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**NATIONAL ASSEMBLY BILLS, 2020**

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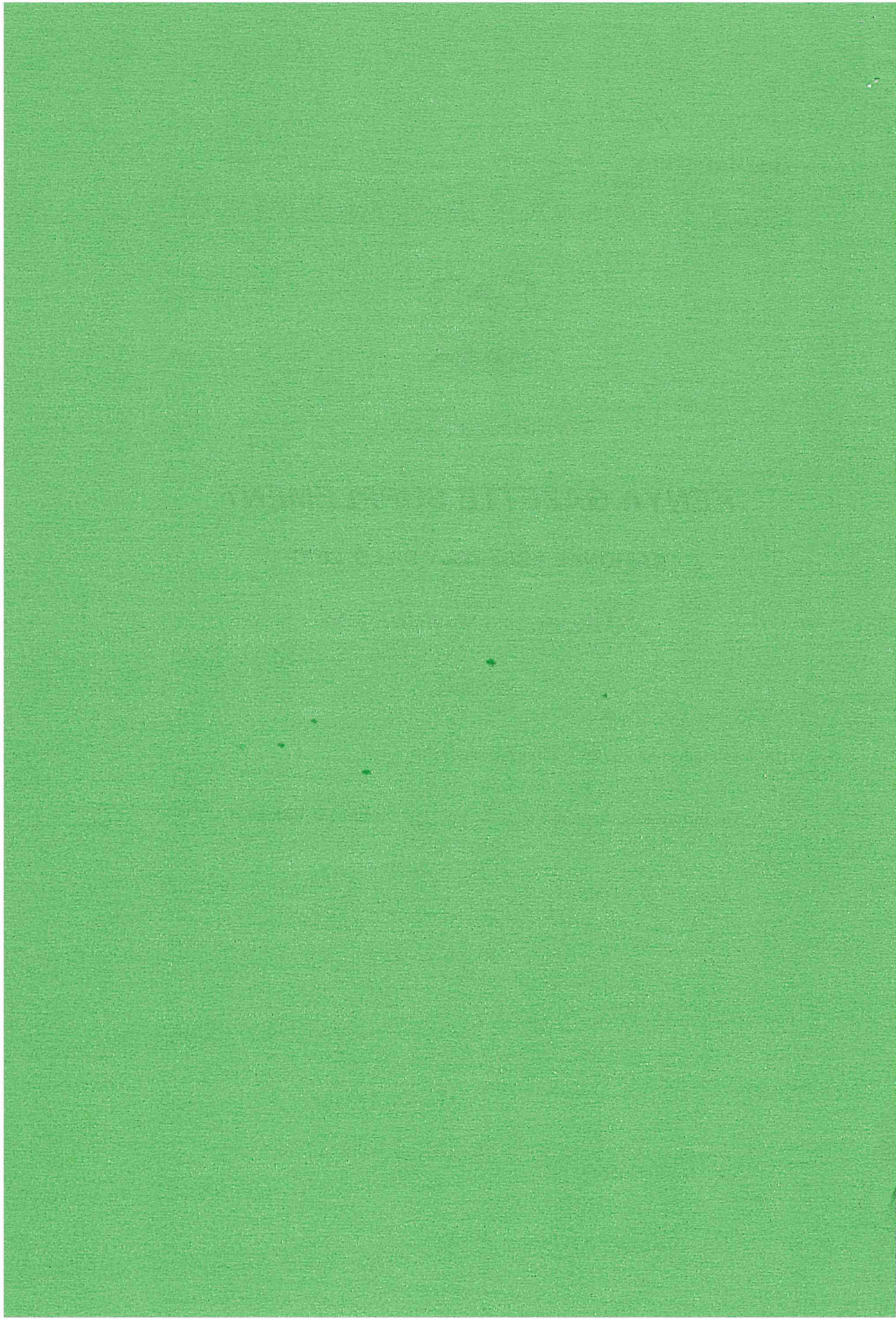
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## **THE INFORMATION COMMUNICATION TECHNOLOGY PRACTITIONERS BILL, 2020**

### **A Bill for**

**AN ACT of Parliament to provide for the training,  
registration, licensing, practice and standards of  
ICT practitioners and for connected purposes**

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

### **PART I—PRELIMINARY**

1. This Act may be cited as the Information Communication Technology Practitioners Act, 2020. Short title.

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

“Council” means the Council of the Institute established under section 4;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to information communication technology;

“Information Communication Technology (ICT)” means technologies employed in collecting, storing, processing, using or sending out information and include those involving the use of computers, mobile apparatus or any telecommunication system;

“ICT practitioner (ICTP)” means a person registered under this Act as an ICT practitioner who is also licensed under section 19 to practice as such;

“ICT practice” means the practice of ICT as the case may be, for a fee or gain either in kind or cash;

“Institute” means the ICT Practitioners Institute established under section 4;

“practicum” means an ongoing, supervised and organized practical experience or internship prescribed as part of the qualifications for the award of any degree or diploma and obtained in an integrated training program recognized by the Council;

“Register” means the register of ICT practitioners maintained under section 21.



