

THE PETROLEUM (AMENDMENT) BILL, 2025

A Bill for

AN ACT of Parliament to amend the Petroleum Act, Cap. 308; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

Short title

1. This Act may be cited as the Petroleum (Amendment) Bill, 2025.

Amendment of
long title of
Cap. 308.

2. The long title of the Petroleum Act, (hereinafter referred to as the “principal Act”), is amended—

(a) by deleting the word “upstream” appearing immediately after the words “apply to”; and

(b) by inserting the word “upstream” immediately after the words “regulation of”.

Amendment of
section 2 of
Cap. 308.

3. Section 2 of the principal Act is amended—

(a) by inserting the following new definitions in proper alphabetical sequence—

“access to land” means the temporary occupation or acquisition of rights other than full property rights such as rights of way or certain usufructuary rights;

“common user facility operator” means the person responsible for managing the day to day operations of a common user facility;

“feedstocks” means the raw organic materials used as inputs in the production of biofuels;

“national oil company” means the National Oil Corporation of Kenya Ltd;

“petroleum operations” means upstream petroleum operations, midstream petroleum

operations and downstream petroleum operations;

“signature bonus” means a single, non-recoverable lump sum payment by the contractor to the National Government upon execution of the petroleum agreement; and

“upstream petroleum data” means all qualitative or quantitative data, associated information, documents, reports and images including—

- (a) raw data;
- (b) edited or composite data;
- (c) analyzed, interpreted or processed data;
- (d) reprocessed data; and
- (e) samples,

whether in physical, digital or other format, obtained through upstream petroleum operations;

- (b) by deleting the definition of “Authority” and substituting therefor the following new definition—

“Authority” means the Authority established under section 9 of the Energy Act;

Cap. 314.

- (c) in the definition of “best petroleum industry practices”—
 - (i) by inserting the words “midstream and downstream” immediately after the words “engaged in upstream”;

(ii) in paragraph (c), by inserting the words “midstream and downstream” immediately after the words “Impact of upstream”; and

(iii) by inserting the following paragraph immediately after paragraph (c)—

“(d) transport and store petroleum by maximizing efficiency in a technically and economically sustainable manner.”

(d) in the definition of “decommissioning”—

(i) by deleting the words “of wells, flowlines, pipelines, facilities, infrastructure and assets” and substituting therefor the words “re-purposing of facilities; and

(ii) by inserting the words “midstream and downstream” immediately after the words “related to upstream”.

(e) by deleting the definition of “facility” and substituting therefor the following new definition—

“facility” includes—

(a) any structure, device, roads, technology or other associated installations or infrastructure including wells, processing plants, pipelines, tanks, refineries, jetties, rail stations, pump stations, compressor stations and equipment constructed, placed or used to carry out upstream, midstream or downstream petroleum operations; and

(b) any vessel, vehicle or craft used in upstream, midstream or downstream petroleum operations.

(c) in the definition of “licence”—

- (i) by inserting the word “processing” immediately after the word “exportation”; and
- (ii) by inserting the words “handling, transportation” immediately after the word “storage”;
- (d) in the definition of “licencing authority” by deleting the words “or body, including the Authority”;
- (e) in the definition of “permit” by deleting the words “activity in the upstream”;
- (f) in the definition of “petroleum” by inserting the words “and refined petroleum products” immediately after the word “reserves”;
- (g) in the definition of “petroleum agreement” by deleting the word “license”;
- (h) by deleting the definition of “refined petroleum products” and substituting therefor the following new definition—

“refined petroleum products” means the range of finished fuels and other outputs derived from the processing of crude oil and other feedstocks in refineries and includes fuels such as petrol, diesel, kerosene, jet fuel, liquefied petroleum gas, heavy fuel oils, lubricants, biofuels and blended fuels intended for use in transportation, power generation, industrial and domestic processes;
- (i) in the definition of “refinery” by inserting the words “oil and other feedstocks” immediately after the word “crude”;
- (j) in the definition of “tariff” by deleting the word “upstream”;

- (k) in the definition of “Tribunal” by deleting the expression “2006”; and
- (l) in the definition of “vandalise” by deleting the words “upstream petroleum”.

Amendment of
section 5 of
Cap. 308.

4. Section 5 of the principal Act is amended by deleting subsection (2).

Amendment of
section 6 of
Cap. 308.

- 5.** Section 6 of the principal Act is amended—
- (a) in subsection (1), by deleting the words “to guide the implementation of the national petroleum policy; and
 - (b) by deleting subsection (2).

Repeal of
section 7 of
Cap. 308.

7. The principal Act is amended by deleting section

Amendment of
Repeal of
section 10 of
Cap. 308.

- 7.** Section 10 of the principal Act is amended—
- (a) in subsection (1)(a)—
 - (i) by deleting the words “license or permit” and substituting therefor the words “petroleum agreement”; and
 - (ii) deleting the words “petroleum agreement” and substituting therefor the word “block”;
 - (b) in subsection (1)(d), by deleting the word “upstream”;
 - (c) in subsection (1)(e)—
 - (i) by deleting the word “exploration”; and

(ii) by deleting the words “by a contractor”; and

(d) in subsection (1)(j), by deleting the word “upstream”.

