principal Secretary in the State Department responsible for matters relating to foreign affairs;

(i) the Principal Secretary to the National Treasury; and

(j) any other persons whose knowledge and skills are considered necessary for the functions of the Committee as authorized by the National Security Council.

(3) The Secretary of the National Security Council shall be the secretary to the Committee.

(4) The Committee shall—

- (a) recommend to the Council policies, programmes and activities in respect of the national security interests of Kenya in internal affairs, foreign relations and national defence;
- (b) oversee the implementation of the decisions of the Council;
- (c) be responsible for the day-to-day co-ordination of national security matters;
- (d) monitor and give advance warning on national security matters;
- (e) monitor and give advance warning on threats to Kenya's national interests;
- (f) commission or prepare reports and briefings in respect of the national security interests of Kenya; and
- (g) perform such other functions

as may be  
conferred on it  
by the Council.

(5) The Council may establish any other committees of the Council as it may consider necessary for the effective discharge of its functions under the Constitution, this Act or any other written law.

(6) The Council may co-opt into the committees established under subsection (1) other persons whose presence, participation, knowledge or skills are necessary for the proper performance of the functions of the Council.

(7) A person co-opted under subsection (6) may attend the meetings of the committee and participate in the deliberations but shall have no right to vote at the meeting.

s. 7

Delete and substitute therefor the following new section—

National  
Security  
Advisor.

7. (1) There is established the office of the National Security Advisor, which shall be an office in the public service.

(2) The President shall nominate the National Security Advisor on the recommendation of the Public Service Commission.

(3) The National Security Advisor shall be appointed by the President with the approval of the National Assembly.

(4) The National Security Advisor shall be the Secretary to the Council.

The Office of s. 28  
the Attorney-  
General Act,  
2012 (No. 49  
of 2012).

Delete

The National s. 2  
Government  
Co-ordination  
Act, 2013 (No.  
1 of 2013).

Insert the following new  
definitions in proper alphabetical  
sequence—

“Chief Administrative  
Secretary” means a Chief  
Administrative Secretary  
appointed under section 12A;

“Head of the Public Service”  
means the Head of the Public  
Service appointed under section  
8(4).

New

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

(ba) the Head of the Public  
Service.

New            Insert the following new paragraph immediately after paragraph (b)—

(ca) Chief Administrative Secretary.

s. 8            Delete the marginal note and substitute therefor the following new marginal note—

“The Executive Office of the President”

Add the following new subsections immediately after subsection (2)—

(3) There is established the office of the Head of Public Service.

(4) The Head of the Public Service shall support the President in facilitating the organisation and execution of Government business.

(5) The President shall appoint the Head of the Public Service.

(6) The Head of the Public Service shall serve at the President's pleasure.

(7) The Head of the Public Service shall—

(a) be the Chief of Staff to the President;

(b) be the administrative head of the Executive Office of the President;

(c) be the custodian of the Public Seal and any other instruments of State that are not in the custody of any other person; and

- (d) perform such other functions as may be assigned by the President.

New

Insert the following new section immediately after section 12—

Chief Administrative Secretaries. 12A. (1) There is established the office of the Chief Administrative Secretary which shall be an office in the public service.

(2) The complement of Chief Administrative Secretaries shall be as determined by the Public Service Commission.

(3) The President shall, on the recommendation of the Public Service Commission and approval of the National Assembly, appoint Chief Administrative Secretaries.

(4) A person shall be eligible to be appointed as a Chief Administrative Secretary if that person—

- (a) has a Bachelor's degree from a university recognized in Kenya;

(b) has knowledge of and experience in the public service; and

(c) satisfies the requirements of Chapter Six of the Constitution.

(5) A person is not qualified to be appointed as a Chief Administrative Secretary if that person—

(a) has been convicted of an offence carrying a penalty of imprisonment for a term of at least six months without the option of a fine;

(b) has been adjudged bankrupt by a court of competent jurisdiction;

(c) holds any office in a political party;

(d) is a member of any legislature;

(e) is a public officer;

(f) holds any State office; or

(g) has been removed from any public office by impeachment or conviction by a court of competent jurisdiction.