(2) The expressions “legally qualified ICT practitioner” and “duly qualified ICT practitioner” or any words importing a person recognized by law as an ICT practitioner or a member of the profession of ICT, when used in a written law with reference to that person, shall be construed to mean a person registered as an ICT practitioner under this Act or, where the context so admits, a person who is registered by the Institute under section 19.

3. The object and purpose of this Act is to —

Object and  
purpose of the  
Act.

- (a) provide for the training, registration and licensing of ICT practitioners;
- (b) prescribe standards for practice of ICT practitioners;
- (c) establish an ICT Practitioners Institute which shall be responsible for establishing standards of professional competence and practice among members of the Institute;
- (d) establish a Council of the Institute which is the governing organ of the Institute;
- (e) prescribe offences for non-compliance with the requirements of registration and licensing as set out in the Act; and
- (f) provide for the funds of the Institute.

## **PART II—ESTABLISHMENT OF THE ICT PRACTITIONERS INSTITUTE**

4. (1) There is established an Institute to be known as the ICT Practitioners Institute.

Establishment of  
the Institute.

(2) The Institute is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing and lending money; and
- (d) doing or performing all such other things or acts as may legally be done or performed by a



body corporate for the proper discharge of its functions under the Act.

- (3) (a) The Institute shall be governed by a Council to be known as the Council of the Institute.

(b) Subject to this Act, all acts and things done in the name of, or on behalf of, the Institute, by the Council or with the authority of the Council shall be deemed to have been done by the Institute.

5. (1) The Council shall consist of—

Composition of  
the Council.

- (a) the principal secretary in the Ministry for the time being responsible for matters relating to information communications technology;
- (b) the principal secretary in the Ministry for the time being responsible for matters relating to the national treasury;
- (c) a representative of the ICT Authority established under the State Corporation Act;
- (d) one person appointed by the Cabinet Secretary to represent training institutions in Kenya which have power to grant a qualification which is recognized under this Act;
- (e) one person appointed by the Cabinet Secretary to represent examination bodies as established in law;
- (f) four persons of good professional standing nominated by—
  - (i) the Information Communication Technology Association of Kenya;
  - (ii) the Computer Society of Kenya;
  - (iii) the Telecommunication Service Providers; and
  - (iv) the chairperson of the Institute elected under section 8;
- (g) the chief executive officer, who shall be appointed by the Council through an open,

Cap. 446.



transparent and competitive recruitment process, and who shall be the secretary to the Council.

(2) All appointments under this section shall be by notice in the *Gazette*.

(3) The appointment of members of the Council under subsection (1)(f) (i), (ii) and (iii) may be on a rotational basis after the expiry of the term of office of the members to include other recognized associations as may be determined by the Council in consultation with the members of the Institute.

(4) There shall be a chairman and vice chairperson of the Council who shall be elected in the manner provided in paragraph 3 of the First Schedule.

(5) A person shall not be appointed as a member of the Council under subsection (1) (c),(d), (e), (f) and (g) unless such person—

- (a) is a citizen of Kenya;
- (b) meets the qualification requirements under section 19;
- (c) meets the requirements of Chapter Six of the Constitution.

(6) In appointing the members of the Council under subsection (1) (d), (e) and (f), the Cabinet Secretary shall take into account the gender, regional and other diversities of the people of Kenya.

**6.** (1) The conduct and regulation of the business and affairs of the Council shall be as provided in the First Schedule.

Conduct of  
business and  
affairs of the  
Council.

(2) Except as provided in the First Schedule, the Council may regulate its own procedure.

**7.** (1) The Members of the Institute shall consist of each person registered as an ICT practitioner under section 19 and may be categorized into fellows, associate members and such other class as the Council may by regulations made under section 41 prescribe.

Members of the  
Institute.

(2) The Council shall prescribe the types of membership, admission into any class of membership,



grounds for termination of membership, and the rights that accrue to each class of membership.