Amendment to
section 12 of
Cap. 308.

8. Section 12 of the principal Act is amended—

(a) in subsection (2)(c), by inserting the word “Officer” immediately after the word “Executive”; and

(b) in subsection (2)(h), by deleting paragraph (h) and substituting therefor the following new paragraph—

(h) the Director-General of the Authority who shall be the Secretary; and

(c) by deleting subsection (3).

Amendment of
section 15 of
Cap. 308.

9. Section 15 of the principal Act is amended in subsection (1) by deleting the word “numbered” and substituting therefor the word “named”.

Amendment of
section 28 of
Cap. 308.

10. Section 28 of the principal Act is amended—

(a) by deleting the marginal note and substituting therefor the following new marginal note—

Plugging and abandonment.; and

(b) by deleting subsection (1) and substituting therefor the following new subsection—

(1) Plugging and abandonment of any well by a contractor shall be conducted in accordance with best petroleum industry practices and any other relevant law.

Amendment of
section 29 of
Cap. 308.

11. Section 29 of the principal Act is amended in subsection (3) by deleting the words “geological and geophysical” and substituting therefor the words “upstream petroleum”.

Amendment of
section 30 of
Cap. 308.

12. Section 30 of the Principal Act is amended—

- (a) by deleting the marginal note and substituting therefor the following new marginal note—

Field development plan.

- (b) in subsection (3), by inserting the words “this Act, the Regulations and” immediately after the word “accordance with”;

- (c) by deleting subsection (4) and substituting therefor the following new subsection—

(4) Within one hundred and eighty days of submission of the development plan by the contractor, the Authority shall review the plan and make a recommendation to the Cabinet Secretary to approve or reject the plan.

- (d) by inserting the following new subsection immediately after subsection (4)—

(5) Subject to sub-section (4), the contractor may incorporate any suggestions or modifications raised by the Authority, provided that such suggestions or modifications considered by the contractor shall not be submitted any later than sixty days prior to the date the Authority is required to make the recommendation under sub-section (4).

Amendment of
section 32 of
Cap. 308.

13. Section 32 of the principal Act is amended—

- (a) by deleting paragraph (c); and

- (b) in paragraph (e), by deleting the words “geological geochemical engineering” and substituting therefor the words “upstream petroleum”.

Amendment of
section 33 of
Cap. 308.

14. Section 33 of the principal Act is amended—

(a) in the marginal note, by deleting the words “Variations or alterations in” and substituting therefor the words “Variation of a”;

(b) by deleting subsection (1) and substituting therefor the following new subsection—

(1) A contractor shall not vary, modify or alter a ratified field development plan except as provided for in this section.

(c) by deleting subsection (2) and substituting therefor the following new subsection—

(2) A contractor may submit a variation of a ratified field development plan to the Cabinet Secretary and the Authority which shall include the information specified under section 30(2) with the relevant modifications.

(d) by inserting the following new subsections immediately after subsection (2)—

(2A) Within thirty days of submission of an application for variation of a ratified field development plan, the Cabinet Secretary shall, on the recommendation of the Authority, determine whether such variation is significant.

(2B) Where the Cabinet Secretary determines that the variation submitted under sub-section (2) is not significant, the Authority shall review the variation within sixty days and make a recommendation to the Cabinet Secretary for the final decision within thirty days of issuance of the recommendation by the Authority.

(2C) Where the Cabinet Secretary determines that the variation submitted under sub-section (2) is significant, such variation shall be reviewed as

if it was a new field development plan submitted under section 30, and such review shall commence on the date the determination by the Cabinet Secretary shall be made.

(2D) A variation shall be considered significant if—

- (a) a contractor proposes changes in the development strategy or management strategy of the field;
- (b) a contractor proposes changes to the number, inclusion or exclusion of fields;
- (c) a contractor ceases production permanently or for the long term, before the date proposed in the field development plan;
- (d) a contractor proposes a change or a new method for the petroleum recovery, such as enhanced recovery and injection of fluids, where such change would result or results in a significant increase in cost;
- (e) a contractor proposes to make any change that requires a revision of the technical configuration and design, design of facilities and economic aspects of the project which would result in a ten percent increase in cost; and
- (f) any other proposed change that the Cabinet Secretary, on the advice of the Authority, shall considers significant.

Amendment of
section 36 of
Cap. 308.

15. Section 36 of the principal Act is amended—

- (a) in subsection (2), by deleting the words “or other resource;

- (b) by deleting subsection (4) and substituting therefor the following new subsection—

(4) Where the Authority requires contractors to develop or produce petroleum under a unitization agreement, the contractors shall prepare a joint development and production plan and submit the plan to the Authority for review.

- (c) in subsection (6), by deleting the words “consultant provided for in subsection (5)” and substituting therefor the word “person”;

- (d) by deleting subsection (8) and substituting therefor the following new subsection—

(8) Where the adjacent area contemplated in subsection (1) is not subject to a petroleum agreement, the Authority may recommend to the Cabinet Secretary for the licensing of the adjacent area in accordance with this Act.

- (e) by inserting the following new subsection immediately after subsection (8)—

(9) Where the adjacent area contemplated in subsection (1) is not a block or does not form part of a block, the Authority may recommend to the Cabinet Secretary for a review of the terms of the petroleum agreement to include such adjacent area.

