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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – FIFTH SESSION – 2026

DIRECTORATE OF DEPARTMENTAL COMMITTEES
DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES

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REPORT ON:

THE TRADE DESCRIPTION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2026)

THE NATIONAL ASSEMBLY
PAPERS LAID
DAY. Tuesday
DATE: 03 NOV 2026
TABLED BY: Chairperson, DC on Trade, Industry and Cooperatives
CLERK-AT THE-TABLE: Gutwale Chebet

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DIRECTORATE OF DEPARTMENTAL COMMITTEES
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LIST OF ABBREVIATIONS AND ACRONYMS

ACA	-	Anti Counterfeit Authority
AfCFTA	-	African Continental Free Trade Area
BETA	-	Bottom-Up Economic Transformation Agenda
CA	-	Communications Authority of Kenya
Cap.	-	Chapter
CAK	-	Competition Authority of Kenya
CBK	-	Central Bank of Kenya
CBS	-	Chief of the Burning Spear
CEO	-	Chief Executive Officer
CIO	-	Chief Information Officer
COFEK	-	Consumer Federation of Kenya
CoG	-	Council of Governors
COMESA	-	Common Market for Eastern and Southern Africa
CPA	-	Consumer Protection Act
CRA	-	Commission on Revenue Allocation
DCI	-	Directorate of Criminal Investigation
DDC	-	Directorate of Departmental Committees
DPAK	-	Digital Platforms Association of Kenya
EAC	-	East African Community
EACC	-	Ethics and Anti-Corruption Commission
EGH	-	Elder of the Golden Heart
ICT	-	Information, Communication and Technology
KAM	-	Kenya Association of Manufacturers
KANU	-	Kenya African National Union
KEBS	-	Kenya Bureau of Standards
KECOPAC	-	Kenya Consumers Protection Advisory Committee
KENTRADE	-	Kenya Trade Network Agency
KRA	-	Kenya Revenue Authority
LSK	-	Law Society of Kenya
Ltd	-	Limited
MSEA	-	Micro and Small Enterprises Authority
MSMEs	-	Micro, Small and Medium Enterprises
RETRAK	-	Retail Trade Association of Kenya
SMEs	-	Small and Medium Entreprises
TBT	-	Technical Barriers to Trade
TDA	-	Trade Descriptions Act
TFA	-	Trade Facilitation Agreement
TIC	-	Trade, Industry and Cooperatives
UDA	-	United Democratic Alliance
UK	-	United Kingdom
UNESCO	-	United Nations Educational, Scientific and Cultural Organisation
WDM-K	-	Wiper Democratic Movement Kenya
WTO	-	World Trade Organisation

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CHAIRPERSON'S FOREWORD

This report presents the proceedings of the Departmental Committee on Trade, Industry and Cooperatives on its consideration of the Trade Description (Amendment) Bill (National Assembly Bill No. 42 of 2026). The Bill was published on 19th June 2026 vide Kenya *Gazette* Supplement No. 154. The Bill underwent First Reading on 28th July 2026 and was thereafter committed to the Departmental Committee on Trade, Industry and Cooperatives for consideration and reporting to the House pursuant to the provisions of Standing Order 127.

The Trade Descriptions (Amendment) Bill, 2026 seeks to amend the Trade Descriptions Act, Cap. 505 to enhance the procedures under the Act, incorporate changes in the conduct of business and address emerging market trends relating to false trade descriptions and misrepresentations.

The proposed amendments are intended to strengthen consumer protection by ensuring that goods and services offered in the market are accurately described and that traders do not engage in practices that may mislead consumers regarding the quality, quantity, composition, origin, characteristics, performance or other material aspects of goods and services. The Bill further seeks to improve the effectiveness of enforcement mechanisms and provide a framework that is responsive to evolving commercial practices, including the increasing use of digital platforms, e-commerce and other modern channels of trade.

In considering the Bill, the Committee observed that it expands arrest and search powers under the proposed section 21A which raises concerns regarding the scope, potential for abuse, and whether the safeguards relating to obstruction, flight risk and false or refused identification provide sufficient protection against arbitrary exercise of power.