8. (1) There shall be a chairperson of the Institute and such other officials who shall be elected by members of the Institute.

Chairperson of the Institute.

(2) The chairperson shall serve for a term of office of three years renewable once.

(3) The chairperson shall be elected at the first meeting of the members of the Institute and shall be convened by the Council.

(4) Within fourteen days of occurrence of a vacancy of a chairperson, the members of the Institute shall hold a meeting for electing a chairperson.

(5) A person shall be eligible for election as a chairperson if the person is a Member of the Institute and holds at least ten years post qualification experience.

(6) The chairperson may be removed from office at a meeting convened by at least a half of the Members of the Institute provided the resolution for removal of the chairperson is supported by at least two-thirds of all the Members of the Institute.

(7) A chairperson may be removed from office on grounds of gross misconduct, incompetence or physical incapacity.

(8) The office of a chairperson shall become vacant if the holder of the office dies, ceases to hold office by virtue of sub-section (6) or resigns in writing addressed to the chairperson of the Council.

(9) The members of the Institute shall determine the rules and procedures for conducting the business and affairs of the Institute.

(10) The provisions of this section shall apply with the necessary modifications to the other officials elected by the Members of the Institute.

9. The members of the Institute shall pay such fees and subscriptions as the Council may in consultation with the Institute prescribe.

Membership fees.

10. The functions of the Institute shall be to—

Functions of the Institute.



- (a) establish standards of professional competence and practice amongst members of the Institute;
- (b) protect, assist and educate the public in Kenya in all matters touching, ancillary or incidental to the profession of ICT;
- (c) represent, protect and assist members of the profession of ICT in Kenya in respect of conditions of practice and otherwise;
- (d) approve courses for purposes of registration of ICT Practitioners under this Act;
- (e) administer such examinations as may be necessary to determine whether persons are qualified for registration under this Act;
- (f) register and licence ICT practitioners for the purposes of this Act upon payment of the prescribed fees;
- (g) collaborate with training institutions, professional associations and other relevant bodies in matters relating to training and professional development of ICT practitioners;
- (h) determine the fees to be charged by ICT practitioners and firms for professional services rendered from time to time;
- (i) upon request, to act as an arbitrator in any disputes between a licensed ICT Practitioner and a client;
- (j) formulate policies and programs governing the profession of Information Communication Technology Practitioners;
- (k) approve institutions offering training and professional development courses for Information Communications Technology practitioners;
- (l) supervise the professional conduct and practice of ICT practitioners and to take the necessary disciplinary measures in cases of violations of professional conduct and discipline;



- (m) plan, arrange, co-ordinate and oversee continuing professional training and development of ICT practitioners.
- (n) promote the international recognition of the Institute;
- (o) carry out any other functions prescribed for it under any of the other provisions of this Act or under any other written law.

11. The Council shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Council shall have power to—

Powers of the Council.

- (a) control, supervise and administer the assets of the Institute in such manner as best promotes the purpose for which the Institute is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Institute;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
- (d) open such banking accounts for its funds as may be necessary;
- (e) invest any funds of the Institute not immediately required for its purposes in the manner provided in section 40;
- (f) undertake any activity necessary for the fulfilment of any of its functions.

12. The Council may pay its members such remuneration, fees or allowances for expenses as it may determine upon the advice of the Salaries and Remuneration Commission.

Remuneration of Council members.

13. (1) There shall be a chief executive officer of the Institute who shall be appointed by the Council through an open, transparent and competitive recruitment process.

Chief Executive Officer.



(2) The chief executive officer shall—

- (a) be the accounting officer of the Institute and shall, subject to the direction of the Council, be responsible for the day to day management of the affairs and staff of the Institute;
- (b) be the Secretary to the Council;
- (c) be an *ex-officio* member of the Council but shall have no right to vote at any meetings of the Council;
- (d) perform such duties as are prescribed by or under this Act.

(3) The terms and conditions of service of the chief executive officer shall be determined by the council in the instrument of appointment or otherwise in writing from time to time.

(4) A person shall not be appointed as a chief executive officer unless such person is registered as an ICT practitioner under this Act and—

- (a) has a degree in information communication technology from a university recognized in Kenya;
- (b) has knowledge and relevant experience of not less than five years post qualification;
- (c) has a master's degree from a university recognized in Kenya;
- (d) has knowledge and experience in policy formulation, administration and management;
- (e) meets the requirements of Chapter Six of the Constitution.

(5) The Chief Executive Officer shall hold office for a period of three years and shall be eligible for appointment for one further term.