Amendment of
section 37 of
Cap. 308.

16. Section 37 of the principal Act is amended in subsection (3)—

- (a) by inserting the words “by the owner of the infrastructure” immediately after the word “submitted”; and

- (b) by deleting the words “by the owner of the infrastructure” appearing immediately after the word “approval”.

Amendment of
section 40 of
Cap. 308.

17. Section 40 of the principal Act is amended—

- (a) in the opening statement by deleting the words “in any of the following situations whichever is earlier” and substituting therefor the following words “that petroleum production commences”;
- (b) in subsection (5), by deleting the word “operating” and substituting therefor the word “decommissioning”;
- (c) in subsection (8)—
 - (i) by inserting the words “Subject to section (8) immediately before the words “where any amount”;
 - (ii) by deleting the words “distributed pro rata between the contractor and” and substituting therefor the words “surrendered to”;
 - (iii) by inserting the words “whether or not” immediately after the words “National Government”;
 - (iv) by deleting the word “where” and substituting therefor the words “the National Government has participating interest”; and

- (d) by inserting the following new subsection immediately after subsection (7)—

(8) Where a contractor has not fully recovered the amounts contributed to the decommissioning fund through cost recovery mechanisms under the petroleum agreement, the contractor shall, upon completion of decommissioning and subject to verification by the Authority, be entitled to receive

a proportionate share of any remaining funds in the decommissioning fund.

Amendment of
section 55 of
Cap. 308.

18. Section 55 of the principal Act is amended—

(a) in subsection (1), by deleting the words “Prior to the award” and substituting therefor the words “On execution”; and

(b) by deleting subsection (2).

Amendment of
section 63 of
Cap. 308.

19. Section 63 of the principal Act is amended in subsection (1) by inserting the words “or licence” immediately after the word “permit”.

Amendment of
section 64 of
Cap. 308.

20. Section 64 of the principal Act is amended by deleting the word “upstream”.

Amendment of
section 65 of
Cap. 308.

21. Section 65 of the principal Act is amended by deleting the word “upstream”.

Amendment of
section 66 of
Cap. 308.

22. Section 66 of the principal Act is amended by inserting the words “licensee or permit holder” immediately after the word “contractor”.

Amendment of
section 67 of
Cap. 308.

23. Section 67 of the principal Act is amended—

(a) in subsection (1), by inserting the words “licensee or permit holder” immediately after the word “contractor”; and

(b) in subsection (2), by inserting the words “licensee or permit holder” immediately after the word “contractor”.

Amendment of
section 68 of
Cap. 308.

24. Section 68 of the principal Act is amended—

(a) in subsection (1), by inserting the words “licensee or permit holder” immediately after the word “contractor”;

(b) in subsection (2), by inserting the words “licensee or permit holder” immediately after the word “contractor”;

(c) in subsection (3)—

(i) in the opening statement, by inserting the words “licensee or permit holder” immediately after the word “contractor”; and

(ii) in paragraph (a), by deleting the word “upstream” and

(d) in subsection (4), by inserting the words “licensee or permit holder” immediately after the word “contractor”.

Amendment of
section 74 of
Cap. 308.

25. Section 74 of the principal Act is amended—

(a) by deleting the marginal note and substituting therefor the following new marginal note—

Requirement for licence and certificate for petroleum business.

(b) in subsection (1)(a)—

(i) by inserting the word “processing” immediately after the word “refining”; and

(ii) by deleting the words “crude or products”,

(c) in subsection (1)(b), by inserting the words “refined petroleum products” immediately after the word “sell”;

(d) in subsection (1)(c)—

(i) by inserting the words “vessel, wagon or craft” immediately after the word “vehicle”;

- (ii) by inserting the words “refined petroleum products” immediately after the word “transporting”; and
- (iii) by deleting the word “petroleum” appearing immediately after the word “valid”;
- (e) in subsection (1)(d), by deleting paragraph (d) and substituting therefor the following new paragraph—
 - (d) drive or operate a vehicle, vessel, wagon or craft, for the purpose of transporting petroleum in bulk shall have a valid certificate for that purpose issued by the Authority; and
- (f) by inserting the following new paragraph immediately after paragraph (d)—
 - (e) engage a driver or operator, for the purpose of transporting petroleum in bulk shall ensure that such driver or operator has a valid certificate for that purpose issued by the Authority.
- (g) by inserting the following new subsection immediately after subsection (3)—
 - (4) A person who wishes to design, install, maintain, repair or decommission a petroleum system shall obtain a valid certificate from the Authority.

Amendment of
section 77 of
Cap. 308.

26. Section 77 of the principal Act is amended in subsection (3) by deleting the words “before the expiry of the licence, permit or certificate” and substituting therefor the words “has been made in accordance with subsection (1).”

Amendment of
section 78 of
Cap. 308.

27. Section 78 of the principal Act is amended in subsection (6) by deleting the words “Cabinet Secretary” and substituting therefor the words “Authority”.

Amendment of
section 79 of
Cap. 308.

28. Section 79 of the principal Act is amended by inserting the words “in accordance with any other written law and” immediately after the word “policy”.

Amendment of
section 80 of
Cap. 308.

