THE INDUSTRIAL TRAINING (AMENDMENT) BILL, 2009

A Bill for

An Act of Parliament to amend the Industrial Training Act to provide for the establishment, powers, functions and the management of the National Industrial Training Authority, to provide for the control and regulation of industrial training in Kenya, and for connected purposes

ENACTED by the Parliament of Kenya as follows—

1. This Act may be cited as the Industrial Training (Amendment) Act, 2009.

2. Section 2 of the Industrial Training Act (in this Act referred to as “the principal Act”) is amended—

(a) by deleting the definitions of “apprentice”, “Council”, “Director”, and “labour officer” and inserting the following new definitions in their proper alphabetical order—

“apprentice” means a person who is bound by a written contract to serve an employer for such period as the Board shall determine with a view to acquiring knowledge, including theory and practice, of a trade in which the employer is reciprocally bound to instruct that person;

“Authority” means the National Industrial Training Authority established under section 3;

“Board” means The National Industrial Training Board established under section 4;

“Director-General” means the Director-General of the Authority appointed under section 4C;

“employee” means a person employed for wages or salary and includes an apprentice, indentured learner, other trainee, temporary, seasonal and casual worker;

“employer” means any person, including the Government, who employs or has employed an employee and, where appropriate includes—
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(a) an heir, successor, assignee or transferee of an employer; and

(b) an agent, director, manager or employee authorized to represent an employer;

“industry” means a trade, occupation, profession or an economic sector for which a training committee has been established for purposes of this Act;

“industrial attachment” means the placement of a person in a workplace for the purpose of gaining knowledge and practical skills;

“industrial training” means training for a specified industry;

“Minister” means the Minister responsible for matters relating to industrial training;

“trainer” means any person, firm, or institution registered under section 7C;

(b) by deleting the words “less than four” appearing in the definition of “indentured learner” and substituting therefor the words “not more than two”;

(c) by deleting the word “fifteen” appearing in the definition of “minor” and substituting therefor the word “eighteen”.

3. The principal Act is amended by repealing section 3 and replacing it with the following new sections—

Establishment of the Authority.

3. (1) There is established an Authority to be known as the National Industrial Training Authority.

(2) The Authority shall be 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) taking, purchasing or otherwise acquiring, holding, charging or
disposing of movable and immovable property;

(c) borrowing or lending money;

(d) entering into contracts; and,

(e) doing or performing all other things or acts for the proper performance of its functions under this Act, which may be lawfully done or performed by a body corporate.

(3) The common seal of the Authority shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(4) The affixing of the common seal of the Authority shall be authenticated by the signatures of the chairman and the Director-General and in the absence of the chairman or the Director-General, by a member of the Board, authorized by the Board.

(5) The common seal of the Authority 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 Board under this section shall be presumed to have been duly given.

3A. The Authority shall be responsible for—

(a) industrial training;

(b) assessing and collecting industrial training levy and fees;

(c) regulating trainers registered under section 7C;

(d) developing industrial training curricula;

(e) harmonizing curricula and certificates of competence;

(f) assessing industrial training, testing occupational skills and awarding certificates including Government
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trade test certificates;

(g) equating certificates;

(h) accrediting institutions engaged in skills training for industry;

(i) associating or collaborating with any other body or organization within or outside Kenya as the Board may consider desirable or appropriate and in furtherance of the purposes for which the Authority is established;

(j) charging for goods and services offered by the Authority; and

(k) performing any other duties and functions as may be conferred on it by this Act or by any other written law.

4. Section 4 of the principal Act is amended—

(a) by deleting the word “Council” appearing in the marginal note and substituting therefor the word “Board”;  

(b) in subsection (1) by deleting the word “Council” and substituting therefor the word “Board”;  

(c) by deleting subsection (3) and substituting therefor the following new subsection;

(3) The Director-General shall be the secretary to the Board.

(d) in subsection (4) by deleting the word “Council” wherever it appears and substituting therefor the word “Board”;  

(e) in subsection (5) by deleting the word “Council” and substituting therefor the word “Board”;  

(f) in subsection (6) by deleting the word “Council” and substituting therefor the word “Board”;  

(g) in subsection (7) by deleting the word “Council” wherever it appears and substituting therefor the word “Board”;  

(h) in subsection (9) by deleting the word “Council” and substituting therefor the word “Board”;  

(i) in subsection (11)—

(i) in paragraph (c) by deleting the word “Council”
wherever it appears and substituting therefor the word “Board”;

(ii) in paragraph (d) by deleting the word “Council” and substituting therefor the word “Board”;

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

\((ca)\) has ceased to be a representative of employers, employees or other interests as the case may be;

(iv) by deleting the word “Council appearing in paragraph (d) and substuting therefor the word “Board”;

(j) in subsection (12) by deleting the word “Council” wherever it appears and substituting therefor the word “Board”;

(k) by inserting the following new subsection immediately after subsection (12)—

(13) Subject to the provisions of this Act, the Board may regulate its own procedure.

5. Section 4A of the principal Act is amended—

(a) in subsection (1) by deleting the word “Council” wherever it appears and substituting therefor the word “Board”;

(b) in subsection (2)—

(i) by deleting the word “Council” wherever it appears and substituting therefor the word “Board”;

(ii) by inserting the words “not more than” immediately after the word “of” appearing in the first line;

(iii) by inserting the words “not more than” immediately before the word “five” appearing in paragraph (a);

(iv) by inserting the words “not more than” immediately before the word “five” appearing in paragraph (b);

(v) by inserting the words “not more than” immediately before the word “five” appearing in paragraph (c);

(c) in subsection (5) by deleting the word “Director” and substituting therefor the word “Director-General”.

Amendment of section 4A of Cap. 237.
(d) by deleting subsection (6) and substituting therefor the following new subsection—

(6) A Committee shall perform, on behalf of the Board, such functions of the Board as may be delegated to it by the Board and shall perform these functions in consultation with the Director-General;

(e) in subsection (7) by deleting the word “Council” wherever it appears and substituting therefor the word “Board”;

(f) by renumbering the existing section 4A as 4J;

6. The principal Act is amended by inserting the following new sections immediately after section 4—

4A. The Board shall exercise 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 Board shall have power to—

(a) control, supervise and administer the assets of the Authority in a manner that best promotes the purposes for which the Authority is established;

(b) determine the provision to be made for capital and recurrent expenditure and for reserves of the Authority;

(c) receive any grants, gifts, donations or endowments on behalf of the Authority and make legitimate disbursements therefrom;

(d) open a bank account or bank accounts for the funds of the Authority;

(e) administer training levy;

(f) invest any funds of the Authority not immediately required for the purposes of the Authority; and

(g) set terms and conditions of service for employees of the Authority.
4B. The Authority shall pay members of the Board such remuneration, fees, or allowances and other expenses as the Board may, with the approval of the Minister, determine.

4C. (1) There shall be a Director-General of the Authority who shall be the chief executive of the Authority, and secretary to the Board and the Committees.

(2) The Director-General shall be appointed by the Board on such terms and conditions of service as the Board may determine.

(3) The Director-General shall hold office for one term of five years and shall be eligible for re-appointment for one further term of five years.

(4) No person shall be appointed Director-General unless that person-

(a) is a holder of a degree in the field of engineering, technology, technical or industrial education, from a recognized university; and

(b) has at least fifteen years working experience in a related field, five of which shall be in matters relating to industrial training.

(5) The Director General shall subject to the directions of the Board, be responsible for the day to day management of the Authority.

4D. (1) The Board shall appoint such directors as may be necessary for the purposes of this Act.

(2) A director appointed under subsection (1) shall, subject to the directions of the Director-General, perform any act or discharge any duty which may lawfully be performed or discharged by the Director-General under this Act.
(3) The Board shall appoint such other officers and staff as may be necessary for the purposes of this Act on such terms and conditions of service as the Board may determine.

4E. No matter or thing done by a member of the Board or any officer, employee or agent of the Authority shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Authority, render the member, officer, employee or agent personally liable to any action, claim or demand whatsoever.

4F. The provisions of section 4E shall not relieve the Authority of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of the powers conferred on the Board by this Act, or by any other written law, or by the failure, whether wholly or partially, of any contract.

4G. (1) The funds of the Authority shall consist of—

(a) moneys provided by Parliament;

(b) training levy funds;

(c) grants from the Government;

(d) such moneys as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act or under any other written law;

(e) such grants, gifts, donations or endowments received by the Board on behalf of the Authority; and

(f) any other funds that may be received by the Authority from any other source.

(2) The financial year of the Authority shall be the period of twelve months ending on the thirtieth June, in each year.

4H. (1) The Board shall, not less than four months before the commencement of each
financial year cause to be prepared estimates of the revenue and expenditure of the Authority for that financial year.