14. The Council may appoint such officers and other staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as the Council may determine.

Staff of the  
Institute.



15. The Council may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Council, the exercise of any of the powers or the performance of any of its functions under this Act or under any other written law.

Delegation by the Council.

16. (1) The Council may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.

Committees of the Council.

(2) The Council shall appoint the chairperson of a committee established under subsection (1) from amongst its members.

(3) The council may where it deems appropriate, co-opt any person from outside the Council with knowledge and expertise in specific areas to attend the deliberations of any of its committees.

(4) All decisions by the committees appointed under subsection (1) shall be ratified by the Council.

(5) Without prejudice to the foregoing provisions of this section, the Council shall establish the committees set out in the Second Schedule.

17. (1) No act or omission by any member of the Council or by any officer, employee, agent or servant of the Council shall, if the act or omission was done bona fide for the purposes of executing a function, power or duty under the Act render such member, officer, employee, agent or servant personally liable to any action, claim or demand whatsoever.

Protection from personal liability.

(2) The provisions of subsection (1) shall not relieve the Institute of the liability to pay compensation to any person for any injury to that person, their property or to any of their interests caused by the exercise of any power conferred by this Act or by failure, whether wholly or partially, of any works.

18. (1) The common seal of the Institute shall be kept in such custody as the Council may direct and shall not be used except upon the order of the Council.

Common Seal.

(2) The affixing of the common seal of the Institute shall be authenticated by the signature of the chairperson



and the chief executive officer and any document not required by law to be made under seal and all decisions of the Council may be authenticated by the signatures of both the chairperson and the chief executive officer.

(3) Notwithstanding the provisions of subsection (2) the Council shall, in the absence of either the chairperson or the chief executive officer in a particular matter, nominate one member to authenticate the seal on behalf of either the chairperson or the chief executive officer.

(4) The common seal of the Institute when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Council under this section shall be presumed to have been duly given.

### **PART III—REGISTRATION OF ICT PRACTITIONERS**

**19.** A person shall be eligible for registration under this Act as an ICT practitioner if the person—

Qualifications for  
registration.

- (a) is the holder of at least a bachelor's degree in ICT related field including computer science, information technology, telecommunication, computer engineering from a recognized university;
- (b) is the holder of at least a bachelor's degree in electrical and electronics engineering, mathematics or physics and has at least one year post qualification experience in ICT field;
- (c) is the holder of a diploma in ICT related field including computer science, information technology, telecommunication or computer engineering and has at least three years post qualification experience in ICT field;
- (d) is the holder of at least a bachelor's degree from a recognized university and has at least three years post qualification experience in ICT field; or
- (e) has demonstrated expertise, innovation or competence in ICT as may be determined by the Council.



**20.** (1) Every person eligible to be registered as an ICT practitioner may apply in the prescribed form to the Registrar for registration in the register, and every such application shall be accompanied by the prescribed fee.

Registration.

(2) Where a person has complied with the provisions of subsection (1) and has been accepted by the Council as being eligible for registration and has satisfied the Council that he or she has been so accepted, he or she shall be registered.

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

**21.** (1) The Council shall maintain a register of ICT practitioners in the prescribed form in which the name of every person registered under this Act shall be entered.

Register of ICT practitioners.

(2) The Chief executive officer shall be the custodian of the register of Information Communication Technology Practitioners.

**22.** (1) The Council shall, from time to time, make any corrections in the register in relation to any entry therein.

Alterations to the Register.

(2) All changes in the entries under subsection (1) shall be made as soon as is practicable after receipt of the notification thereof.

(3) The Council shall remove from the register—

(a) the name of every—

(i) deceased person;

(ii) person convicted of an offence under this Act and all avenues of appeal have been exhausted;

(iii) person whose name the Council has, under section 31, directed that it should be struck off the Register; and

(b) any entry which has been incorrectly or fraudulently made in the register.

(4) The Council may, with the written consent of the person, remove from the register the name of a person who has ceased to practice.



(5) Every person registered under this Act who has obtained a higher qualification than the registered qualification shall be entitled to have that additional qualification inserted in the register in addition to the qualification previously registered.

**23.** (1) The Council shall publish in the Gazette as soon as may be practicable after registration, the name of every ICT practitioner registered under this Act.

Publication of  
registration.

(2) It shall be the duty of every ICT practitioner to inform the Council immediately of any change in their registered address.