(6) A Chief Administrative Secretary shall be responsible for—

- (a) responding to issues relating to the portfolio assigned to the office;
- (b) liaising with Parliament;
- (c) liaising with County Governments on matters of concurrent mandate;
- (d) providing inter-ministerial and sectoral co-ordination;
- (e) representing the Cabinet Secretary at any meeting as directed by the Cabinet Secretary; and
- (f) performing any other duties assigned by the office by

Attorney-  
General or the  
relevant the  
Cabinet  
Secretary.

(7) Each Chief  
Administrative  
Secretary shall be  
responsible to the  
Attorney-General or the  
respective Cabinet  
Secretary in the  
performance of his or  
her duties.

(8) The office of  
Chief Administrative  
Secretary shall be a  
State office.

## **MEMORANDUM OF OBJECTS AND REASONS**

The National Government Administration Laws (Amendment) Bill, 2023, seeks to make various amendments to the Assumption of the Office of President Act, 2012; the National Security Council Act, 2012; the Office of the Attorney-General Act, 2012, and the National Government Co-ordination Act, 2013.

The Bill contains amendments to the following statutes—

### **The Assumption of Office of the President Act, 2012 (No. 21 of 2012)**

This Bill aims to amend the Assumption of the Office of President Act with the objective of strengthening the composition of the Assumption of the Office of the President Committee by incorporating the Secretary to the National Security Council and the principal secretary responsible for Defence as additional members of the Committee.

Additionally, the Bill also seeks to enhance the representation of the President-elect in the Committee by increasing the number of representatives of the President-elect from three to six.

### **The National Security Council Act, 2012 (No. 23 of 2012)**

The Bill proposes to amend the National Security Council Act, 2012, to provide for the appointment of the National Security Advisor, to designate the National Security Advisor as the Secretary to the National Security Council, to prescribe the functions of the National Security Advisor, to establish the National Security Council Committee, and to prescribe the functions of the National Security Council Committee.

### **The Office of the Attorney-General Act, 2012 (No. 49 of 2012)**

The Bill proposes to amend the Office of the Attorney-General Act, 2012, to remove the Attorney-General as the custodian of the public seal.

### **The National Government Co-ordination Act, 2013 (No. 1 of 2013)**

The Bill proposes to amend the National Government Co-ordination Act, 2013, to provide for the establishment and functions of the Head of the Public Service and offices of Chief Administrative Secretary.

### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill does not delegate legislative powers, and does not limit fundamental rights and freedoms.

**Statement on whether the Bill concerns county governments**

The Bill does not affect the functions and powers of county governments, and is not a Bill concerning counties for purposes of the Standing Orders.

**Statement on the financial implications of the Bill**

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 24th November, 2023.

**KIMANI ICHUNG'WAH,**  
*Leader of the Majority Party.*

*Section 5 of No. 21 of 2012 which it is proposed to amend—*

**5.** (1) There is established a committee to be known as the Assumption of the Office of President Committee.

Establishment of the Assumption of the Office of President Committee.

(2) The Committee shall be an ad hoc committee and shall consist of—

- (a) the Secretary to the Cabinet who shall be the chairperson;
- (b) the Attorney-General;
- (c) the Cabinet Secretary of the Ministry responsible for matters relating to the registration of persons and immigration;
- (d) the Principal Secretary in the Ministry responsible for matters relating to internal security;
- (e) the Principal Secretary in the Ministry responsible for matters relating to finance;
- (f) the Principal Secretary in the Ministry responsible for matters relating to foreign affairs;
- (g) the Principal Secretary in the Ministry responsible for matters relating to information and communication;
- (h) the Principal Secretary in the Ministry for the time being responsible for matters relating to constitutional affairs;
- (i) the Principal Secretary in the Ministry responsible for matters relating to the Cabinet Office;
- (j) the Principal Secretary in the Ministry responsible for matters relating to local government;
- (k) the Principal Secretary in the Ministry responsible for matters relating to culture and social services;
- (l) the Chief of the Kenya Defence Forces;
- (m) the Director-General of the National Intelligence Service;
- (n) the Inspector-General of the National Police Service;

- (o) the person in charge of the administration of the affairs of State House;
- (p) the Clerk of the National Assembly;
- (q) the Chief Registrar of the Judiciary;
- (r) three persons nominated by the President-elect;
- (s) the Clerk of the Senate; and
- (t) the Secretary to the Intergovernmental Relations Secretariat, appointed under the law relating to intergovernmental relations.