Additionally, the Bill introduces new powers over digital platforms raising practical and jurisdictional questions, particularly regarding platforms operating outside Kenya. There is also need to clarify their interaction with the Data Protection Act and existing consumer protection and e-commerce regulatory frameworks.

In accordance with Article 118(1)(b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly placed an advertisement in the print media on 6th August 2026 inviting the public and relevant stakeholders to submit memoranda on the Bill. Further, vide a letter Ref: NA/DDC/TIC/2026 (070) dated 24th August 2026, the Committee invited stakeholders for a public engagement session held on Wednesday, 2nd September 2026. During the meeting, ten (10) stakeholders made oral submissions on the Bill.

All stakeholders supported the modernisation of the Trade Descriptions Act, Cap. 505 but expressed concern with the powers that the Bill was proposing to give to inspectors. They noted that the powers may be abused if adequate safeguards are not provided in the Bill. The clause providing for liability by an employer or partner was also opposed by stakeholders with some proposing amendments to it.

The Committee considered all the views, comments and amendments proposed by stakeholders and adopted some of them which form part of the amendments proposed by the Committee in Chapter Seven of this Report.

The Committee extends appreciation to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support provided during consideration of the Bill. The Committee also thanks the stakeholders who submitted memoranda and participated in the stakeholder engagement meeting for their invaluable input. Finally, I'm grateful to the Honourable Members of the Committee and the Committee Secretariat for their dedication and contribution in the preparation of this report.

Having considered the Trade Description (Amendment) Bill (National Assembly Bill No. 42 of 2026), the Committee recommends that the House approves the Bill with amendments as outlined in the Schedule in Chapter Seven of this Report.

On behalf of the Departmental Committee on Trade, Industry and Cooperatives, and pursuant to Standing Order 127(4), it is my privilege and honour to present to the House the Committee's Report on the Trade Description (Amendment) Bill (National Assembly Bill No. 42 of 2026).

Hon. Benard Masaka Shinali, CBS, MP
Chairperson,
Departmental Committee on Trade, Industry and Cooperatives

CHAPTER ONE

1.0 PREFACE

1.1 Establishment of the Committee

1. The Departmental Committee on Trade, Industry and Cooperatives is one of the twenty Departmental Committees of the National Assembly established under Standing Order 216 whose mandate pursuant to Standing Order 216 (5) is as follows:

   i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
   ii. *To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;*
   iii. *On a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
   iv. ***To study and review all the legislation referred to it;***
   v. *To study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
   vi. *To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
   vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on appointments);*
   viii. *To examine treaties, agreements and conventions;*
   ix. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
   x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
   xi. *To examine any questions raised by Members on a matter within its mandate.*

1.2 Mandate of the Committee

2. In accordance with the Second Schedule to the Standing Orders, the Committee is mandated to consider trade, including securities exchange, consumer protection, pricing policies, commerce, industrialisation including special economic zones, enterprise promotion & development including micro, small & medium enterprises (MSMEs), and small and medium enterprises (SMEs), intellectual property, industrial standards, anti-counterfeit policies and cooperatives development.

3. In executing its mandate, the Committee oversights the Ministry of Investment, Trade and Industry; and the Ministry of Cooperatives and MSMEs Development.

1.3 Committee Membership

4. The Departmental Committee on Trade, Industry and Cooperatives was reconstituted by the House on 5th March 2025 and comprises the following Members:

Chairperson
Hon. Bernard Masaka Shinali, CBS, MP
Ikolomani Constituency
ODM Party