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

(a) the payment of the salaries, allowances and other charges in respect of the staff of the Authority;

(b) the payment of pensions, gratuities and other charges in respect of the staff of the Authority;

(c) the proper maintenance of the buildings and grounds of the Authority;

(d) the maintenance, repair and replacement of the equipment of the Authority;

(e) the payment of expenses related to training and industrial attachment;

(f) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings; and

(g) any other expenditure necessary for the performance of the functions of the Authority.

(3) The annual estimates shall be approved by the Board and be submitted to the Minister for approval before the commencement of the financial year to which they relate.

(4) No expenditure shall be incurred for purposes of the Authority except in accordance with the annual estimates approved under subsection (3) or in pursuance of an authorization of the Minister.

(5) Not more than fifteen percent of the total annual levy collected under this Act may be used for administration of the Authority within that year.
41. (1) The Board shall cause to be kept proper books and records of the income, expenditure, assets and liabilities of the Authority.

(2) The Board shall, within three months after the end of each financial year, submit to the Controller and Auditor-General or to an auditor appointed under subsection (4), the accounts of the Authority together with—

(a) a balance sheet showing the assets and liabilities of the Authority as of the end of the financial year;

(b) a statement of income and expenditure for that year;

(c) a cash flow statement for the financial year; and

(d) any other statements and accounts.

(3) The accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act.

(4) The accounts of the Authority shall be audited by the Controller and Auditor-General or by an auditor appointed by the Board with the approval of the Controller and Auditor-General in accordance with the Public Audit Act.

(5) The appointment of an auditor shall not be terminated by the Board without the prior written consent of the Controller and Auditor-General.

(6) The Controller and Auditor-General may give general or special directions to an auditor appointed under subsection (4) and the auditor shall comply with those directions.

(7) An auditor appointed under subsection (4) shall report directly to the Controller and Auditor-General on any matter relating to the directions given under subsection (6) of this section.
(8) Notwithstanding anything in this Act, the Controller and Auditor-General may submit to the Minister a special report on any matters incidental to his powers under this Act, and provisions of the Public Audit Act shall, *mutatis mutandis*, apply to any report made under this section.

(9) The Minister shall lay the audit report before the National Assembly as soon as reasonably practicable after the report is submitted to him.

(10) The fees for any audit carried out under this section shall be determined and paid by the Board.

7. Section 5 of the principal Act is amended—

(a) by deleting the word “Council” appearing in the marginal note and substituting therefor the word “Board”;

(b) by deleting the word “Council” and substituting therefor the word “Board”;

(c) by deleting paragraph (d) and substituting therefor the following new paragraph—

(d) it shall review and maintain a system or systems for the holding of tests in respect of trades and occupations generally or any particular trade or occupation, and grant certificates of proficiency and competency to, and keep a record in respect of each person who enrolls for the tests;

(d) by deleting the word “Director” appearing in paragraph (e) and substituting therefor the word “Director General”

(e) by deleting paragraph (g) and substituting therefor the following new paragraph—

(g) it shall investigate any matters connected with this Act and take the necessary action.

8. Section 5A of the principal Act is amended—

(a) in subsection (1)—
(i) by deleting the word “Council” wherever it appears and substituting therefor the word “Board”;

(ii) by deleting the words “in the industry in respect of which the committee is established” appearing in the third line;

(b) by deleting subsection (2);

(c) in subsection (3) by deleting the word “Council” wherever it appears and substituting therefor the word “Board”;

(d) in subsection (4) by deleting the word “Council” and substituting therefor the word “Board”;

(e) in subsection (5) by deleting the word “Council” wherever it appears and substituting therefor the word “Board”.

9. Section 5B of the principal Act is amended—

(a) in subsection (1) by deleting the word “Council” and substituting therefor the word “Board”;
(b) in subsection (2) by deleting the word “Director” and substituting therefor the word “Director-General”;

(c) by deleting the fullstop at the end of subsection (4) and inserting the words—

“and shall be liable to a fine not exceeding one hundred thousand shillings and if such failure continues after a conviction, such person shall be liable to a penalty not exceeding fifty thousand shillings for every month or part thereof during which such failure is continued;”

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

(5) The court before which any person is convicted of an offence under subsection (2) may, without prejudice to any civil remedy, order such person to pay to the Fund the amount of any levy or any other sum due, together with any interest or penalty thereon, found to be due from such person to the Fund.

(6) Without prejudice to any other remedy, any training
levy due under this Act plus the five percent penalty imposed by this section that remains unpaid shall be recoverable summarily by the Authority as a civil debt due to the Authority.

10. Section 5C of the principal Act is amended—

(a) by deleting the word “Director” appearing in the marginal note and substituting therefor the word “Director-General”;

(b) in subsection (1) by deleting the words “established in respect of the industry to which that order relates” appearing in line three;

(c) in subsection (2)—

(i) by deleting the word “Director” and substituting therefor the word “Director-General”;  

(ii) by deleting the word “Council” and substituting therefor the word “Board”;

(iii) by inserting the words “or industrial attachment” immediately after the word “courses” appearing at the end of paragraph (d);

(iv) by deleting the word “Minister” appearing in paragraph (h) and substituting therefor the word “Board”.

(d) by deleting subsections (3), (4), (5), (6) and (7).

11. Section 6 of the principal Act is amended—

(a) in subsection (1) by deleting the word “Director” wherever it appears and substituting therefor the word “Director-General”;

(b) in subsection (2) by deleting the word “Director” and substituting therefor the word “Director-General”;

(c) by deleting subsection (3);

(d) in subsection (4) by deleting the word “Director” wherever it appears and substituting therefor the word “Director-General”;
12. Section 7 of the principal Act is amended—

(a) in subsection (1) by deleting the word “Director” wherever it appears and substituting therefore the word “Director-General”;

(b) in subsection (2) by deleting the word “Director” wherever it appears and substituting therefore the word “Director-General”;

(c) by deleting subsection (3);

(d) in subsection (4) by deleting the word “Director” wherever it appears and substituting therefore the word “Director-General”.

13. The principal Act is amended by inserting the following new sections immediately after section 7—

Permission to train.

7A. (1) An employer who wishes to carry out training under this Act shall first obtain the written permission of the Director-General to do so.

(2) No permission shall be granted under this section unless the trainer who is to carry out the training has been approved and registered for purposes of training under this Act.

Industrial attachment.

7B. (1) A person who—

(a) has attained the age of eighteen years;

(b) is undergoing training in a programme requiring industrial attachment; and

(c) has in the case of a trade or occupation in respect of which a scheme has been made, the qualifications prescribed under that scheme; or

(d) is a lecturer or instructor in a training institution registered under this Act, or

(e) has applied for industrial attachment and in the opinion of the Director-General may benefit from skills
acquired in industry
may be admitted for industrial attachment.

(2) A minor shall not be admitted for industrial attachment except with the consent of his parent or guardian or if there is no parent or guardian, with the consent of the Director-General.

(3) An employer who wishes to admit any person for industrial attachment under this Act shall first obtain the written permission of the Director-General.

(4) No permission shall be granted under subsection (3) unless the employer satisfies the Director-General that the establishment to be used for industrial attachment offers reasonable opportunity for the proper training of the person or number of persons proposed for industrial attachment.

(5) A person who purports to be—

(a) on industrial attachment;

(b) an employer offering industrial attachment,

otherwise than as provided by this section shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months or to both.

7C. (1) A person who wishes to be registered as a trainer under this Act shall apply for registration to the Director-General in the prescribed form.

(2) No person shall be registered under subsection (1) unless the trainer satisfies the Director-General that he offers reasonable facilities and opportunities for proper training in the field specified in the application.

(3) For purposes of registration under this section, the Director-General may conduct such inspection or carry out such investigations as he may consider necessary.

(4) A person who—
(a) having been registered as a trainer under this section contravenes any conditions subject to which the registration was granted;

(b) uses any unqualified persons for purposes of training under this Act;

(c) issues a certificate to any person who has not completed training under this Act; or

(d) issues any receipt, invoice or other document in respect of any training under this Act which contains any false particulars;

shall be guilty of an offence.

(5) The Director-General may deregister a trainer who contravenes the provisions of this section.

14. Section 8 of the principal Act is amended—

(a) in subsection (1) (a) by deleting the words “fifteen” and substituting therefor the word “eighteen”;

(b) in subsection (3) by deleting the words “District Officer or labour officer” and substituting therefor the word “Director-General”;

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

(5) A person who purports to be—

(a) an apprentice or indentured learner; or

(b) an employer of an apprentice or indentured learner;

otherwise than as provided for under this section shall be guilty of an offence and shall be liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months or to both.