(3) For the purposes of the assumption of office of the President elected during the first general elections under the Constitution, the members of the Committee referred to under paragraphs (s) and (t) shall not constitute the membership of the Committee.

(4) The chairperson of the Committee shall convene the first meeting of the Committee upon the commencement of this Act.

(5) The Principal Secretary in the Ministry responsible for matters relating to the Cabinet Office shall be the secretary to the Committee.

(6) A vacancy in the membership of the Committee shall not affect the decisions of the Committee.

(7) The quorum for the conduct of the business at a meeting of the Committee shall be two thirds of all the members of the Committee.

*Section 2 of No. 23 of 2012 which it is proposed to amend—*

2. In this Act, unless the context otherwise requires — Interpretation.

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to internal security;

"classified information" has the meaning assigned to it under section 14 (2);

"Council" means the National Security Council established by Article 240 (1) of the Constitution;

"national security" has the meaning assigned to it under Article 238(1) of the Constitution;

"national security organs" means the Kenya Defence Forces, the National Intelligence Service and the National Police Service established by Articles 241, 242. and 243 of the Constitution respectively;

"public officer" has the meaning assigned to it under Article 260 of the Constitution;

"Republic" has the meaning assigned to it under Article 260 of the Constitution;

"Secretariat" means the Joint Security Secretariat established under section 9;

"secretary" means the secretary to the Council appointed by the Council under Article 240(5) of the Constitution and in accordance with section 7;

"State officer" has the meaning assigned to it under Article 260 of the Constitution.

*Section 5 of No. 23 of 2012 which it is proposed to amend—*

5. (1) The Council may, from time to time, establish such committees of the Council as it may consider necessary for the effective discharge of its functions under the Constitution, this Act or any other written law.

Committees of the Council.

(2) The Council may co-opt into the committees established under subsection (1) other persons whose presence, participation, knowledge or skills are necessary for the proper performance of the functions of the Council.

(3) A person co-opted under subsection (2) may attend the meetings of the committee and participate in the deliberations but shall have no right to vote at the meeting.

*Section 7 of No. 23 of 2012 which it is proposed to amend—*

7. Until the Council appoints its secretary, the Secretary to the Cabinet shall be the secretary to the Council.

Secretary to the Council.

*Section 28 of No. 49 of 2012 which it is proposed to delete—*

28. The Attorney-General shall have custody of the public seal of the Republic of Kenya.

The public seal.

*Section 2 of No. 1 of 2013 which it is proposed to amend—*

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

Interpretation.

"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to the co-ordination of national government functions;

"county" means any one of the counties into which the territory of Kenya is divided as specified in the First Schedule to the Constitution;

"national government administrative officer" means an officer recruited and appointed as such under section 15;

"national government function" means a function assigned by the Constitution, this Act or any other law to the executive arm of government;

"Principal Secretary" means a Principal Secretary appointed under Article 155 of the Constitution.

(2) Despite subsection (1), until after the first general elections under the Constitution, references in this Act to the expression "Cabinet Secretary" shall be construed to mean "Minister".

*Section 8 of No. 1 of 2013 which it is proposed to amend—*

8. (1) Pursuant to Article 132(3)(b) of the Constitution, the President shall be responsible for the co-ordination of functions of Ministries, State and government departments.

The Office of the President.

(2) For purposes of co-ordination of national government functions under the Constitution, this Act or any other written law, the Office of the President shall have such number of National Government Administrative Officers as shall be necessary for the effective and efficient co-ordination of national government functions.