29. Section 80 of the principal Act is amended—

(a) in subsection (1)—

(i) by inserting the words “conspicuously” immediately after the words “to be”; and

(ii) by inserting the word “within” immediately after the word “displayed”.

(b) by inserting the following new subsection immediately after subsection (1)—

(1A) The number of a construction permit shall be prominently displayed on the site information board and the number of a license for a petroleum facility shall be conspicuously displayed at the gate of the facility.

Amendment of
section 83 of
Cap. 308.

30. Section 83 of the principal Act is amended—

(a) by inserting the following new subsections immediately after subsection 2—

(2A) In the case of transfer of a licence for a petroleum retail station, storage facility, pipeline or a jetty the transferor and transferee shall jointly carry out a comprehensive environmental assessment audit of the facility and the final report shall form part of the documents submitted to the licensing authority for approval.

(2B) Where there is an adverse environmental impact, the two parties shall agree and commit to who will carry out the restoration and within the period approved by the licensing authority.

- (b) by inserting the following new subsections immediately after subsection (5)—

(6) This section shall apply to midstream and downstream petroleum.

(7) In this section—

- (a) “transfer of licence” includes the acquisition of a controlling interest directly or indirectly in the licence holder; and
- (b) “controlling interest” means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that person, whether through the ownership of shares, voting, securities, partnerships or other ownership interests, agreements or otherwise.

Amendment of
section 85 of
Cap. 308.

31. Section 85 of the principal Act is amended—

- (a) deleting the article “the” appearing immediately before the word “action” and substituting therefor the article “an”; and
- (b) by deleting the article “the” appearing immediately before the word “licensing” and substituting therefor the letter “a”.

Amendment of
section 86 of
Cap. 308.

32. Section 86 of the principal Act is amended in subsection 2(c) by inserting the words “in the relevant discipline” immediately after the word “engineer”.

Insertion of
new section
91A of Cap.
308.

33. The principal Act is amended by inserting the following new section immediately after section 91—

Petroleum
installation
works.

91A. (1) It shall be the duty of any person planning, building, operating or maintaining a petroleum or gas pipeline transportation or distribution system to ensure that such works are carried out by

persons duly certified by the Authority for such purposes.

(2) It shall be the duty of the owner or occupier of any premises to ensure, in accordance with regulations issued under this Act, that the petroleum installation in the subject premises is—

- (a) carried out only by a duly authorized person and appropriate certificates detailing particulars of the installation submitted to the person undertaking the work before the commencement of the works; and
- (b) tested and inspected periodically, any defects being remedied, and maintain appropriate certificates detailing particulars of the installation.

(3) Where the petroleum installation does not meet the conditions set out in subsection (2), the owner or occupier of the facility shall decline to put into service the installation until such time as the defects are remedied.

(4) A person who carries out any petroleum installation work while not duly authorised by the Authority commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment.

(5) An owner or occupier who wilfully permits a person who is not duly authorised by the Authority to carry out petroleum installation work in his premises commits an offence and shall on conviction, be liable to a fine not exceeding one million shillings

or to a term of imprisonment not exceeding three months or to both such fine and imprisonment.

Amendment of
section 92 of
Cap. 308.

34. Section 92 of the principal Act is amended—

- (a) in subsection (1), by inserting the words “imports or” immediately after the words “A person who”;
- (b) by inserting the following new subsection immediately after subsection (1)—

(2) Petroleum equipment, facilities and installations for midstream and downstream shall conform to the relevant Kenya Standard: Provided that where no such standard exists, the relevant international standards approved by the Kenya Bureau of Standards shall apply.

Amendment of
section 94 of
Cap. 308.

35. Section 94 of the principal Act is amended—

- (a) by inserting the following new subsection immediately after subsection (1)—

(1A) A person licensed to operate a common user facility shall, prior to charging or revising any set of charges upwards, apply to the Authority for approval in the form and manner specified in the regulations made under this Act.

- (b) in subsection (2), by deleting the word “logistic”.

Amendment of
section 96 of
Cap. 308.

36. Section 96 of the principal Act is amended—

- (a) by deleting the marginal note and substituting therefor the following new marginal note—

Security of supply.

- (b) by renumbering the existing provision as subsection (1); and

- (c) by inserting the following subsection immediately after subsection (1)—

(2) In the case of a public emergency, the Cabinet Secretary may, with the approval of the Cabinet direct a licensee to—

- (a) supply or deliver petroleum in such manner or at such place as he may direct; and
- (b) avail a facility for storage and dispensing of products during the emergency period.

Amendment of
section 98 of
Cap. 308.

37. Section 98 of the principal Act is amended by inserting the following new subsection immediately after subsection (1)—

(1A) A person licensed to operate a petroleum tanker shall ensure petroleum tankers are parked in designated petroleum tanker parking yards.

Amendment of
section 99 of
Cap. 308.

38. Section 99 of the principal Act is amended in subsection (1)—

- (a) by inserting the following new paragraph immediately after paragraph (q)—
 - (r) wilfully or maliciously misinforms a common user facility operator on petroleum operations with criminal intent or driven by gain,
- (b) in subparagraph (ii)—
 - (i) by deleting the word “and” appearing after the expression “(0)”; and
 - (ii) by inserting the expression “and (r)” immediately after the expression “(q)”.