15. Section 11 of the principal Act is amended—

(a) in subsection (1) by deleting the word “Director” and substituting therefor the word “Director-General”;

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(b) in subsection (2)—

(i) by deleting the word “fourteen” and substituting therefor the word “thirty”;

(ii) by deleting the word “Director” and substituting therefor the word “Director-General”;  

(c) in subsection (4) by deleting the word “Director” and substituting therefor the word “Director-General”;

(d) in subsection (5) by deleting the word “Director” and substituting therefor the word “Director-General”;  

(e) by deleting subsection (6);

(f) in subsection (7) by deleting the word “Director” and substituting therefor the word “Director-General”;

16. Section 12 of the principal Act is amended—

(a) in subsection (1) by deleting the word “Director” and substituting therefor the word “Director-General”;

(b) in subsection (2) by deleting the word “Director” and substituting therefor the word “Director-General”;  

(c) by deleting subsections (3), (4) and (5).

17. Section 13 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting the word “Director” appearing in paragraph (b) and substituting therefor the word “Director-General”;

(ii) by deleting the word “Director” wherever it appears in paragraph (c) and substituting therefor the word “Director-General”;  

(iii) by deleting the word “Council” wherever it appears in paragraph (c) and substituting therefor the word “Board”;  

(b) in subsection (2) by deleting the word “Director” and substituting therefor the word “Director-General”;

(c) in subsection (3) by deleting the word “Director” and
substituting therefor the word “Director-General”;

\((d)\) in subsection (4) by deleting the word “Director” and
substituting therefor the word “Director-General”;

\((f)\) by deleting subsections (5), (6) and (7).

18. The principal Act is amended by repealing section 14.

19. The principal Act is amended by repealing section 15.

20. The principal Act is amended by repealing section 16.

21. Section 17 of the principal Act is amended—

\((a)\) in subsection (1) by inserting the words “the training
expenses and” immediately after the word “of”
appearing in the third line;

\((b)\) in subsection (2)—

(i) by deleting the word “Director” and substituting
therefor the word “Director-General”;

(ii) by deleting the word “Council” and substituting
therefor the word ‘Board’.

22. Section 18 of the principal Act is amended—

\((a)\) by renumbering the existing section 18 as section 18
(1);

\((b)\) by deleting the word “seventeen” appearing in
paragraph (b) and substituting therefor the word
“eighteen”;

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

\((2)\) Any term of a contract of industrial attachment, or any
condition which requires a person under eighteen years of age
who is on industrial attachment to work overtime shall be void.

23. Section 19 of the principal Act is amended—

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

\((1)\) An employer of an apprentice or an indentured learner
or an employer who has accepted a person on industrial
attachment shall, on the satisfactory completion of the contract
of apprenticeship, indentured learnership or industrial
attachment, submit a certificate of completion in the prescribed form, to the Director-General and issue a copy of the certificate to the apprentice, indentured learner or person on industrial attachment.

(b) in subsection 2—
   (i) by inserting the words “of completion” immediately after the word “certificate” appearing in the first line;
   (ii) by deleting the word “Director” and substituting therefor the word “Director-General”.

(c) in subsection 4—
   (i) by inserting the words “or a person on industrial attachment” immediately after the word “learner”;
   (ii) by inserting the words “of completion” immediately after the word “certificate”.

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

(5) The Director-General shall upon receiving a certificate of completion under subsection (1), issue to the apprentice, indentured learner or person on industrial attachment a certificate of apprenticeship, indentured learnership or industrial attachment as the case may be.

24. Section 20 of the principal Act is amended—

(a) by deleting the word “Director” appearing in the marginal note and substituting therefor the word “Director-General”

(b) in subsection (1)—
   (i) by deleting the words “an apprentice or indentured learner” and substituting therefor the words “a person undergoing training;”
   (ii) by deleting the word “Director” and substituting therefor the word “Director General”;  
   (iii) by deleting the words “an apprenticeship or indentured learnership” and substituting therefor the word “training;”

(c) in subsection (2)—
   (i) by deleting the word “Council” wherever it appears and substituting therefor the word “Board”; 
   (ii) by deleting the word “Director” and substituting
therefore the word “Director-General”
(iii) by deleting the word “apprenticeship” and substituting therefore the word “training”;

(d) in subsection (3) by deleting the word “Director” and substituting therefore the word “Director-General”;

25. Section 21 of the principal Act is amended —

(a) in subsection (1) —
(i) by deleting the word “Director” and substituting therefore the word “Director-General”;
(ii) by deleting the word “Council” and substituting therefore the word “Board”.
(iii) by deleting the words “apprentices or indentured learner in any trade or occupation” and substituting therefore the words “persons undergoing training”;
(iv) by deleting the words “apprenticeship or indentured leadership” appearing in the proviso and substituting therefore the word “training”.

(b) in subsection (2) —
(i) by deleting the words “apprentices or indentured learners in that trade or occupation” appearing in paragraph (a) and substituting therefore the words “the scheme”;
(ii) by deleting paragraph (b);
(iii) by deleting the words “apprentices or indentured learners in their employ in that trade or occupation” appearing in paragraph (c) and substituting therefore the words “persons undergoing training”;
(iv) by deleting paragraph (d) and substituting therefore the following new paragraph—
(d) the theoretical training in that scheme which shall be provided by or at the expense of the employers of persons undergoing training, and the manner in which training shall be provided or undergone;

(v) by deleting the words “apprentices or indentured learners in that trade or occupation” appearing in paragraph (e) and substituting therefore the words
“persons undergoing training in that scheme”;  
(vi) by deleting paragraph (f) and substituting therefor the following new paragraph—  
(f) the maximum number of hours which persons undergoing training in that scheme may be required or permitted to work during any week or on any day;  
(vii) by deleting the words “apprentices or indentured learners in that trade or occupation” appearing in paragraph (g) and substituting therefor the words “persons undergoing training”;  
(viii) by deleting paragraph (h) and substituting therefor the following new paragraph—  
(h) the minimum number of paid holidays to be allowed to a person undergoing training in that scheme during any year of training.  
(ix) by deleting paragraph (i) and substituting therefor the following new paragraph—  
(i) the type and mode of certification to be issued to a person who completes training under the scheme.  
(x) by deleting the words “Director” and “Council” appearing in paragraph (j) and substituting therefor the words “Director-General” and “Board” respectively;

(c) in subsection (3)—  
(i) by deleting the word “Director” and substituting therefor the word “Director-General”;  
(ii) by deleting the words “apprenticeship or indentured learnership” and substituting therefor the word “training”;  
(iii) by deleting the word “apprentices or indentured learners” and substituting therefor the words “persons undergoing training”.  

(d) by deleting subsection (4) and substituting therefor the following new subsection—  
(4) Different conditions of training may be specified under this section in respect of different classes of employers or persons undergoing training; and in prescribing different conditions the Director-General may apply any method of
differentiation he may deem advisable.

(e) in subsection (5) by deleting the words “Director” and “Council” wherever they appear and substituting therefor the words “Director-General” and “Board” respectively;

26. Section 22 of the principal Act is amended—

(a) in subsection (1) by deleting the word “Director” wherever it appears and substituting therefor the word “Director-General”;

(b) in subsection (2) by deleting the word “Director” and substituting therefor the word “Director-General”;

(c) in subsection (3) by deleting the word “Director” and “Council” wherever they appear and substituting therefor the word “Director-General” and “Board” respectively;

(d) in subsection (4) by deleting the word “Director” and substituting therefor the word “Director-General”;

(e) in subsection (5) by deleting the word “Director” and substituting therefor the word “Director-General”;

27. Section 22A of the principal Act is amended—

(a) in the marginal note by deleting the words “apprentices or indentured learners” and substituting therefor the words “persons undergoing training”;

(b) in subsection (1)—

(i) by deleting the words “of apprentices or indentured learners” and substituting therefor the words “carrying out training under this Act”;

(ii) by deleting the words “apprentices or indentured learners” appearing in paragraph (a) and substituting therefor the words “persons undergoing training”;

(iii) by deleting paragraph (b) and substituting therefore the following new subsection—

(b) at every premises or worksite where persons are undergoing training for a period of not less than three months, the employer shall appoint a training master who shall be responsible for the day to day guidance of the persons undergoing training in matters concerning their trade or occupation.
(c) in subsection (2)—

   (i) by deleting the word “Director” wherever it appears and substituting therefor the word “Director-General”;

   (ii) by deleting the word “an” appearing in the second line and substituting therefor the word “a”;

   (iii) by deleting the words “apprentice or indentured learner” wherever it appears and substituting therefor the words “training”;

(d) by deleting subsection (3) and substituting therefor the following new subsection—

   (3) Where twenty-five or more persons are undergoing training in any one premises or worksite, the training master shall devote the whole of his time during normal working hours to the guidance of the persons undergoing training; and where the number of those undergoing training is less than twenty-five, the training master shall devote that proportion of his time to the guidance of the persons undergoing training as that number bears to twenty-five.