Vice-Chairperson
Hon. Marianne Jebet Kitany, MP
Aldai Constituency
UDA Party

Hon. Adhe Wario Guyo, MP
North Horr Constituency
KANU

Hon. Adams Korir Kipsanai, MP
Keiyo North Constituency
UDA Party

Hon. Anthony Tom Oluoch, MP
Mathare Constituency
ODM Party

Hon. Alfred Kiprono Mutai, MP
Kuresoi North Constituency
UDA Party

Hon. (Dr.) Beatrice Kahai Adagala, MP
Vihiga County
ANC Party

Hon. Amos Maina Mwago, MP
Starehe Constituency
Jubilee Party

Hon. Joshua Mbithi Mutua Mwalyo, MP
Masinga Constituency
Independent Member

Hon. John Okano Bwire, MP
Taveta Constituency
WDM-K Party

Hon. Joyce Kamene, MP
Machakos County
WDM-K Party

Hon. Samuel Parashina Sakimba, MP
Kajiado South Constituency
ODM Party

Hon. Robert Githinji Gichimu, MP
Gichugu Constituency
UDA Party

Hon. Michael Wainaina Wambugu, MP
Othaya Constituency
UDA Party

Hon. (Dr.) Wilberforce Ojiambo Oundo, MP
Funyula Constituency
ODM Party

1.4 Committee Secretariat

5. The Committee is facilitated by the following Secretariat:

Ms. Laureen Omusa Wesonga
Senior Clerk Assistant/Head of Secretariat

Ms. Carolyne Musyoka
Hansard Reporter II (Clerk Assistant)

Ms. Doreen Karani
Principal Legal Counsel I

Ms. Lynette Otieno
Principal Legal Counsel II

Mr. Peter Barasa
Legal Counsel I

Ms. Priscilla Wangu
Fiscal Analyst II

Ms. Pauline Sifuma
Hansard Reporter II

Ms. Priscilla Saidi
Research Officer III

Mr. Ambrose Nguti
Media Relations Officer III

Ms. Margaret Wainaina
Public Relations Officer III

Ms. Peris Kaburi
Assistant Serjeant-at-Arms II

Mr. Kelvin Lengasi
Audio Assistant II

CHAPTER TWO

2.0 BACKGROUND OF TRADE DESCRIPTIONS AND REGULATION OF TRADE IN KENYA

2.1 Introduction

6. The Trade Description (Amendment) Bill (National Assembly Bill No. 42 of 2026) seeks to modernise the Trade Descriptions Act, Cap. 505 to enhance the procedures set out in the Act, to incorporate changes in the conduct of business that have occurred since commencement of the Act and address emerging market trends relating to false trade descriptions and misrepresentations.

7. The principal Act was designed for face-to-face retail transactions typical of the late 1970s and, apart from minor consequential amendments, has not undergone substantive revision to address digital commerce. The existing framework does not expressly provide for online marketplaces, social media advertising or similar digital platforms, creating an enforcement gap in identifying vendors and addressing non-compliant listings.

2.2 Situational Analysis

8. Kenya's trade description regulatory framework has evolved through the following three broad periods:

   a) **The Merchandise Marks Era (Pre-1977)**: Misdescription of goods was addressed only indirectly through the colonial-era Merchandise Marks Act, which focused narrowly on the false marking of goods and country-of-origin labelling of imports, without a dedicated statutory regime for trade descriptions generally.

   b) **The Analogue Trade Description Era (1977-2010)**: Enactment of the Trade Descriptions Act, Cap. 505, assented to on 13th July 1977 and commenced on 1st April 1979, repealed the Merchandise Marks Act and established the current framework prohibiting false trade descriptions, false price indications, and misdescription of goods, services, accommodation and facilities supplied through physical, in-person retail and market transactions.

   c) **The Digital and Devolved Commerce Epoch (Post-2010)**: The rise of e-commerce platforms, social media marketing, mobile-money enabled digital transactions, and a large used-goods import economy created an urgent statutory need to extend trade description enforcement beyond physical retail into online and cross-border commercial spaces.

9. Kenya's e-commerce penetration reached 43.2 per cent in 2023 and there has been significant increase in reported cybercrime incidents during the same period. Additionally, third-party seller scams on otherwise legitimate e-commerce platforms contribute to consumer losses, illustrating the enforcement gap which the proposed amendments seek to address.

2.3 Challenges in the Existing Trade Descriptions Framework

10. **Evolving forms of misrepresentation:** Modern commerce presents risks involving misleading digital representations, false or incomplete product information, reconditioned and used goods, and representations concerning matters such as mileage.

11. **Reactive enforcement:** The existing framework is less suited to proactive market surveillance. The Bill therefore proposes stronger mechanisms for random visits, inspection, testing and test purchases.

12. **Supply-chain and corporate accountability:** The Bill responds to the need to clarify responsibility where false descriptions are made by employees, agents or business partners by introducing provisions on employer and partnership liability.