Amendment of
section 100 of
Cap. 308.

39. Section 100 of the principal Act is amended by inserting the following new subsection immediately after subsection (2)—

(2A) The owner or master of any barge shall not divert export designated petroleum within the Kenyan Exclusive Economic Zone and Kenyan Territory or discharging petroleum to an onshore facility without approval of the Authority and the Kenya Revenue Authority.

Amendment of
section 101 of
Cap. 308.

40. Section 101 of the principal Act is amended—

(a) in the marginal note, by inserting the words “midstream and” immediately after the word “for”;

(b) by inserting the following new paragraph immediately after paragraph (o)—

(oa) governing the design and construction of facilities and barges for petroleum refuelling of marine vessels in inland or coastal waters;

(c) in paragraph (p), by inserting the words “vessel, wagon and craft” immediately after the word “vehicle”;

(d) in paragraph (aa), by inserting the words “and operators for vessels, wagons and crafts” immediately after the word “drivers”; and

(e) by inserting the following new paragraph immediately after paragraph (cc)—

(cca) providing for importation of petroleum products by the national oil company through a quota allocation.

Amendment of
section 106 of
Cap. 308.

41. Section 106 of the principal Act is amended by deleting the word “Commission” wherever it appears and substituting therefor the following word “Authority”.

Amendment of section 107 of Cap. 308.	42. Section 107 of the principal Act is amended in the marginal note by deleting the word “Energy”.
Amendment of section 108 of Cap. 308.	43. Section 108 of the principal Act is amended in subsection (2)(a) by deleting the word “exploratory”.
Amendment of section 110 of Cap. 308.	44. Section 110 of the principal Act is amended in the marginal note by deleting the word “proposal” and substituting therefor the word “compensation”.
Amendment of section 113 of Cap. 308.	45. Section 113 of the principal Act is amended— (a) in the marginal note, by deleting the word “upstream”; and (b) in subsection (1), by deleting the words “or licence”.
Amendment of section 115 of Cap. 308.	46. Section 115 of the principal Act is amended in subsection (6) by deleting the word “contract” and substituting therefor the word “contractor”.
Amendment of section 121 of Cap. 308.	47. Section 121 of the principal Act is amended in subsection (1) by deleting paragraph (e) and substituting therefor the following new paragraph— (e) maliciously misinforms the public on matters of upstream petroleum with intent to unfair financial gain or cause economic sabotage.
Amendment of section 124 of Cap. 308.	48. Section 124 of the principal Act is amended by inserting the words “or Regulations” immediately after the word “Act”.
Insertion of new section 124A.	49. The principal Act is amended by inserting the following new section immediately after section 124— default penalties. 124A. Notwithstanding the application of any offence and penalty created under this Act or regulations

against a person who is in default or in contravention, and where such person continues to be in default or in contravention in respect of that default or contravention, the person shall be liable to a further fine of not more than ten million Kenya shillings for each day the person continues to be in default or contravention.

Amendment of
section 126 of
Cap. 308.

50. Section 126 of the principal Act is amended in subsection (2) by inserting the words “or any other”.

Amendment of
section 127 of
Cap. 308.

51. Section 127 of the principal Act is amended—

(a) in paragraph (ii)—

(i) by deleting the words “to the Authority”; and

(ii) by inserting the words “to the Authority and the Cabinet Secretary”; and

(b) in paragraph (II), by deleting the word “and” appearing at the end of the paragraph.

Amendment of
section 128 of
Cap. 308.

52. Section 128 of the principal Act is amended—

(a) by deleting subsection (3); and

(b) by deleting subsection (4).

Amendment of
the Schedule of
Cap. 308.

53. The Schedule of the principal Act is amended—

(a) in paragraph 2, in the definition of “commercial discovery”, by deleting the expression “0” and substituting therefor the expression “28”;

(b) in paragraph 3(6)—

(i) by deleting the word “of” appearing immediately after the words “from the date”;

- (ii) by deleting the words “adopted under subclause 29(4) hereof” and substituting therefor the word “ratified”.
- (c) in paragraph 21(1)—
 - (i) by deleting the expression “79” wherever it appears and substituting therefor the expression “52”;
 - (ii) by deleting the word “Government” and substituting therefor the expression “52”;
- (d) in paragraph 21(3), by deleting the words “Energy Petroleum Policy” and substituting therefor the words “National Petroleum Policy”.
- (e) in paragraph 23(1)—
 - (i) by deleting the words “Energy and Petroleum Policy” and substituting therefor the words “National Petroleum Policy”; and
 - (ii) by inserting the words “through mentoring and training” immediately after the words “technology and skills”
- (f) in paragraph 24(1), by deleting the words “Energy and Petroleum Policy” and substituting therefor the words “National Petroleum Policy”;
- (g) in paragraph 26(1), by deleting the expression “108” and substituting therefor the expression “116”;
- (h) in paragraph 26(1), by deleting the expression “55” and substituting therefor the expression “27”;
- (i) in paragraph 29, by deleting subparagraph (5);

(j) in paragraph 29(6)—

(i) by deleting the word “adoption” and substituting therefor the word “review”; and

(ii) by inserting the words “or rejection” immediately after the words “and approval”

(k) in paragraph 29(7), by deleting the expression “58” and substituting therefor the expression “31”;

(l) in paragraph 29, by inserting the following new subparagraph immediately after subparagraph (10)—

(11) Where the development plan has been rejected in accordance with sub-clause (6) above, the decision shall be final and not subject to appeal.