(e) by inserting the following new subsections immediately after subsection (4)—

   (5) No contract of apprenticeship or indentured learnership shall be registered unless the employer has complied with subsection (1).

   (6) The provisions of subsections (1), (2), (3) and (4) shall apply to contracts of industrial attachment.

   (7) Where the Director-General is satisfied that an employer has a human resource, personnel or training department capable of satisfactory supervision of persons undergoing training within the organisation, the Director-General may exempt the employer from the provisions of subsection (1).

28. The principal Act is amended by repealing section 23 and substituting therefor the following new section—

23. (1) The Minister may on the advice of the Board, by notice in the Gazette appoint an employee of the Authority to be an inspector for the purposes of enforcing this Act.

(2) An inspector appointed under subsection (1) shall be issued with a certificate
of appointment signed by the Director-General.

(3) A person who ceases to be an inspector shall surrender the certificate of appointment issued under subsection (2) to the Director-General.

(4) Any person who fails to surrender the certificate of appointment or who uses or purports to use the certificate of appointment after ceasing to be an inspector shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding six months or to both.

(5) A person who, not being an inspector presents himself as such shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to a term of imprisonment not exceeding twelve months or to both.

29. Section 24 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) at any reasonable time enter premises of an employer—

(i) in which he has reasonable cause to believe that a person is undergoing or has undergone training under this Act;

(ii) to establish whether there is any training in the premises; or

(iii) for purposes of levy collection under this Act;

(ii) by deleting the words “within the preceding six months”; and inserting the words “or trained” immediately after the word “employed” appearing in paragraph (b);

(iii) by inserting the words “or trainer” immediately after the word “employer” appearing in paragraph (d);

(iv) by deleting the words “apprentice or indentured learner” wherever it appears in paragraph (c) and
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substituting the word “employer” or a person undergoing training”;

(v) by deleting the words “or was within the preceding six months the employer of an apprentice or indentured learner” appearing in paragraph (d) and substituting therefor the words “an employer”.

(b) by inserting the following new subsection immediately after subsection (3)—

(4) An inspector may prosecute an offence under this Act.

30. Section 25 of the principal Act is amended in subsection (1) by deleting the word “Council” and substituting therefor the word “Board”.


32. Section 27 of the principal Act is amended by deleting the word “Director” wherever it appears and substituting therefor the word “Director-General”.

33. The principal Act is amended by inserting the following new section immediately after section 27—

False statements 27A. A person who—

(a) makes, causes to be made or knowingly allows to be made an entry in a register, record, book or other document whatsoever, required by this Act to be kept which he knows to be false in a material particular; or

(b) produces, furnishes, causes or allows to be produced or furnished to an officer of the Authority, a register, record, book or other document which is false in a material particular;

shall be guilty of an offence and liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

34. Section 28 of the principal Act is amended by deleting the word “six” appearing in the third line and substituting therefor the words “one hundred”.

35. Section 29 of the principal Act is amended—

(a) in subsection (1)—

(i) by inserting the words “on the advice of the Board” immediately after the word “may” appearing in the first line;
(ii) by deleting the words “apprenticeship or indentured learnership” appearing in paragraph \((a)\) and substituting therefor the words “training under this Act”;

(iii) by deleting the word “Director” appearing in paragraph \((c)\) and substituting therefor the word “Director General”;

(iv) by deleting the words “of apprenticeship or indentured learnership” appearing in paragraph \((d)\) and substituting therefor the words “under this Act”

(v) by deleting the words “apprenticeship or indentured learnership” appearing in paragraph \((e)\) and substituting therefor the words “completion”.

(b) by deleting subsection (2) and replacing it with the following new subsection—

(2) Different rules may be made under subsection (1) in respect of different classes of employers or persons undergoing training under this Act.

36. The principal Act is amended by inserting the following new section immediately after section 29—

29A. The Minister may make regulations generally for the better carrying into effect of the provisions of this Act.

37. Section 30 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting the word “Director” and substituting therefor word “Director General”;

(ii) by deleting the word “Council” and substituting therefor the word “Board”;

(iii) by deleting the words “apprenticeship or indentured learnership” and substituting therefor the word “training”;

(b) in subsection (2)—

(i) by deleting the word “Director” and substituting therefor the word “Director-General”.

(ii) by deleting the word “Council” and substituting therefor the word “Board”.

38. Section 31 of the principal Act is amended by deleting the word “Director” and substituting therefor for the word “Director-General”:
39. The Principal Act is amended by adding the following new sections immediately after section 32—

33. (1) In this section, “Directorate of Industrial Training” means the Government Department by that name existing immediately before the commencement of this Act.

(2) All property, which immediately before the commencement of this Act was vested in the Directorate of Industrial Training shall on the commencement of this Act, vest in the Authority subject to all interests, liabilities, charges, obligations and trusts affecting such property.

(3) All contracts, debts, obligations and liabilities of the Directorate of Industrial Training before the commencement of this Act shall be vested in the Authority and may be enforced by or against the Authority.

(4) All legal proceedings pending in Kenya by or against the Directorate of Industrial Training in respect of any property, liabilities or contracts of the Directorate of Industrial Training shall be deemed to continue or be continued by or against the Authority.

(5) All directions, orders, rules, authorizations and other things published, made, given or done by the Directorate of Industrial Training, under the Act, subsisting at the commencement of this Act, shall on that day be deemed to have been published, given, made or done by the Authority.

34. Any person who was a member of staff of the Directorate of Industrial Training shall, upon the commencement of this Act, be deemed to be an employee of the Authority in accordance with the Schedule.

40. The principal Act is amended by inserting the following new schedule—
SCHEDULE (s. 34)

1. In this schedule “vesting day” means the date of commencement of this Act.

2. Any person who, at the commencement of this Act, is a member of staff of the former Directorate of Industrial Training, shall on the vesting day become a member of staff of the Authority on the same or improved terms and conditions of service as may be specified by the Minister:

Provided—

(a) a member of staff of the former Directorate of the Industrial Training may retire on the basis of abolition of office in accordance with the existing regulations; and,

(b) a member of staff of the former Directorate of Industrial Training may remain in the civil service with mutual consent of any such member of staff and the Government.

3. Where on the vesting day—

(a) any disciplinary proceedings against any member of staff of the former Directorate of Industrial Training, are in the course of being heard or instituted, or have been heard or investigated by the former Directorate of Industrial Training but no order or decision has been made thereon; or

(b) any such member of staff is interdicted or suspended, the Authority shall—

(i) in the case of paragraph (a), carry on and complete the hearing or investigation and make an order or render a decision, as the case may be; and

(ii) in the case of paragraph (b), deal with such member of staff in such manner as it deems appropriate having regard to the offence committed by him, including the completion of disciplinary proceedings that have been commenced by the Authority.

4. Where on the vesting day, any penalty, other than dismissal, has been imposed on any member of staff of the former Directorate of Industrial Training pursuant to disciplinary proceedings against him and the penalty has not been, or remains to be, serviced by such member of staff, he shall on his transfer to the Authority,
under paragraph (2) serve or continue to serve such penalty to its full as if it had been imposed by the Authority.

Pensions.

5. (1) An member of staff of the Directorate of Industrial Training who becomes a member of staff of the Authority shall continue to be governed by the existing Government pension scheme.

(2) Where any person whose services are transferred to the Authority is on the vesting day a member of any statutory voluntary pension scheme or provident fund, he shall for the purpose of this Act, continue to be governed by the same regulations under those schemes or funds, as if he had not been so transferred, and for purposes of the regulations governing those schemes or funds service with the Authority shall be deemed to be service in the former Directorate of Industrial Training.

MEMORANDUM OF OBJECTS AND REASONS

The purpose of this Bill is to amend the Industrial Training Act, Chapter 237 of the Laws of Kenya to transform the Directorate of Industrial Training from a department of the Ministry of Labour to a public corporate entity to be known as the National Industrial Training Authority.

Clause 3 of the Bill establishes the National Industrial Training Authority and provides for its powers and functions. The Authority is responsible for collecting industrial training levy, regulation trainers registered under the Act and assessing industrial training, testing occupational skills and awarding certificates among other functions.

Clause 4 converts the National Industrial Training Council into the National Industrial Training Board.

Clause 6 provides for the appointment of the Director General and other staff of the Authority. The clause also provides the sources of funds of the Authority and for the management of the funds.

Clause 13 empowers the Authority to register trainers, carry out industrial attachment and other training programmes.

Clauses 18, 19 and 20 repeal sections 14, 15, and 16 of the Act respectively. These sections provide for the enticement, probationary period and suspension of apprentices and
indentured learners.