(3) The publication of the list of registered ICT practitioners in the Gazette shall be *prima facie* evidence that the persons named therein are registered under this Act, and the absence of the name of any person from such list shall be *prima facie* evidence that the person is not so registered.

#### **PART IV—LICENSING OF ICT PRACTITIONERS**

**24.** (1) A person shall not practise as an ICT practitioner unless such person has complied with the requirements for continuing education and supervision, and has been issued with a valid practice license by the Council, in accordance with regulations made under this Act.

Licence to  
practice.

(2) The Council may issue to an ICT practitioner who has applied in the prescribed form, a license to practice on their own behalf or to be employed.

(3) Subject to the provisions of this Act, a person shall not operate an ICT firm unless—

- (a) the firm has a certificate of registration of a business name or certificate of incorporation;
- (b) the firm has at least one partner or principal shareholder who is registered as an ICT practitioner and who has a valid practicing licence; and
- (c) the firm fulfills any other condition as may be stipulated by the Council.



**25.** (1) A licence granted under this Act shall be valid for one year, for the duration between the 1st January and 31st December in every year, and may, upon expiry, be renewed.

Period of validity of licences.

(2) A person whose licence has not been renewed for one year or more and who wishes to have the licence renewed may apply to the Council upon—

- (a) swearing an affidavit in the prescribed form explaining the reasons for non-renewal;
- (b) payment of the license fee for the current license period;
- (c) presentation of evidence to the Council of fulfilment of all applicable conditions for renewal of a license; and
- (d) payment of annual subscription fee for the current licence period.

(3) The Council may refuse to issue or to renew a licence.

(4) A person aggrieved by a decision of the Council under this section may appeal to the High Court, and in any such appeal the High Court may annul or vary the decision of the Council as it may determine necessary.

(5) A person wishing to renew a licence under this Act shall be required to pay an annual subscription as shall be prescribed by the Council.

**26.** (1) The issue and the cancellation, revocation or withdrawal of a licence under this Part shall be published in the *Gazette*.

Publication of licences.

(2) The Council shall, once in every year, as soon as convenient after 1st January, but not later than 31st March, publish in the *Gazette* a list containing the names, qualifications and registered addresses of all licensed ICT practitioners.

**27.** A person shall not be entitled to recover a fee for ICT services, unless such person is licensed under this Act.

No fees for unlicensed persons.



**PART V—ENFORCEMENT**

**28.** (1) A person who wilfully procures or attempts to procure registration or licensing under any of the provisions of this Act, by making or producing or causing to be made or produced any false or fraudulent representation or declaration either orally or in writing, commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or both.

False registration  
or licensing.

(2) If a person convicted of an offence under this section is registered or licensed under this Act, the Council shall remove such person's name from the register and cancel the licence.

**29.** A person who is licensed as an ICT practitioner commits an act of professional misconduct if such person—

Professional  
misconduct.

- (a) deliberately fails to follow the laid down standards of conduct and practice of the profession of ICT as may be laid down by the Council;
- (b) commits gross negligence in the conduct of professional duties;
- (c) allows another person to practise in their name, where such person—
  - (i) is not a holder of a practising certificate issued under this Act; and
  - (ii) is not in partnership with the ICT practitioner;
- (d) takes advantage of clients by abusing a position of trust, expertise, or authority;
- (e) is insensitive to clients through a lack of regard or concern for clients' needs, feelings, rights, or welfare of others;
- (f) shows incompetence or inability to render services, for reasons ranging from inadequate training or inexperience, to personal unfitness,



such as a character defect or an emotional disturbance;

- (g) evidences irresponsibility including lack of reliable or dependable execution of professional duties, attempts to blame others for one's mistakes, shoddy or superficial professional work, or excessive delays in delivering necessary feedback, assessments, reports, or services; or
- (h) is guilty of abandonment through failure to follow through with their duties or responsibilities, thereby causing clients to become vulnerable or incur unnecessary expenditure.

**30.** (1) A person may, being dissatisfied with any services offered by an ICT practitioner or alleging breach of the standards of conduct as may be specified by the Council from time to time, make a written complaint to the Council in the prescribed manner.

Disciplinary proceedings by the Council.

(2) Where the Council is satisfied in respect of any person registered or licensed under this Act, that such person—

- (a) has been convicted of an offence under this Act or under any other law punishable by imprisonment, the commission of which in the opinion of the Council has brought the profession to disrepute;
- (b) has committed an act of negligence or malpractice in respect of his or her profession or
- (c) has committed an act of impropriety or misconduct in respect of his or her profession, the Council may, subject to subsection (10)—
  - (i) remove such person's name from the register;
  - (ii) suspend such person's licence or registration for a period not exceeding twelve months; or



(iii) cancel such person's licence.