(m) in paragraph 30, by deleting the expression “63” and substituting therefor the expression “36”;

(n) in paragraph 36(2), by deleting subparagraph (h) and substituting therefor the following new subparagraph—

(h) The cost recovery of petroleum and Uplift shall be recovered in the following priority order—

1. Production costs
2. Development Costs
3. Uplift
4. Exploration Costs
5. Decommissioning Costs;

(o) in paragraph 41(1), by deleting the words “either directly” or” and substituting therefor the words “on its own”;

(p) in paragraph 43—

(i) by deleting subparagraph (3) and substituting therefor the following new subparagraph—

(3) The Government shall audit the books and accounts of the contractor in accordance with relevant laws and regulations.

(ii) by deleting subparagraph (4);

(q) by inserting the following new paragraph immediately after paragraph 53—

53A. Notices

(r) in paragraph 53A, by deleting subparagraph (1) and substituting therefor the following new paragraph—

(1) To be addressed to the registered address of the Ministry responsible for Petroleum.

(s) in Appendix “B”—

(i) in the definition of “joint property” by inserting the words “jointly by parties to a Petroleum Agreement” immediately after the words “and held”;

(ii) in subparagraph 1.2.1, by deleting the phrase “International Financial Reporting Standards” and substituting therefor the words “relevant laws, best petroleum industry practices and reporting standards,

and in a format approved by the Cabinet Secretary”;

(iii) in subparagraph 1.2.2—

(aa) by deleting the words “and discuss with the Cabinet Secretary and the Kenyan tax authority” and substituting therefor the words “with relevant state agencies”; and

(bb) by inserting the words “relevant regulations” immediately after the words “accordance with the”;

(iv) in subparagraph 1.4.1—

(aa) by deleting the words “or portion thereof within the seven (7) year period following the end of such year”; and

(bb) by deleting the words “within eight (8) years from the end of such year” and substituting therefor the words “in accordance with relevant legislation”.

(v) in subparagraph 1.4.5—

(aa) by inserting the words “within thirty days after the end of each contract year” immediately after the words “contractor shall”; and

(bb) by deleting the words “report thereon” and substituting therefor the words “submit the audit report within one hundred and twenty days”.

(vi) in subparagraph 3.2.2.1, by inserting the words “movable property and assets, and once every three years with respect to

immovable property and assets, inventories of the controllable materials, property and assets inventories shall be taken by the operator.” immediately after the words “controllable material”;

(vii) in subparagraph 3.5.1—

(aa) by deleting the title and substituting therefor the following new title—

“UNINSURED DAMAGES AND LOSSES TO JOINT PROPERTY; and

(bb) by inserting the words “not insured” immediately after the words “operator and”;

(viii) by deleting subparagraph 3.11.2;

(ix) in subparagraph 3.14.1.19—

(aa) by inserting the words “of litigations” immediately after the word “Costs”; and

(bb) by inserting the word “mediation” immediately after the word “arbitration”.

(x) by deleting subparagraph 3.14.1.24 and substituting therefor the following new subparagraph—

3.14.1.24 Corporate social investment costs.

(xi) in subparagraph 4.2.2, by deleting the words “showing the anticipated tender date and approximate value and the goods or services to be provided” and substituting therefor the words “The schedule of service and supply contracts shall include:

4.2.2.1 A description of the goods, services and works to be procured;

4.2.2.2 procurement method to be used and justification thereof;

4.2.2.3 the estimated contract sum;

4.2.2.4 The estimated duration of the contract

(xii) in subparagraph 4.3—

(i) by deleting subparagraph 4.3.1 and substituting therefor the following new subparagraph—

4.3.1 a report of expenditure and receipts under the contract analysed by budget item showing—

(ii) by deleting subparagraph 4.3.1.1 and substituting therefor the following new subparagraph—

4.3.1.1 the actual expenditure and receipts for the quarter in question including all credits pursuant of the accounting procedures;

(iii) by deleting subparagraph 4.3.1.2 and substituting therefor the following new subparagraph—

4.3.1.2 the actual cumulative Petroleum costs to date;

(iv) by deleting subparagraph 4.3.1.3 and substituting therefor the following new subparagraph—

4.3.1.3 cumulative expenditure and receipts for the preceding quarter and, where applicable, for the other previous quarters of that budget year;

- (v) by deleting subparagraph 4.3.1.4 and substituting therefor the following new subparagraph—

4.3.1.4 Supporting evidence of expenditure including but not limited to technical reports and studies carried out.

- (vi) by deleting subparagraph 4.3.1.5 and substituting therefor the following new subparagraph—

4.3.1.5 the latest forecast cumulative cost at the year-end;

- (vii) by deleting subparagraph 4.3.1.6 and substituting therefor the following new subparagraph—

4.3.1.6 any variations between budgeted costs and actual costs and the Contractor's explanation for each variation on a line-by-line basis.