Clause 28 provides for the appointment of inspectors for purposes of enforcement of the Act.

Clause 39 provides for transitional and saving provisions, which transit the Directorate of Industrial Training to the National Industrial Training Authority.

The Schedule provides for the transiting of members of staff of the Directorate of Industrial Training and their terms of service.

The enactment of this Bill shall not entail any additional funding from the Exchequer.

Dated the 25th September, 2009. 

JOHN MUNYES,
Minister For Labour.

Definition of “apprentice”, “Director”, “Council” and “Labour Officer” in section 2 of the Act which it is proposed to amend—

“apprentice” means a person who is bound by a written contract to serve an employer for a determined period of not less than four years, or such lesser period as the Counsel shall determine under subsection (2) of section 20, with a view to acquiring knowledge, including theory and practice, of a trade in which the employer is reciprocally bound to instruct that person;

“Director” means the Director of Industrial Training appointed under section 3;

“Council” means the National Industrial Training Council established under section 4;

“labour officer” means any person appointed to the public service as the Labour Commissioner, a Deputy Labour Commissioner, an Assistant Labour Commissioner, a Senior Labour Officer or a Labour Officer;
Section 3 of Cap 237 which it is proposed to repeal

3. (1) There shall be a Director of Industrial Training and such number of Deputy Directors and Assistant Directors of Industrial Training as may be necessary for the purposes of this Act.

(2) Every Deputy Director and Assistant Director of Industrial Training may, subject to the directions of the Director, perform any act or discharge any duty which may lawfully be performed or is required to be discharged by the Director under this Act.

Section 4 of Cap 237 which it is proposed to amend—

4. (1) There shall be a National Industrial Training council for the purposes of this Act consisting of a chairman and not less than eighteen other members appointed by the Minister, of whom—

(a) six shall be chosen to represent employers;
(b) six shall be chosen to represent employees; and
(c) not less than six shall be chosen to represent other interests.

(2) A vice-chairman shall be appointed by the Minister from among the members.

(3) The Director or his representative shall act as a secretary to the Council.

(4) The chairman, or in his absence the vice-chairman, shall preside at every meeting of the Council and where he does so thereat, he shall have all the powers of, and be deemed to be, the chairman of the Council under this Act.

(5) A quorum of the Council shall be the chairman or vice-chairman and five other members, and in the case of an equality of votes, the chairman or vice-chairman, as the case may be, shall have a casting vote.

(6) The chairman and members of the Council shall hold office for such period, not exceeding four years, as shall be specified at the time of their appointment, and shall be eligible for reappointment.

(7) Every member of the Council shall have the power to appoint one other person approved by the Minister, other than a member of the Council, to act as an alternate member in his absence and may revoke the appointment of that alternate member; but no person shall act as an alternate member in place of more than one member at any one time.
(8) An alternate member as such shall be subject to the provisions of this Act and may exercise all the powers, except the power to appoint an alternate member, and perform all the duties of the member by whom he was appointed.

(9) The appointment of an alternate member shall determine if for any reason the member by whom such appointment was made cease to be a member of the Council.

(10) No person shall be appointed as a member if he—

(a) is insolvent or has conveyed or assigned his property or has made a composition or arrangement for the benefit of his creditors; or

(b) is of unsound mind; or

(c) has been sentenced by a court to imprisonment for a term of six months or more within the preceding five years.

(11) If the Minister is satisfied that a member—

(a) has become subject to any of the disqualifications specified in subsection (10); or

(b) is incapacitated by reason of physical or mental illness; or

(c) has been absent from three consecutive meetings of the Council without the leave of the Council; or

(d) is otherwise unable or unfit to discharge his functions as a member of the Council,

he may revoke the appointment of that member, and give notification thereof in such manner as he thinks fit, whereupon the office of that member shall become vacant.

(12) The Council may co-opt to serve on it for such length of time as it thinks fit any number of persons whose assistance or advice it may require, but a person so co-opted shall neither be entitled to vote a meeting of the Council nor be counted as a member thereof for the purpose of forming a quorum.

Section 4A which it is proposed to amend—

4A. (1) The Council may establish training committees to exercise functions of the Council in relation to training in specified industries.

(2) A Committee shall consist of fifteen persons appointed in writing by the Council of whom—

(a) five shall be chosen to represent employers in the
industry concerned;

(b) five shall be chosen to represent employees in the industry concerned; and

(c) five shall be chosen to represent other interest, and the Council shall appoint a chairman and a vice-chairman from among the members of the Committee chosen under paragraphs (c) and (a) respectively.

(3) The chairman and other members of a Committee shall hold office for such period not exceeding three years as may be specified at the time of appointment, and a retiring member shall be eligible for reappointment.

(4) A quorum of a Committee shall be the chairman or vice-chairman and three other members, and in case of an equality of votes the chairman or vice-chairman, as the case may be, shall have a casting vote.

(5) The director or his representative shall act as the secretary to any Committee.

(6) A Committee shall exercise on behalf of the Council such functions of the Council as may be delegated to it by the Council, and shall exercise these functions in consultation with the Director.

(7) If a member of any Committee has been absent from three consecutive meetings of the Committee in question without the leave of the chairman or vice-chairman his office may be declared by the Council to be vacant, and in that event he shall be notified of the fact by the Council and he shall forthwith relinquish his membership of that Committee whereupon the office shall become vacant.

(8) A Committee may co-opt to serve on it for such length of time as it thinks fit any number of persons whose assistance or advice it may require, but a person so co-opted shall neither be entitled to vote at any meeting of that Committee nor be counted as a member thereof for the purpose of forming a quorum.

Section 5 of Cap 237 which it is proposed to amend—

5. Without prejudice to the provisions of this Act, the Council shall perform the following duties and functions—

(a) it shall secure the greatest possible improvement in the quality and efficiency of the training of personnel engaged in industry;

(b) it shall ensure an adequate supply of properly trained
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manpower at all levels in industry;

(c) it shall share the cost of all industrial training undertaken in pursuance of this Act as evenly as possible between employers;

(d) it shall advise the Minister from time to time concerning the institution, review and maintenance of a system or systems for the holding of tests in respect of trades and occupations generally or any particular trade or occupation, and for the granting of certificates of efficiency to, and the making of reports upon, persons who enter for those tests;

(e) it shall investigate any dispute or other matter arising out of a contract of apprenticeship or indentured learnership referred to it by the Director, and shall endeavour to settle the dispute amicably;

(f) it shall perform such duties and functions in regard to any other matter concerning apprenticeship or indentured learnership as may be prescribed;

(g) it shall, at the request of the Minister, and may of its own motion, investigate and make recommendations to the Minister on any matters connected with this Act.

Section 5A of Cap 237 which it is proposed to amend—

5A. (1) A Committee shall from time to time and whenever so directed by the Council submit to the Council proposals for the raising and collection of a training levy on employers in the industry in respect of which the Committee is established.

(2) The Minister may by notice in writing require the Council to exercise its power of direction under subsection (1) in respect of any industry specified in the notice within such time as may be so specified.

(3) Where a Committee—

(a) has failed to comply within a reasonable time with a direction of the Council under subsection (1) to submit proposals for the raising and collection of a levy; or

(b) has submitted such proposals which appear to it unsatisfactory,

the Council may direct the Committee to submit those proposals or, as the case may be, fresh proposals, within a specified time, and it directs the Committee to submit fresh proposals it shall specify in the direction in what respects the proposals already submitted appear to it unsatisfactory and if the Committee fails
to comply with the direction or the proposals submitted in pursuance of which it appears to the Council unsatisfactory the Council may make an order declaring the Committee to be in default.

(4) On the making of an order under subsection (3) the members of the Committee shall forthwith vacate their office and the order may contain such provisions as seem to the Council expedient for authorizing any person to act in the place of the member of the Committee during such period, not exceeding six months, as may elapse before new members are appointed.

(5) If the proposals of a Committee, or of a person acting under subsection (4), are approved by the Council, the Council shall submit those proposals to the Minister.

Section 5B of Cap 237 which it is proposed to amend—

5B. (1) The Minister may make a training levy order for the purpose of giving effect to proposals submitted by the Council and approved by him, and the order may provide for the amendment of a previous training levy order and may make different provisions in relation to different classes or descriptions of employer.

(2) A training levy order may contain provisions as to the evidence by which a person’s liability to the levy or his discharge of that liability may be established, and as to the time at which any amount payable by any person by way of the levy shall become due and the manner in which it shall be recoverable by the Director.

(3) If any person fails to pay an amount payable by him by way of the training levy within the time prescribed by the training levy order a sum equal to five per cent of that amount shall be added to the amount for each month or part of a month thereafter that the amount due remains unpaid.

(4) A person who fails to comply with any provision of a training levy order shall be guilty of an offence.

