

SPECIAL ISSUE

Kenya Gazette Supplement No. 201 (National Assembly Bills No. 38)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2020

NAIROBI, 20th November, 2020

CONTENT

Bill for Introduction into the National Assembly—

PAGE

The Information Communication Technology Practitioners Bill, 2020 953

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

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Object and purpose of the Act.

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

- 4—Establishment of the Institute.
- 5—Composition of the Council.
- 6—Conduct of business and affairs of the Council.
- 7—Members of the Institute.
- 8—Chairperson of the Institute.
- 9—Membership fees.
- 10—Functions of the Institute.
- 11—Powers of the Council.
- 12—Remuneration of Council members.
- 13—Chief Executive officer of the Council.
- 14—Staff of the Institute.
- 15—Delegation by the Council.
- 16—Committees of the Council.
- 17—Protection from personal liability.
- 18—Common seal.

**PART III—REGISTRATION OF ICT
PRACTITIONERS**

- 19—Qualifications for registration.
- 20—Registration.
- 21—Register of ICT practitioners.

**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.

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;

Cap. 446.

(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,

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.

- (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.

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

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.

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.

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

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.

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;

(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);

-
- (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.

(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.

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.

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.