(4) For the purpose of proceedings at an inquiry held under this section, the Council may administer oaths and may, subject to the provisions of regulations made under this Act, enforce the attendance of persons as witnesses and the production of books and documents as evidence.

(5) A person whose name has been removed from a register or whose license has been cancelled or suspended shall forthwith surrender to the Council his or her certificate of registration or license, and any person who fails to do so commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding two years, or both.

(6) Subject to the provisions of this section and to rules as to procedure made under this Act, the Council may regulate its own procedure in disciplinary proceedings.

(7) The power to direct the removal of the name of a person from the register or to cancel the licence of a person shall include a power exercisable in the same manner to direct that during such period as may be specified in the order, the registration of a person's name in the register or the licence granted to him or her shall not have effect.

(8) The provisions of this section, in so far as they relate to the cancellation or suspension of licenses, shall be in addition to and not in derogation of the provisions of section 22.

(9) A person who fails, when summoned by the Council, to attend as a witness or to produce any books or documents which he is required to produce commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for six months, or both.

(10) Notwithstanding any other provisions of this Act, the Council shall not remove the name of a person from the register, or cancel any licence granted to a



person, unless such a decision is supported by a majority of all the Council members.

**31.** (1) Subject to the provisions of this Act, the removal of a person's name from the register shall be notified by the Council to that person by registered mail sent to the address appearing in the register against that person's name immediately before such removal.

Effect of removal,  
suspension or  
cancellation.

(2) Where the name of a person has been removed from the register, the name of that person shall not, subject to the provisions of this Act, be entered again in the register except by order of the Council.

(3) Where an order has been made for the removal of a person's name from the register, or for suspending a person's registration under this Act, or for cancelling or suspending a licence granted to a person under this Act, the Council may either on its own motion or on the application of the person concerned, and in either case after holding such inquiry as the Council may deem fit, cause the name of that person to be restored to the register or terminate the suspension of the registration, or, as the case may be, grant a new licence or terminate the suspension of the existing licence, in any such case either without fee or on the payment of such fee, not exceeding the appropriate registration or licence fee, as the Council may determine.

(4) Subsection (1) shall not apply when a person's name has been removed from the register at that person's request or with that person's consent in circumstances under which it could not otherwise have been removed without consent.

(5) Notwithstanding the provisions of subsection (3) above, a person whose name was removed from the register at that person's own request, shall upon application and on payment of the prescribed fee, have the name restored on the register.

**32.** A person aggrieved by a decision of the Council under this Act may appeal within thirty days to the High Court and in any such appeal the High Court may confirm, annul or vary the decision of the Council as it deems fit.

Appeals.



**33.** (1) A person who, not being eligible to be licensed or registered under this Act, wilfully and falsely takes or uses any name, title or addition implying a qualification to practice as an ICT practitioner, or who, not being registered or licensed under this Act, practises or professes to practice or publishes that person's name as practising as an ICT practitioner, commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or both.

Offences by  
unregistered or  
unlicensed  
persons.

(2) A person who, not being eligible to be licensed or registered under this Act, uses the title "ICT practitioner" as appropriate to a person so registered or licensed, which entitles such person to use that title, commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding two years, or both.

**34.** A person, being in charge of a training institution which is not approved by the Council as an institution for the training of persons seeking registration under this Act, who—

Obstruction of  
officers of the  
Council.

- (a) admits to the institution under their charge any person for the purpose of training in the profession of ICT;
- (b) purports to be conducting a course of training or examining persons seeking registration under this Act or regulations made thereunder;
- (c) issues any document, statement, certificate or seal implying that the holder thereof has undergone a course of instruction or has passed an examination prescribed by the Council; and
- (d) issues any document, statement, certificate or seal implying that the institution under his or her charge is approved by the Council as an institution for training of persons seeking registration under this Act,

commits an offence and is liable on conviction to a fine not exceeding one million shillings or imprisonment for a term not exceeding three years, or both.



**35.** A person who obstructs or hinders, or knowingly makes a false or misleading statement to any member, officer, servant or agent of the Council who is carrying out duties under this Act, commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding two years, or both.

Punishment for  
offence of  
obstruction.

## **PART VI—FINANCIAL PROVISIONS**

**36.** The funds of the Institute shall comprise—

Funds of the  
Institute.