Section 5C of Cap 237 which it is proposed to amend—

5C. (1) All moneys received in respect of a training levy order shall be paid into a Training Levy Fund (in this section referred to as a Fund) established in respect of the industry to which that order relates.

(2) The Director, acting on advice of the Council, may make payments out of a Fund for any of the following purposes—
(a) the payment of maintenance and travelling allowances to persons attending training courses;

(b) the making of grants or loans to persons providing courses or training facilities;

(c) the payment of fees to persons providing further education in respect of persons who receive it in association with their training;

(d) the reimbursement of an employer for all or part of his training costs including fees, instruction costs, materials costs and wages of apprentices or indentured learners while attending training courses;

(e) the payment of sitting allowances and travelling, accommodation and entertainment expenses for members of Committees and any sub-committees set up under them while attending meetings of those Committees and sub-committees;

(f) the payment of examiners’ fees for setting, moderating, invigilating and marking proficiency tests for apprentices and indentured learners, and their travelling and accommodation expenses;

(g) the payment of honoraria to instructors for conducting evening courses; and

(h) such other expenditure related to training as may be approved by the Minister.

(3) In any case where the Council withholds its approval for any payment, or the Director refuses to make a payment approved by the Council, being a payment proposed under the provisions of subsection (2), the matter shall be referred to the Minister whose decision thereon shall be final.

(4) The Director shall cause to be kept all proper books of account and other books and records in relation to a Fund and shall, within such period after the end of each financial year as the Minister shall specify, cause to be prepared a balance sheet showing in detail the assets and liabilities of each Fund as at the end of that year and, in such form as the Minister shall specify, statements of account of each Fund for that year.

(5) The accounts of a Fund shall be examined, audited and reported upon annually by auditors to be appointed in respect of each financial year by the Council in relation to each Fund, and the expenses of and incidental to the examination and audit of and report upon the accounts shall be paid out of the Fund to which they relate.
(6) The Director shall cause to be produced and submitted to the auditors all books and records necessary for and relevant to the performance of their duties under subsection (5) and shall, in addition, cause to be supplied to them such other information and particulars as they may require in that behalf.

(7) The Director shall cause to be submitted to the Minister all such information as the Minister may from time to time require in respect of the financial position of a Fund. And shall, in addition, submit to the Minister an annual report, including a balance sheet and a statement of income and expenditure audited in accordance with subsection (5) and such other particulars as the Minister may request, and the report shall be published by the Council, in such manner as it shall specify, as soon as practicable after the end of each financial year.

Section 6 of Cap 237 which it is proposed to amend—

6. (1) No person shall employ an apprentice without having first obtained the written permission of the Director to do so; and the Director’s permission shall specify the maximum number of apprentices who may be employed at any one time by the person to whom the permission is given.

(2) No permission shall be given under this section unless the person applying therefor satisfies the Director that his establishment offers reasonable opportunities for the proper training of the apprentice or the number of apprentices proposed to be employed by him.

(3) A person aggrieved by a decision of the Director under this section may appeal therefrom to the Minister whose decision thereon, after consultation with the Council, shall be final.

(4) A person who—

(a) employs an apprentice without having first obtained the written permission of the Director to employ apprentices; or

(b) having obtained the written permission of the Director to employ apprentices, employs at any one time a number of apprentices in excess of the maximum number specified in that written permission,

shall be guilty of an offence.

Section 7 of Cap 237 which it is proposed to amend—

7. (1) No person shall employ an indentured learner without having first obtained the written permission of the Director to do so; and the Director’s permission shall specify the
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maximum number of indentured learners who may be employed at any one time by the person to whom the permission is given.

(2) No permission shall be given under this section unless the person applying therefor satisfies the Director that his establishment offers reasonable opportunities for the proper training of the indentured learner or the number of indentured learners proposed to be employed by him.

(3) A person aggrieved by a decision of the Director under this section may appeal therefrom to the Minister whose decision thereon, after consultation with the Council shall be final.

(4) A person who—

(a) employs an indentured learner without having first obtained the written permission of the Director to employ indentured learners; or

(b) having obtained the written permission of the Director to employ indentured learners, employs at any one time a number of indentured learners in excess of the maximum number specified in such written permission,

shall be guilty of an offence.

Section 8 of Cap 237 which it is proposed to amend—

Who may bid himself as an apprentice or indentured learner.

8. (1) A person who—

(a) has attained the apparent age of fifteen years; and

(b) has completed any period of compulsory education required by law; and

(c) has, in the case of a trade or occupation in respect of which a scheme has been made, the qualifications prescribed under that scheme; and

(d) has been certified fit as provided in section 10, may, subject to the provisions of subsection (3), bind himself as an apprentice or as an indentured learner in any trade or occupation.

(2) No person who does not qualify therefor under the provisions of subsection (1) shall so bind himself.

(3) A person who is a minor shall not so bind himself except with the consent of his parent or guardian or, if there is no parent or guardian, with the consent of a District Officer or labour officer.

(4) A minor who, with consent under subsection (3), binds
himself as an apprentice or indentured learner shall be bound by
the contract of apprenticeship or indentured learnership, as the
case may be, throughout its currency notwithstanding that he
may have in the meantime attained his majority.

Section 11 of Cap 237 which it is proposed to amend—

11. (1) Every contract of apprenticeship or indentured
learnership made after the commencement of this Act shall be in
the prescribed form or, where no form has been prescribed, in a
form approved by the Director.

(2) An employer who enters into a contract of
apprenticeship or indentured learnership with any person shall,
within fourteen days thereafter, lodge, in the prescribed manner,
with the Director for registration—

(a) the contract of apprenticeship, or indentured
learnership;
(b) a duplicate or copy thereof;
(c) a further copy thereof for filing by the Director; and
(d) the medical certificate obtained under section 10.

(3) An employer who fails to comply with the provisions of
subsection (2) shall be guilty of an offence.

(4) No contract of apprenticeship or indentured learnership
made after the commencement of this Act shall be binding until
it has been registered by the Director.

(5) The Director may refuse to register a contract of
apprenticeship or indentured learnership if in his opinion it is not
in the interests of the person who is the apprentice or indentured
learner thereunder, or if it is not made in accordance with the
provisions of a scheme; and he may in coming to a decision
under this subsection have regard, in addition to any other
circumstances, to that person’s prospects of obtaining
employment at the expiration of the contract in the trade or
occupation in which he seeks to bind himself as apprentice or
indentured learner.

(6) A party dissatisfied with the refusal of the Director to
register a contract may appeal to the Minister within thirty days
of the date upon which the decision of the Director is
communicated to him and the Minister’s decision, after
consultation with the Council, shall be final.

(7) In every case where the Director registers a contract
under this Act, he shall—

(a) endorse the particulars of registration thereon and on
the duplicate or copy referred to in paragraph (b) of subsection (2) and return the contract and the duplicate or copy thereof to the employer; and

(b) The employer shall deliver the duplicate or copy which has been endorsed to the apprentice or indentured learner for him to keep.

Section 12 of Cap 237 which it is proposed to amend—

Transfer of contracts of apprenticeship or indentured learnership.

12. (1) The rights and obligations of an employer under a contract of apprenticeship or indentured learnership may, with the consent of the apprentice or indentured learner thereunder and with the approval of the Director, be transferred to another employer.

(2) The Director may withhold his approval under this section if in his opinion the transfer is not in the interests of the apprentice or indentured learner.

(3) Subject to the provisions of subsection (5), no transfer of the rights and obligations of an employer under a contract of apprenticeship or indentured learnership shall take effect until the instrument of transfer—

(a) has been reduced to writing and has been signed by or on behalf of the employer transferring the rights and obligations and the employer to whom the rights and obligations are being transferred and by the apprentice or indentured learner, as the case may be; and where the apprentice or indentured learner is a minor, has been signed also by his parent or guardian or, if he has no parent or guardian, has been signed by a District Officer or a labour officer; and

(b) has been registered by the Director in the manner prescribed by subsection (4).

(4) The employer to whom the rights and obligations under a contract of apprenticeship or indentured learnership are being transferred shall, within one month of the date on which the instrument of transfer is signed by him, lodge, in the prescribed manner, the instrument with the Director for registration, and an employer who fails so to lodge the instrument shall be guilty of an offence.

(5) Where under a contract of apprenticeship or indentured learnership, an apprentice or indentured learner is employed by two or more persons in partnership, unless the apprentice or indentured learner otherwise elects his contract of apprenticeship or indentured learnership shall not be terminated by reason only of the death or retirement of a partner if the business of the
partnership is continued by the surviving or continuing partner or partners whether alone or jointly with another person or persons, and the rights and obligations of the employer under the contract shall be deemed to be transferred to the person or partners continuing the business; and that person or partnership shall, within one month of the date of the death or retirement, lodge the contract, in the same manner as if it were an agreement to transfer, with the Director, who shall certify thereon that the employer’s rights and obligations under the contract have been transferred to that person or partnership under this subsection.