13. **Consumer redress gap:** The Bill is principally enforcement-oriented and does not establish a comprehensive mechanism through which consumers harmed by misleading trade descriptions may obtain remedies such as refund, repair, replacement or compensation.

2.4 Legal and Policy Framework

14. **Article 46 of the Constitution:** Provides for consumer rights, including the right to goods and services of reasonable quality, information necessary to gain full benefit from goods and services, and protection of health, safety and economic interests.

15. **Trade Descriptions Act, Cap. 505:** Is the principal statutory framework governing false trade descriptions and related representations concerning goods and trade.

16. **Weights and Measures Act, Cap. 513:** Interlinks with the proposed framework through the designation and powers of inspectors.

17. **Consumer Protection Act, 2012:** Complements the proposed amendments through its provisions addressing unfair trade practices and consumer protection.

18. **Public Procurement and Asset Disposal Act, Cap. 412C:** The Act is relevant as it provides for the disposal of test-purchased goods.

2.5 Comparative Analysis

19. Compared to the consumer-protection frameworks in the United Kingdom and South Africa, the Bill represents an important modernisation of Kenya's trade description regime but there are areas in the Bill that need to be strengthened.

Misleading Omissions and Material Information

20. The Bill focuses principally on false descriptions, price indications, digital platforms, enforcement and possession of falsely described goods. Section 41(1)(b) of the South African Consumer Protection Act, 2008 expressly covers failure to disclose a material fact where the failure amounts to deception. The UK expressly recognises misleading omissions under section 227 of the Digital Markets, Competition and Consumers Act, 2024 and also prohibits omission of material information from an invitation to purchase under section 230 of the Act.

Bait Advertising

21. The Bill amends the rules on false or misleading price indications, including previous prices and recommended prices, and provides that advertising goods as available for supply constitutes an offer to supply. However, it does not establish a specific 'bait advertising' offence. Section 30 of the South African Consumer Protection Act, 2008 expressly prohibits bait marketing where goods or services are advertised at a specified price in a manner likely to mislead consumers regarding actual availability. Schedule 20 of the UK Digital Markets, Competition and Consumers Act, 2024 expressly prohibits inviting consumers to purchase at a specified price where the trader has reasonable grounds to believe it cannot supply reasonable quantities for a reasonable period and fails to disclose that fact. It also prohibits 'bait and switch'.

False Price Representations

22. The Bill amends section 4 of the Act to include importers in the price-related provisions. The Bill retains rules on previous prices, recommended prices and price indications. The law in South Africa specifically covers misleading representations concerning price, previous prices and competitor prices. The modern UK regime regulates misleading information concerning price and, importantly, also addresses drip pricing, requiring mandatory fees to be included in the total price in an invitation to purchase.

Reconditioned and Grey-Market Goods

23. Clause 4 expressly expands the origin-related provision to goods that have been 'manufactured, produced, processed or reconditioned'. South Africa expressly requires disclosure relating to reconditioned or grey-market goods under section 25 of the Act. UK consumer law regulates misleading descriptions and material information concerning products.

Fake Reviews and Endorsements

24. The Bill has no express provisions on this. In South Africa, general misleading/deceptive representation provisions can apply, but there is no equivalent comprehensive statutory regime in the cited provisions to the UK's specific digital provisions. In the UK, Schedule 20 specifically prohibits fake consumer reviews and misleading publication of consumer-review information.

Employer Liability and Due Diligence

25. The proposed section 16A of the Bill makes employers answerable for acts or omissions of agents, servants and other persons concerning the business; liability is joint and several. The South African Act imposes obligations on suppliers and persons involved in the supply chain, with a broad definition of supplier. UK legislation attributes responsibility to traders, including persons acting in the name of or on behalf of another trader.

Enforcement Safeguards

26. The proposed section 21A of the Bill permits specified arrests without warrant and seizure/detention of goods, documents and things connected with suspected offences. South Africa's system operates through specialised consumer enforcement institutions and judicial mechanisms. UK uses a more differentiated civil/criminal enforcement model rather than relying primarily on inspector arrest powers.