- (viii) by deleting subparagraph 4.3.1.7 and substituting therefor the following new subparagraph—

4.3.1.7 with effect from adoption of the development plan, the total payroll costs segregated between Kenyan and non-Kenyan personnel and the total expenditure segregated between Kenyan and non-Kenyan goods and services;

(xiii) in subparagraph 4.4—

- (i) by deleting subparagraph 4.4.1 and substituting therefor the following new paragraphs—

4.4.1 description of the goods, services and works provided;

- (ii) by deleting subparagraph 4.4.2 and substituting therefor the following new paragraphs—

4.4.2 procurement method used;

- (iii) by deleting subparagraph 4.4.3 and substituting therefor the following new paragraphs—

4.4.3 the consideration for the contract;

- (iv) by deleting subparagraph 4.4.4 and substituting therefor the following new paragraphs—

4.4.4 The duration of the contract;

- (v) by deleting subparagraph 4.4.5 and substituting therefor the following new paragraphs—

4.4.5 the names of sub-contractors or suppliers;

- (vi) by deleting subparagraph 4.4.6 and substituting therefor the following new paragraphs—

4.4.6 classification of contracts as either local or international;

- (vii) by deleting subparagraph 4.4.7 and substituting therefor the following new paragraphs—

4.4.7 a brief description of the efforts made to find a Kenyan supplier or contractor including the names of businesses considered and the reasons for rejecting them.

- (viii) by deleting subparagraph 4.4.8 and substituting therefor the following new paragraphs—

4.4.8 Any other information the Cabinet Secretary or the Authority may require.

- (xiv) In subparagraph 4.7—

- (i) by deleting subparagraph 4.7.1 and substituting therefor the following new subparagraph—

4.7.1 inventory of petroleum in storage at the beginning and at the end of the month.

- (ii) by deleting subparagraph 4.7.2 and substituting therefor the following new subparagraph—

4.7.2 the value of stocks of petroleum held at the beginning of the month in question;

- (iii) by deleting subparagraph 4.7.3 and substituting therefor the following new subparagraph—

4.7.3 the value of stocks of petroleum held at the end of the month in question;

- (iv) by deleting subparagraph 4.7.4 and substituting therefor the following new subparagraph—

4.7.4 quantities of petroleum sold by the Contractor during the preceding month constituting arm's length sales together with corresponding sale prices;

- (v) by deleting subparagraph 4.7.5 and substituting therefor the following new subparagraph—

4.7.5 quantities of petroleum sold by the Contractor during the preceding month that did not constitute arm's length sales together with corresponding sale prices; and

- (vi) by deleting subparagraph 4.7.1 and substituting therefor the following new subparagraph—

4.7.1 The quantities of petroleum appropriated by the Contractor for petroleum operations, refining, or other processing without otherwise being disposed of in the form of petroleum.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the provisions of the Petroleum Act, Cap. 308, to streamline the regulation of upstream, midstream and downstream value chains in the petroleum sector and align the petroleum agreements with the Constitution, best petroleum industry practices including international best standards.

Clause 2 of the Bill proposes to amend the long title to include upstream petroleum operations.

Clause 3 of the Bill proposes the amendment of section 2 of the Petroleum Act, (“the principal Act”) to include new definitions of “access to land”, “common user facility operator”, “feedstocks” and “petroleum operations”.

Clause 4 of the Bill proposes to amend section 5 of the Act by deleting subsection (2) in relation to considering the petroleum policy when developing petroleum strategic plans.

Clause 5 of the Bill seeks to amend section 6 of the Act to provide for national petroleum strategic plan.

Clause 6 of the Bill seeks to delete section 7 of the Act.

Clause 7 of the Bill seeks to amend section 10 of the Act to provide for functions of the Cabinet Secretary.

Clause 8 of the Bill seeks to amend section 12 of the Act to provide for further clarification on the function of the National Upstream Petroleum Advisory Committee.

Clause 9 of the Bill seeks to amend section 15 of the Act to provide clarification on the division of the blocks.

Clause 10 of the Bill seeks to amend section 28 of the Act, to provide for plugging and abandonment of wells by contractors.

Clause 11 of the Bill seeks to amend section 29 of the Act, to provide for upstream petroleum.

Clause 12 of the Bill seeks to amend section 30 of the Act, to provide for field development plans and the period of review of the plans by the Authority.

Clause 13 of the Bill seeks to amend section 32 of the Act, to provide for petroleum production.

Clause 14 of the Bill seeks to amend section 33 of the Act, to provide for variations of a field development plan.

Clause 15 of the Bill seeks to amend section 36 of the Act, to provide that petroleum agreements only relate to petroleum resources and not any other resources. Further, the amendment corrects grammatical errors.

Clause 16 of the Bill seeks to amend section 37 of the Act, to provide the direction that the owner of the third-party infrastructure gives approval to the infrastructure sharing agreement once it's submitted to the authority. The proposed amendment provides clarity on who the "approver" is.

Clause 17 of the Bill seeks to amend section 40 of the Act, to provide for making early contributions to a decommissioning fund, Contractors can accumulate funds over time to cover significant costs of decommissioning. This will ensure that adequate funds are available in the event that a contractor is unable to pay for these costs (due to insolvency or any other), and also reduces risk of the cost falling on taxpayers or any other parties.