Section 13 of Cap 237 which it is proposed to amend—

13. (1) Without prejudice to the provisions of section 15, a contract of apprenticeship or indentured learnership may be terminated or extended—

(a) by mutual agreement of the parties thereto, with, in the case of an apprentice or indentured learner who is a minor, the same consent as is requisite for binding himself as an apprentice or indentured learner; or

(b) by the director at the instance of any party thereto if he is satisfied that it is expedient so to do; or

(c) by the Director at the instance of the Council.

(2) The employer shall give notice to the Director of the termination or extension of a contract under paragraph (a) of subsection (1), and an employer who fails to give notice within a period of one month after the date of termination or extension shall be guilty of an offence.

(3) The Director shall not exercise the powers conferred upon him by paragraph (b) of subsection (1) unless he has given both parties to the contract an opportunity to be heard by, or to make representations to, him.

(4) The fact of termination or extension shall be endorsed by the Director upon the registered copy of the contract of apprenticeship or indentured learnership.

(5) A party dissatisfied with the action of the Director in terminating or extending a contract of apprenticeship or indentured learnership may appeal to the Minister within two months of the date upon which the decision of the Director is communicated to him.

(6) The Minister shall consult the Council on the matter of an appeal under subsection (5), and, in the event of his setting aside the decision of the Director to terminate a contract, he may make such direction with regard to the payment of any wages which would have been payable to the apprentice or indentured
learner if the contract had not been terminated as he considers just, and any sum so directed to be paid may be recovered by the apprentice or indentured learner form the employer as a civil debt recoverable summarily.

(7) The decision of the Minister under subsection (6) shall be endorsed by the Director upon the registered copy of the contract of apprenticeship or indentured learnership.

(8) A contract terminated under this section shall be terminated for all purposes but without prejudice to any right of action which may have accrued before the date of termination.

Section 14 of Cap 237 which it is proposed to repeal—

14. A person who induces or attempts to induce an apprentice or indentured learner to quit the service of his employer, or who employs a person who he knows is bound by a contract of apprenticeship or indentured learnership to another person, shall be guilty of an offence and liable to a fine not exceeding two thousand shillings.

Section 15 of Cap 237 which it is proposed to repeal—

15. (1) Without prejudice to the provisions of section 13, the first six months of every contract of apprenticeship or indentured learnership shall be a period of probation during or at the expiration of which the contract may be terminated by either party; and an agreement to the contrary, whether expressed or implied, shall be void, without, however, affecting the validity of any other part of the agreement of which it forms part.

(2) The employer shall give notice to the Director of the termination of a contract under subsection (1), and an employer who fails to give notice within a period of one month after the date of termination shall be guilty of an offence.

Section 16 of Cap 237 which it is proposed to repeal—

16. (1) If an employer is satisfied that an apprentice or indentured learner bound to him by contract under this Act has committed a serious breach of the terms of the contract or of any conditions of apprenticeship or indentured learnership applicable to the apprentice or indentured learner, he may forthwith suspend the apprentice or indentured learner.

(2) An employer who has suspended an apprentice or indentured learner shall report the matter in writing to the Director within three days of the suspension, and the Director shall then investigate the matter and may confirm or set aside the suspension of the apprentice or indentured learner or vary the term thereof.
(3) Whether or not a complaint has been lodged by the employer, the Director may order the suspension of an apprentice or indentured learner pending investigation, and, if he does so, he shall report his action to the Council.

(4) Where the Director sets aside the suspension of an apprentice or indentured learner the employer shall pay to the apprentice or indentured learner such wages as may have been withheld from him during the period of suspension.

(5) An employer who fails to report the suspension of an apprentice or indentured learner in accordance with the provisions of this section shall be guilty of an offence.

Section 17 of Cap 237 which it is proposed to amend—

17. (1) An employer who employs an apprentice or indentured learner shall keep in respect of every apprentice or indentured learner records of the remuneration paid to, and of the time worked by, every apprentice or indentured learner, and such other particulars as may be prescribed.

(2) The records shall be kept in such form and manner as may be prescribed; but the Director may, after consultation with the council, in writing signed by him, authorize the keeping of records in some other form if the records so kept will in his opinion enable him to ascertain therefrom the required particulars.

(3) A person who employs or has employed an apprentice or indentured learner shall retain a record made in accordance with this section for a period of three years after the date of the last entry in the record.

(4) An employer who fails to keep the required records in the proper form and manner and an employer and former employer who fails to retain a record made in accordance with this section for the required period shall be guilty of an offence.

Section 18 of Cap 237 which it is proposed to amend—

Section 19 Notwithstanding the provisions of any other law for the time being in force, any term of a contract of apprenticeship or indentured learnership or any condition of apprenticeship or indentured learnership which—

(a) provides that the whole or any part of the wages of an apprentice or indentured learner shall be based upon the quantity of work done; or

(b) requires an apprentice or indentured learner under seventeen years of age to work overtime;
(c) (Deleted by 3 of 1971, Sch.),

shall be void.

Section 19 of Cap 237 which it is proposed to amend—

19. (1) The employer of an apprentice or indentured learner shall, at the request of the apprentice or indentured learner, on the satisfactory completion of the contract of apprenticeship or indentured learnership, make out a certificate of apprenticeship or indentured learnership, as the case may be, in the prescribed form and manner, submit it to the Director for countersignature and, when countersigned, give it to the apprentice or indentured learner.

(2) If an employer fails to give a certificate, then, without prejudice to any penalty to which the employer may be liable in respect of failure so to do, the Director, having first made such inquiries as may be necessary and possible, may give the certificate himself.

(3) A person who contravenes any of the provisions of subsection (1) shall be guilty of an offence.

(4) A person who knowingly gives to an apprentice or indentured learner a certificate under this section which is untrue in any material particular shall be guilty of an offence.

Section 20 of Cap 237 which it is proposed to amend—

20. (1) If an apprentice or indentured learner is absent from work for a period of thirty days or more, or for a number of periods amounting in the aggregate to thirty days or more, the Director may, if he considers it expedient, order that the term of his contract of apprenticeship or indentured learnership be extended by the number of days on which he is absent, and the contract shall stand extended accordingly.

(2) Where it is proved to the satisfaction of the Council that a person has undergone previous technical training relevant to the trade or occupation in which he desires to be apprenticed, the Council may authorize the Director to reduce the period of apprenticeship to be served by that person to such lesser period as it shall determine.

(3) The Director shall have all the powers of an inspector under this Act.

Section 21 of Cap 237 which it is proposed to amend—

21. (1) The Director may, after consultation with the Council and subject to the provisions of section 22, make a scheme or schemes for regulating the training of apprentices or
indentured learners in any trade or occupation:

Provided that no scheme shall revoke or vary any term of any contract of apprenticeship or indentured learnership registered before the date of making of the scheme.

(2) A scheme may in respect of any trade or occupation which it relates specify—

(a) the qualifications, including age and educational standard, required for apprentices or for indentured learners in that trade or occupation;

(b) without prejudice to the provisions of subsection (2) of section 20, the period of apprenticeship or indentured learnership (which shall not exceed seven years in the case of apprenticeship and shall be less than four years in the case of indentured learnership) applicable to that trade or occupation;

(c) the practical training which employers shall provide for apprentices or indentured learners in their employ in that trade or occupation;

(d) the theoretical training in that trade or occupation which shall be provided by or at the expense of employers for their apprentices or indentured learners or which apprentices or indentured learners shall undergo, and the manner in which such training shall be provided or undergone;

(e) the proficiency tests or examinations which apprentices or indentured learners in that trade or occupation shall be required to undergo from time to time;

(f) the maximum number of ordinary working hours which apprentices or indentured learners in that trade or occupation may be required or permitted to work during any week or on any day, and the days on which, the hours on any day before or after which and the intervals during which no apprentice or indentured learner in that trade or occupation may be required or permitted to work;

(g) the maximum period of overtime which apprentices or indentured learners in that trade or occupation may be required or permitted to work on any day or during any specified period;

(h) the minimum number of paid holidays to be allowed to apprentices or indentured learners in that trade or occupation during any year of their apprenticeship or
indentured learnership;

(i) the remuneration and other conditions which shall apply in respect of any period during which an apprentice or indentured learner in that trade or occupation is unable by reason of any condition of apprenticeship or indentured learnership or other specified circumstances to render service to his employer during ordinary working hours;

(jj) any other matter which in the opinion of the Director, after consultation with the Council, is necessary for the effective operation of the scheme.