Consumer Redress

27. The Bill is predominantly enforcement-oriented. It does not establish a comprehensive consumer compensation/redress mechanism for consumers harmed by misleading trade descriptions. South Africa has a comprehensive consumer-rights and redress architecture. The UK regime includes consumer rights of redress for specified unfair commercial practices.

CHAPTER THREE

3.0 OVERVIEW OF THE TRADE DESCRIPTION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2026)

3.1 Introduction

28. The Trade Description (Amendment) Bill (National Assembly Bill No. 42 of 2026) is a Bill sponsored by the Hon. Kimani Ichung'wah, EGH, MP the Leader of the Majority Party. The Bill was read a First Time on 28th July 2026 and committed to the Departmental Committee on Trade, Industry and Cooperatives for consideration. The Bill's principal object is to amend the Trade Descriptions Act, Cap. 505, to modernise its legal framework in response to evolving business practices, particularly the growth of e-commerce and digital platforms, and to address existing gaps relating to false trade descriptions, misleading representations and consumer protection in the digital marketplace.

3.2 Key Policy Changes Proposed in the Bill

The Bill seeks to:

29. expand the Act to cover digital and online trade by broadening the definitions of '*advertisement*' and '*trade*' and introducing '*digital platform*' as a regulated category.

30. expand consumer protection by extending protection to processed and reconditioned goods and recognises mileage as a trade description parameter, particularly in transactions involving used vehicles.

31. ease the evidentiary burden by introducing a rebuttable presumption that a person in possession of goods bearing a false trade description is engaged in trade in those goods.

32. strengthen penalties by empowering courts to prohibit repeat or serious offenders from dealing in specified goods or engaging in the relevant business.

33. introduce vicarious liability by holding employers liable for offenses committed by their agents or servants, and partners liable for offenses committed by other partners, thereby addressing gaps in principal liability.

34. enhance enforcement powers by expanding inspectors' powers to conduct random inspections, make test purchases, arrest and search suspected offenders subject to safeguards, and require digital platforms to disclose information, remove offending users, or take down unlawful listings and advertisements.

35. formalise seizure procedures by introducing a prescribed Seizure Notice to strengthen procedural safeguards, accountability, and evidentiary record-keeping.

36. protect residential privacy by requiring an inspector to obtain a court warrant before entering and searching a dwelling.

3.3 Potential Impact of the Bill

37. The Bill is expected to improve consumer protection against false, misleading or deceptive information concerning quality, quantity, origin, condition, processing, reconditioning, price and, where applicable, mileage.

38. The express inclusion of digital formats, electronic media and digital platforms would bring online marketplaces, social-media advertising and other digital forms of commerce more clearly within the trade-description regime.

39. Random visits, inspection, testing and test purchases would move enforcement towards a more proactive model and could support earlier identification of problematic goods.

40. The proposed provisions on employers, employees, agents and partners could strengthen corporate accountability and encourage internal compliance systems for product claims and advertisements.

41. The Bill would complement existing enforcement against counterfeit and illicit goods by addressing not only whether a product is counterfeit but also whether information presented to consumers is false or misleading.

3.4 Clause-by-Clause Provisions of the Bill

The Bill has eleven clauses that propose the following amendments to the Act:

42. **Clause 1** provides for the short title of the Bill.

43. **Clause 2** proposes the amendment of section 2 of the Act, to amend definitions of the words '*advertisement*', '*goods*' and '*trade*' and insert the definition of the word '*digital platform*'.

44. The proposed amendment expands the definition of *'advertisement'* to expressly include digital-format price lists; broadens *'trade'* to cover professional services, whether for import or export; and redefines *'goods'* as products bought and sold in business, while retaining coverage of ships, aircraft, land-attached items and growing crops.

45. The amendments further introduce 'digital platform' and define it as a business model that uses online infrastructure to facilitate interactions between groups, and it includes social media channels, online marketplaces, and crowdsourcing websites and applications.

46. The amendments expand electronic media coverage by extending the same to the media covered under subsection 2(b) from television broadcasting to 'any other electronic media' thereby bringing emerging digital communication channels within the scope of the Act.

47. **Clause 3** amends section 4 of the principal Act to include importers in the list of people who may recommend the price of goods. The proposed amendment expands the scope of recommended pricing by including the '*importer*' alongside the '*producer*' as a party whose recommended price is relevant for determining the applicable trade description.