- (a) such fees, monies or assets as may accrue to or vest in the Council in the course of the exercise of its powers or the performance of its functions under this Act or under any written law; and
- (b) all monies from any other source provided for or donated or lent to the Institute.

**37.** The financial year of the Institute shall be the period of twelve months ending on the thirtieth June in each year.

Financial year.

**38.** (1) At least three months before the commencement of each financial year, the Council shall cause to be prepared estimates of the revenue and expenditure of the Institute for that year.

Annual estimates.

(2) The annual estimates shall make provision for all estimated expenditure of the Institute for the financial year and in particular, the estimates shall provide for—

- (a) the payment of such facilities and services as the Institute may require for the discharge of its functions under this Act;
- (b) the payment of the allowances and other charges in respect of members of the Council;
- (c) the payment of salaries, pensions, gratuities and other charges in respect of staff of the Institute;
- (d) the proper maintenance of the buildings and grounds of the Council;



- (e) the maintenance, repair and replacement of the equipment and other property of the Institute; and
- (f) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Council may deem appropriate.

(3) The annual estimates shall be approved by the Council before the commencement of the financial year to which they relate and shall be submitted to the stakeholders for approval and after the stakeholders approval, the Council shall not increase the annual estimates without the consent of the stakeholders.

**39.** (1) The Council shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Institute.

Books and records of account.

(2) Within a period of three months after the end of each financial year, the Council shall submit to the Auditor-General the accounts of the Institute together with—

- (a) a statement of the income and expenditure of the Institute during that year; and
- (b) a balance sheet of the Institute on the last day of that year.

(3) The accounts of the Institute shall be audited and reported upon in accordance with the Companies Act, 2015.

No. 17 of 2015.

**40.** The Institute may invest any of its funds in securities, in which for the time being the trustees may by law invest trust funds, or in any other securities or banks which the Treasury may, from time to time, approve for that purpose.

Investment of funds.

## **PART VII—MISCELLANEOUS**

**41.** (1) The Council may make regulations generally for the better carrying into effect the provisions of this Act.

Regulations.



(2) Without prejudice to the generality of the foregoing, the regulations under this Act may —

- (a) prescribe the form and method of keeping the registers under this Act;
- (b) prescribe forms, methods and regulations concerning conditions for the issuance of licenses;
- (c) prescribe the manner of training, subject matter of training courses, standards of proficiency for the profession of ICT, including standards for internship and practicum and examinations of persons for whom provision is made under this Act to be regulated;
- (d) prescribe the standards and conditions of professional practice of persons registered or licensed under this Act;
- (e) provide for the procedure to be followed by the Council in a disciplinary inquiry;
- (f) prescribe the criteria for recognition of ICT related associations;
- (g) provide for the procedure to be followed by the Council in approving qualifications to practice as an ICT practitioner;
- (h) prescribe the types of membership, admission into any class of membership, grounds for termination of membership, and the rights that accrue to each class of membership;
- (i) prescribe ICT services constituting practice as a registered member or firm;
- (j) provide for enforcing the attendance of witnesses and the production of books and documents at an inquiry held by the Council;
- (k) prescribe forms to be used in connection with this Act or fees to be charged under this Act;
- (l) prescribe the supervision to be undergone by persons registered under this Act;
- (m) prescribe the factors to be considered in by the Council in registering persons as ICT practitioners under section 19(e);



- (n) prescribe the functions and roles of the Committees of the Council;
- (o) prescribe anything required by this Act to be prescribed.

(3) For the purposes of Article 94(6) of the Constitution the purpose and objective of the delegation under this section is to enable formulation of regulations to provide for the better carrying into effect of the provisions of this Act and to enable the Institute to discharge its functions more effectively and—

- (a) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect provisions of this Act and to fulfillment of the objectives specified under this section;
- (b) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

**42.** (1) Within sixty days upon the commencement of this Act the Cabinet Secretary shall by notice in the *Gazette*— Transition.

- (a) publish the names of the Council members in accordance with section 5;
- (b) convene the first Council meeting for the purpose of launching the business and affairs of the Institute.
- (c) provide the institute with such facilities and other support as it may require for the discharge of its functions under this Act.

(2) Within sixty days of occurrence of a vacancy in the Council, the Cabinet Secretary shall by notice in the *Gazette* publish the name of every person appointed to fill such vacancy.

(3) Despite anything in this Act, a person who immediately before the date of commencement of this Act was engaged in practice as an ICT Practitioner or firm shall be entitled to continue in such practice without a licence under this Act—



- (a) for a period of one year beginning with the date of the commencement of this Act; and
- (b) if before the expiration of six months, the person applies for a licence under this Act, until the licence is granted or finally refused or the application is withdrawn.