(3) The Director may, in any scheme, provide that the conditions of apprenticeship or indentured learnership specified therein, or any of them, shall apply in respect of apprentices or indentured learners either generally or in any particular area.

(4) Different conditions of apprenticeship or indentured learnership may be specified under this section in respect of different classes of employers or apprentices or indentured learners, and different specified trades or occupations; and in prescribing different conditions the Director may apply any method of differentiation he may deem advisable.

(5) A scheme may be amended by a subsequent scheme or by an order made by the Director on the advice of the Council.

Section 22 of Cap 237 which it is proposed to amend—

22. (1) Before making a scheme the Director shall publish once in the Gazette and twice, with an interval of at least seven but not more than fourteen days between each publication, in a newspaper published and circulating in Kenya, a notice of his intention to make a scheme, specifying a place where copies of a draft thereof may be inspected and a time, which shall not be less than thirty days form the first date of publication, within which any objection to the draft scheme shall be sent to the Director.

(2) An objection shall be in writing and shall state—

(a) the specific grounds of objection; and

(b) the deletions from, or additions or modifications to, the scheme requested by the objector,

and the Director shall consider the objection made by or on behalf of a person appearing to him to be affected, if the objection has been sent to him within the time specified, and he may, but shall not be bound to, consider any other objection.
(3) At the expiration of the time specified for the making of objections, the Director may, after consideration in consultation with the Council of all objections which he is required by subsection (2) to consider—

(a) withdraw the draft scheme; or

(b) make the scheme under section 21 in the terms of the draft of the scheme published under subsection (1); or

(c) make the scheme under section 21 subject to such deletions from, or additions or modifications to, the draft of the scheme published under subsection (1) as he thinks necessary:

Provided that no deletion from, or addition or modification to, any scheme shall be made under paragraph (c) of this subsection if in the opinion of the Director the deletion, addition or modification effects important alterations in the character of the draft of the scheme published under subsection (1).

(4) The Director may amend a draft scheme otherwise than as permitted under paragraph (c) of subsection (3), but in that case all the provisions of this section, shall apply to the amended draft scheme as if it were an original draft scheme.

(5) Where the Director makes a scheme, he shall publish notice thereof in the same manner as is provided in subsection (1) for the publication of a notice of intention to make a scheme specifying a place where copies of the scheme may be inspected.

Section 22A of Cap 237 which it is proposed to repeal—

22. A (1) Every employer of apprentices or indentured learners shall appoint by name, from among his employees—

(a) a person responsible for supervising generally the training of apprentices or indentured learners under the provisions of this Act and of any relevant scheme; and

(b) at every premises or worksite where apprentices or indentured learners are regularly employed for a period of not less than three months, an apprentice or indentured learner master, who shall be responsible for day-to-day guidance of the apprentices or indentured learners in matters concerning their trade or occupation.

(2) The Director may, by notice to an employer in writing, disapprove the appointment of an apprentice or indentured learner master deemed by him not to be competent for the purpose of this Act, and that notice may specify the nature of the training which the Director requires the apprentice or indentured
learner master to undertake before his appointment may be re-approved.

(3) Where twenty-five or more apprentices and or indentured learners are employed at any one premises or worksite, the apprentice or indentured learner master shall devote the whole of his time during normal working hours to apprentice or indentured learner guidance; and where the number of apprentices and or indentured learners so employed is less than twenty-five the apprentice or indentured learner master shall devote that proportion of his time to apprentice or indentured learner guidance as the number of apprentices and or indentured learners employed bears to twenty-five.

(4) An employer who fails to make an appointment required by subsection (1), or who fails to ensure that the provisions of subsection (3) are observed, shall be guilty of an offence.

Section 23 of Cap 237 which it is proposed to amend—

Appointment of inspectors.

23. (1) The Minister may, by notice in the Gazette, appoint any person appointed to the public service as a senior training officer or levy inspector to be an inspector for all or any of the purposes of the Act.

Section 24 of Cap 237 which it is proposed to amend—

Powers of inspectors.

24. (1) An inspector may—

(a) at any reasonable time enter premises in which he has reasonable cause to believe that an apprentice or indentured learner is or has within the previous six months been employed and take with him an interpreter or other assistant or a police officer;

(b) examine, with respect to matters under this Act, an person whom he finds on premises entered under the provisions of paragraph (a) or whom he has reasonable cause to believe to be or to have been within the preceding six months employed on those premises, and require him to be so examined;

(c) require an apprentice or indentured learner to appear before him at a time and place fixed by the inspector and then and there question that apprentice or indentured learner;

(d) require the production or delivery up of any of the records required to be kept under this Act or any rules made thereunder , and or any document relating thereto or relating, with respect to matters under this Act, to the business of any person whom the inspector has
reasonable cause to believe is or was within the preceding six months the employer of an apprentice or indentured learner;

(e) examine and make extracts from and copies of any such documents produced or delivered up.

(2) A person who—

(a) refuses or fails to comply to the best of his ability with a requirement made by an inspector under this section; or

(b) hinders an inspector in the exercise of his powers under this section shall be guilty of an offence:

Provided that no one shall be required under this section to answer a question or to give information tending to incriminate himself.

(3) An inspector exercising or seeking to exercise any of the powers specified in subsection (1) shall, on being required to do so, produce written evidence of his appointment.

Section 25 of Cap 237 which it is proposed to amend—

25. (1) A member of the Council or a public officer who discloses to any person, except for the purposes of the performance of his duties or the exercise of his powers under this Act, information in relation to the financial affairs or plant or equipment of any person, which information was acquired in the performance of his duties or the exercise of his powers under his Act, shall be guilty of an offence.

(2) Nothing in this section shall apply to the disclosure to information made for the purposes of criminal proceedings which may be taken whether by virtue of this Act or otherwise or for the purposes of a report of any such proceedings.

Section 26 of Cap 237 which it is proposed to repeal—

26. (1) Every contract of apprenticeship existing at the commencement of this Act shall continue in force and be reduced to writing and executed and registered in accordance with the procedure laid down in section 11 within four months of the date of commencement of this Act.

(2) Every employer under a contract of apprenticeship existing at the commencement of this Act shall ensure that the requirements of subsection (1) are fulfilled in relation to the contract, and an employer who fails so to do shall be guilty of an offence, but without prejudice to the continuance in force of the contract.
Section 27 of Cap 237 which it is proposed to amend—

Bankruptcy.

27. Where, under the provisions of subsection (1) of section 39 of the Bankruptcy Act, a contract of apprenticeship or indentured learnership is discharged by the apprentice or indentured learner giving notice in writing to the trustee in bankruptcy to that effect, the trustee shall, within a period of one month of receiving the notice, notify the Director thereof, and failure so to notify the Director shall be an offence, without prejudice however to the complete discharge of the contract.

Section 28 of Cap 237 which it is proposed to amend—

Penalties.

28. (1) A person who commits an offence under this Act in respect of which no penalty is specially provided shall be liable to a fine not exceeding six thousand shillings or to imprisonment for a period not exceeding six months, or to both.

Section 29 of Cap 237 which it is proposed to amend—

Rules.

29. (1) The Minister may make rules generally for carrying into effect the provisions of this Act and, in particular, may make rules prescribing—

(a) the form of a contract of apprenticeship or indentured learnership and the matters for which provision shall be made in the contract;

(b) the manner in which educational standards or birth may be proved;

(c) the nature of returns which employers may from time to time be required to furnish to the Director and the period within which those returns shall be so furnished;

(d) the procedure for the registration and transfer of contracts of apprenticeship or indentured learnership and for the notification of the expiration or termination of those contracts;

(e) the form and manner in which certificates of apprenticeship or indentured learnership are to be issued by employers;

(f) the form and manner in which tests to assess the occupational skills of persons (other than apprentices and indentured learners) in any particular trade or occupation, or trades and occupations generally, shall be conducted;

(g) the form of certificates, reports and other documentary evidence to be granted or issued, after the completion of those tests, in respect thereof;
(h) all or any matters which by this Act are required or permitted to be prescribed.

(2) Different rules may be made under subsection (1) in respect of different classes of employers or apprentices of indentured learners and of different trades or occupations, and in respect of different classes of employers or apprentices or indentured learners and of different trades or occupations, and in making rules the Minister may apply any method of differentiation he may deem advisable.

Section 30 of Cap 237 which it is proposed to amend—

Exemptions.

30. (1) The Director, with the approval of the Council, may, in the case of a particular contract, exempt any person from any provision of this Act or of any rule made thereunder or from a condition of apprenticeship or indentured learnership contained in any scheme.

(2) Any such exemption may at any time be withdrawn by the Director with the approval of the Council.

Section 31 of Cap 237 which it is proposed to amend—

Institution of proceedings.

31. The director may institute proceedings in respect of an offence under this Act or any rules made thereunder and may appear and prosecute in those proceedings.