48. **Clause 4** amends section 7 of the principal Act to include goods and products that have been processed or reconditioned. The proposed amendments seek to expand the scope of prohibited conduct by extending the prohibition from goods that are '*manufactured or produced*' to goods that are '*manufactured, produced, processed or reconditioned*' where they bear a false indication of origin.

49. **Clause 5** provides for the amendment of section 8 of the principal Act to provide for 'mileage' as one of the parameters to be included in a trade description of a good.

50. **Clause 6** proposes to insert a new section 14A to the principal Act to provide for possession of goods bearing a false trade description. This proposed amendment introduces a presumption concerning possession which provides that goods bearing a false trade description found in a trader's possession, control or on trade premises are presumed to be held for trade purposes, unless the person concerned proves otherwise.

51. **Clause 7** provides for the amendment of section 15 of the principal Act to provide for additional penalties in relation to offences under the Act. The proposed amendment seeks to strengthen penalties and introduce disqualification orders. Under this clause, the Bill further seeks to empower courts to prohibit a convicted person from dealing in the goods or articles involved in the offense. A person with two prior convictions for similar offenses may also be prohibited from continuing to deal in the relevant goods or engaging in the business altogether.

52. **Clause 8** proposes to insert new sections to the principal Act to provide for liabilities of employers and partners in a firm. Section 16A provides that employers shall be jointly and severally liable for offenses committed by their agents or servants in the course of business while section 16B provides that partners in a firm shall be jointly and severally liable for offenses committed by any partner in connection with the affairs of the firm.

53. **Clause 9** provides for the amendment of section 21 of the principal Act to provide for additional penalties in relation to offences under the Act. The proposed amendments seek to strengthen inspection and search powers. The amendments empower inspectors to conduct random inspections of traders' premises to inspect, examine, test and analyse goods for compliance, and to take photographs, video or audio recordings for evidentiary purposes. It further formalises the seizure process by replacing the informal notice requirement with a mandatory prescribed Seizure Notice, requires a court-issued search warrant before entering premises used solely as a dwelling, and provides that the sworn information supporting an application for the warrant must be made by an inspector.

54. **Clause 10** proposes to insert new sections 21A and 21B to the principal Act to enhance the enforcement of the provisions of the Act by providing for the powers of the inspectors to enter a

premises, arrest, search, seizure and make a test purchase. It also creates an offence for any person who obstructs an inspector.

55. Section 21A empowers inspectors to stop and detain ships, aircraft and vehicles, and to arrest suspected offenders without a warrant, subject to specified safeguards, including where there is a risk of obstruction, flight, or refusal to provide identification. Inspectors may also seize goods and documents and require digital platform operators to disclose information relating to offending traders or advertisers, remove such users from their platforms, and take down offending advertisements or listings.

56. Section 21B gives authority to inspectors to conduct test purchases to verify compliance, including the search and seizure of money or goods connected with the purchase. Where no prosecution follows, the goods may be disposed of in accordance with the Public Procurement and Asset Disposal Act, while expenses incurred in conducting test purchases may be reimbursed from public funds through imprest.

57. **Clause 11** proposes to insert a Schedule to the principal Act to provide for the format of a seizure note under the Act. The proposed amendment seeks to formalise the seizure process by introducing a prescribed Seizure Notice under section 21(2), to be completed in triplicate. The original is retained by the seizing officer, the duplicate is issued to the person from whom the goods are seized, and the triplicate is filed for record purposes. The notice captures key details, including the trader's particulars, goods or items seized, purpose of the seizure, testing or examination conducted, and signatures of witnesses.

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

59. The Bill concerns county governments as it contains provisions on trade development and regulation that affect the functions of the county governments pursuant to the Fourth Schedule to the Constitution.