**FIRST SCHEDULE [s. 5, s. 6]****PROVISIONS AS TO THE CONDUCT OF BUSINESS  
AND AFFAIRS OF THE COUNCIL**

1. The chairperson, vice chairperson or a member of the Council other than an ex officio member shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for reappointment. Tenure of office.

2. A member, other than an ex officio member, may

- (a) at any time resign from office by notice in writing to the Cabinet Secretary; Vacation of office
- (b) be removed from office by the Cabinet Secretary on recommendation of the Council if the member—
- (i) has been absent from three consecutive meetings of the Council without the Council's permission;
  - (ii) is convicted of a criminal offence that amounts to a felony under the laws of Kenya;
  - (iii) is incapacitated by prolonged physical or mental illness for a period exceeding six months;
  - (iv) ceases to be a registered person under this Act; or
  - (v) is otherwise unable or unfit to discharge his functions.

3. (1) The Council shall, at its first meeting upon the commencement of this Act and upon every lapse of the tenure specified in paragraph 1, elect a Chairperson and vice- chairperson from amongst its members.

(2) The Council shall meet not less than four times in every financial year and not more than four months shall lapse between the date of one meeting and the date of the next meeting. Chairperson and vice chairperson.



(3) Notwithstanding subparagraph (2), the chairperson of the Council may convene a special meeting of the Council at any time for the transaction of the business of the Council, upon requisition in writing by at least five members of the Council.

Meetings.

(4) Unless three quarters of the total members of the Council otherwise agree, at least fourteen days' written notice of every meeting of the Council shall be given to every member of the Council.

(5) The quorum for the conduct of the business of the Council shall be six members.

Quorum.

(6) The chairperson or in his absence, the vice-chairperson, shall preside at every meeting of the Council but the members present shall elect one of their number to preside whenever the chairperson and vice-chairperson are absent, and the person so elected shall have all the powers of the chairperson with respect to that meeting and the business transacted thereat.

(7) Unless a unanimous decision is reached, a decision on any matter before the Council shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

(8) Subject to subparagraph (5), no proceedings of the Council shall be invalid by reason only of a vacancy among the members thereof.

(9) Subject to the provisions of this Schedule, the Council may determine its own procedure and the procedure for any committee of the Council and for the attendance of other persons at its Meetings, and may make standing orders in respect thereof.

4. (1) A member who has an interest in any contract, or other matter, present at a meeting shall, at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

Disclosure of interest.



(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Council who contravenes subparagraph (1) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings.

5. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Council by any person generally or specially authorized by the Council for that purpose.



**SECOND SCHEDULE** (s. 16)

**COMMITTEES OF THE COUNCIL**

1. The Examination, Registration and Quality Assurance Committee.
2. The Continuing Education Committee.
3. The Disciplinary Committee.
4. The Finance and Administration Committee.
5. Such other Committees as the Council may determine.



## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statement of the Objects and Reasons of the Bill**

The principal object of this Bill is to establish a legal framework for the training, registration, licensing, practice and standards of Information Communication Technology (ICT) professionals in Kenya.

**Part I** contains preliminary provisions.

**Part II** provides for the establishment of the Information Communication Technology Practitioners Institute, its composition, powers and functions. It further provides for a Council as the governing organ of the Institute.

**Part III** contains provisions relating to the registration of ICT Practitioners. It among other things, stipulates the requirements for such registration, the keeping of a register containing particulars of registered persons and the manner in which alterations may be made to that register.

**Part IV** contains provisions relating to the licensing of ICT Practitioners. It provides for the issuance of practising licences and the duration of those licences.

**Part V** contains enforcement provisions. It among other things defines what constitutes professional misconduct, and provides for disciplinary proceedings by the Council against an errant practitioner. It further provides for the removal, suspension or cancellation of a member from the register, and the effect thereof. It also provides for various offences relating to various matters under the Bill.

**Part VI** contains the financial provisions and among others, defines sources of fund of the Institute, the annual estimates of the Institute and auditing of accounts of the Institute.

**Part VII** contains miscellaneous provisions.

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

The Bill delegates legislative powers but it does not limit fundamental rights and freedoms.

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

The Bill does not concern county governments in terms of Article 110 of the Constitution.



**Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution**

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 17th November, 2020.

GODFREY OSOTSI,  
*Member of Parliament.*