Clause 18 of the Bill seeks to amend section 55 of the Act, to aligns with the definition of "signature bonus".

Clause 19 of the Bill seeks to amend section 63 of the Act, to include licences so as to cover midstream and downstream operations.

Clause 20 of the Bill seeks to amend section 64 of the Act, to delete "upstream" so as to cover midstream and downstream operations.

Clause 21 of the Bill seeks to amend section 65 of the Act, to delete "upstream" so as to cover midstream and downstream operations.

Clause 22 of the Bill seeks to amend section 66 of the Act, to insert "licensee or permit holder" so as to cover midstream and downstream operations.

Clause 23 of the Bill seeks to amend section 67 of the Act, to insert "licensee or permit holder" so as to cover midstream and downstream operations.

Clause 24 of the Bill seeks to amend section 68 of the Act, to insert "licensee or permit holder" so as to cover midstream and downstream operations.

Clause 25 of the Bill seeks to amend section 74 of the Act, to insert "and certificate" to cover the proposed amendment of the new section 74(4) which makes a introduces for petroleum technicians.

Clause 26 of the Bill seeks to amend section 77 of the Act, to provide clarity by cross-referencing subsection (3) with (1).

Clause 27 of the Bill seeks to amend section 78 of the Act, to provide for the function of amending licenses, permits or certificates to be vested in the Authority and not the Cabinet Secretary.

Clause 28 of the Bill seeks to amend section 79 of the Act, to allow for applicability of other relevant laws on environmental matters.

Clause 29 of the Bill seeks to amend section 80 of the Act, to ensure that the licenses and permits are noticeable and to rectify the typo in the provision.

Clause 30 of the Bill seeks to amend section 83 of the Act, to ensure that there is adequate disclosure of any adverse environmental pollution to both the licensing authority and the transferee as at the time of the transfer of the facility.

Clause 31 of the Bill seeks to amend section 85 of the Act, to correct grammatical error in the section.

Clause 32 of the Bill seeks to amend section 86 of the Act, to provide clarity and to ensure that the professional engineer carries out works authorized by his class of licence as specified by the accrediting body.

Clause 33 of the Bill seeks to amend the Act, by inserting a new section 91A to align with the recently published LPG regulations provide for LPG installers and contractors. This was out of the several accidents arising out of poor workmanship done by incompetent and unskilled installers and contractors.

Clause 34 of the Bill seeks to amend section 92 of the Act, to insert the word “import” which had been left out and which was in the repealed Energy Act 2006. This was causing enforcement challenges when dealing with substandard importation.

Clause 35 of the Bill seeks to amend section 94 of the Act, to insert the word “import” which had been left out and which was in the repealed Energy Act 2006. This was causing enforcement challenges when dealing with substandard importation.

Clause 36 of the Bill seeks to amend section 96 of the Act, to provide for public emergency, where the Cabinet Secretary is empowered to require a licensee to dispose petroleum in order to ensure security of supply in Kenya and to avert resultant disruptions to the economy.

Clause 37 of the Bill seeks to amend section 98 of the Act, to ensure that transporters have a designated petroleum tanker parking yards where they can layover, carry out minor repairs or servicing of the tankers in a controlled environment without causing environmental nuisances to third parties.

Clause 38 of the Bill seeks to amend section 99 of the Act, to provide for wilful or malicious misinformation as an offence.

Clause 39 of the Bill seeks to amend section 100 of the Act, to curb the cases of illegal sale of export petroleum products by barges.

Clause 40 of the Bill seeks to amend section 101 of the Act, to provide for Regulations for midstream operations.

Clause 41 of the Bill seeks to amend section 106 of the Act, to correct the reference to the former Commission.

Clause 42 of the Bill seeks to amend section 107 of the Act, to correct a typo.

Clause 43 of the Bill seeks to amend section 108 of the Act, to include activities relating to petroleum operations and to correct a typo.

Clause 44 of the Bill seeks to amend section 110 of the Act, to correct the marginal to provide for the subject matter.

Clause 45 of the Bill seeks to amend section 113 of the Act, to provide broader scope beyond upstream petroleum infrastructure.

Clause 46 of the Bill seeks to amend section 115 of the Act, to correct a typo and to include a licensee.

Clause 47 of the Bill seeks to amend section 121 of the Act, to provide for the offence of malicious misinformation to the public on matters upstream petroleum.

Clause 48 of the Bill seeks to amend section 124 of the Act, to ensure that any offence in the regulations whose penalty is not provided will rely on this section for the penalty.

Clause 49 of the Bill seeks to insert a new section 124A to provide for continuing offences and penalties.

Clause 50 of the Bill seeks to amend section 126 of the Act, to allow all stakeholders to propose formulation of regulations.

Clause 51 of the Bill seeks to amend section 127 of the Act, to provide consistency and incorporate submission to the Cabinet Secretary.

Clause 52 of the Bill seeks to amend section 128 of the Act, to delete subsections (3) and (4) as they are moot.

Clause 53 of the Bill seeks to amend Schedule of the Act, to align the model production sharing contract with the current petroleum standards.

JAMES OPIYO WANDAYI,
Cabinet Secretary for Energy and Petroleum.