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

CHAPTER FOUR

4.0 STAKEHOLDER ENGAGEMENT ON THE TRADE DESCRIPTION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2026)

61. Following the placement of advertisements in the print media on 6th August 2026 requesting for memoranda from the public and stakeholders, and vide the letter Ref. NA/DDC/TIC/2026 (070) dated 24th August 2026 inviting stakeholders for a meeting on Wednesday, 2nd September 2026, the Committee received memoranda from the following twelve (12) stakeholders on the Trade Description (Amendment) Bill (National Assembly Bill No. 42 of 2026):

    i. Kenya Bureau of Standards (KEBS);
    ii. Retail Trade Association of Kenya (RETRAK);
    iii. Kenya Revenue Authority (KRA);
    iv. Communications Authority of Kenya (CA);
    v. Digital Platforms Association of Kenya (DPAK);
    vi. Micro and Small Enterprises Authority (MSEA);
    vii. Anti Counterfeit Authority (ACA);
    viii. Kenya Association of Manufacturers (KAM);
    ix. Kenya Consumer Protection Advisory Committee (KECOPAC);
    x. State Department for Trade;
    xi. Law Society of Kenya (LSK);
    xii. Consumers Federation of Kenya (COFEK); and
    xiii. Mr. Andrew Juma Makokha Tumbu

    The stakeholders submitted as follows:

4.1 Kenya Bureau of Standards

In a meeting with the Committee held on 2nd September 2026, Dr. Henry Rotich, Director, Metrology and Testing, proposed the following amendments to the Bill on behalf of KEBS:

62. Reword clauses 7(2) and (3) so that there is flow and graduation of consequences.

    Committee's Observation/Recommendation

    This proposal was adopted by the Committee.

63. Insert the following new subclause 8(5), *'Notwithstanding the previous provisions of this section, any description or mark applied in pursuance of the Standards Act, Cap. 496 shall be deemed not to be a trade description for the purposes of this Act'.*

    Committee's Observation/ Recommendation

    This proposal was adopted by the Committee.

4.2 Retail Trade Association of Kenya

In a meeting with the Committee held on 2nd September 2026, Ms Anne Nyambura, Policy Officer, proposed the following amendments to the Bill on behalf of RETRAK:

64. Expand the definition of *'advertisement'* to cover paid and unpaid commercial communications, seller-generated content and future technologies. Exclude genuinely private and non-commercial communications.

    Committee's Observation/Recommendation

    Members observed that this proposal was already covered in the definition. Their proposal was therefore rejected by the Committee.

65. Amend definition of 'trade' and 'goods' by retaining the word 'includes' or expressly cover goods supplied, offered, hired, exchanged or promoted. Clarify domestic and cross-border professional services.

    Committee's Observation/Recommendation

    Their proposal was rejected because it is already covered in the definition.

66. Amend clause 3 to require evidence that the price is genuine, recent, non-binding and actually recommended. Preserve the prohibition against resale price.

    Committee's Observation/Recommendation

    The Committee rejected the proposal as this is already covered in section 4 of the Act.

67. Amend clause 4 to require disclosure of the place of material processing or reconditioning and avoid implying that minor local work/assembly changes origin.

    Committee's Observation/Recommendation

    The Committee adopted the proposal and provided for additional disclosure of country of origin where a good is reconditioned.

68. Amend clause 5 so that it only applies primarily to vehicles and other mileage-dependent goods, require disclosure of known odometer replacement, rollback, estimate or material inconsistency.

    Committee's Observation/Recommendation

    The Committee adopted the proposal and provided an offence for non-disclosure of odometer replacement or rollback.

69. Amend Clause 6 to require prosecution to first establish control, commercial premises and objective falsity. Allow proof on a balance of probabilities and preserve due-diligence and innocent-possession defences.

Committee's Observation/Recommendation

The Committee rejected the proposal. The presumption concerning possession is permissible in the Evidence Act. Further, an accused person is allowed to put up defence under the Constitution and the Criminal Procedure Code.

70. Amend clause 7 by defining *'similar offence'*, requiring reasons, proportionality and a fixed/reviewable period. A whole-business ban should be measure of last resort for repeated serious misconduct.

Committee's Observation/Recommendation

The Committee adopted the proposal and proposed prohibition of dealing in the goods and business for a period of twelve months for first offenders and two years for subsequent offenders.

71. Amend clause 8 by using consent, connivance, neglect, actual authority, reasonable-supervision and strict liability tests. Preserve a documented due-diligence defense.

Committee's Observation/Recommendation

This proposal was adopted by the Committee because the employer or partner may not be aware of the dealings of their employees and partners.

72. Amend clause 9 to require random inspections to be risk-based, reasonable and non-discriminatory; recordings must be relevant and protected; seizure notices need unique IDs, full inventory, condition, reasons and review information.

Committee's Observation/Recommendation

The Committee adopted the proposal to provide for mandatory disclosure of credentials of inspectors. The Committee further observed that the seizure notice in the proposed new Schedule addresses concerns relating to the inspection and seizure process.

73. Amend clause 10 to strike out suspicion, retain necessity and proportionality, require warrant for police-supported arrest, require written platform orders, due process, data minimisation, chain of custody and prompt judicial/administrative review.

Committee's Observation/Recommendation

The Committee adopted the proposal. To avoid abuse, the arrest should be subject to a warrant. Further, to ensure the take down provision on digital platforms is subject to judicial process, the Committee proposed the same to be subject to a court order. The requirement for a court order will ensure that persons have the right to appeal and are given notice before being subject to arbitrary enforcement measures.

74. Amend clause 11 by adding statutory timelines, item-level identifiers, photographs where appropriate, storage location, preservation duties, return/disposal decision, complaint channel and consequences of non-compliance.

Committee's Observation/Recommendation

The Committee adopted the proposal and has proposed a consequential amendment to section 31 of the Act to provide for the disposal and release of goods seized under the proposed new section 21A.

4.3 Kenya Revenue Authority

In a meeting with the Committee held on 2nd September 2026, Mr. Joel Ndege, Manager, proposed the following amendments to the Bill on behalf of KRA:

75. Amend paragraph 2(a)(i) by inserting a comma after the word *'price list'* and inserting the phrase *'whether in digital format or not.'*

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

76. Amend definition of '*digital platform*' to mean a business model that uses online infrastructure to facilitate interactions and transactions between groups, and it includes social media channels, online marketplaces, crowdsourcing websites and applications.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

77. Define the word *'business'* to mean includes any trade, profession or vocation, and every manufacture, adventure and concern in the nature of trade, but does not include employment'.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

78. Amend clause 4 by deleting the word *'reconditioned'*.

Committee's Observation/Recommendation

The Committee amended the clause to provide for stating of the country of reconditioning.

79. Redraft paragraph 9(c) to be part of paragraph (a): or place sub-section (2A) as (1A).

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

80. Amend clause 10 under the proposed section 21A(b)(ii) by deleting the words *'it appears'* and replacing with the words *'the inspector has reasonable grounds to believe that such a person is likely to fail to answer to summons'*.

Committee's Observation/Recommendation

The Committee redrafted the clause to remove the subjectivity.

81. Amend clause 10 under the proposed section 21B(2) to read as follows, *'An inspector may in connection with the investigator of any alleged offence arising out of a test purchase involving payment with money, require the person to refund the money, search any person or enter and search premises, or search any box or receptacle and the contents thereof at the place at which such test purchases has been made, and may seize the money so found and retain any change received for the purchase together with the goods as evidence of the transaction'*.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

82. Amend clause 10 by deleting the proposed Section 21B(4).

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

4.4 Communications Authority of Kenya

In a meeting with the Committee held on 2nd September 2026, Eng. Leo Boruett, Director License and Compliance, proposed the following amendments to the Bill on behalf of CA:

83. Delete paragraph 2(a)(i) and substitute with the following new paragraph, *'advertisement' includes a catalogue, circular, price list, notice, representation, endorsement or commercial communication, whether in*

physical or digital form, made through a website, application, digital marketplace, social-media service, broadcasting service or other electronic medium for the purpose of promoting supply of goods or services'.

Committee's Observation/Recommendation

The proposal was rejected by the Committee since it is covered in the amendment in the Bill.

84. Delete paragraph 2(a)(iv) and substitute with the following new paragraph *'digital marketplace' means an online service, including a website or application, that enables a trader to advertise, offer, sell or supply goods or services to a consumer, but does not include a person whose role is limited to providing electronic communications service, internet access service, payment service or other underlying technical service without control over the advertisement, offer or transaction'.*

85. Consequentially replace the word '*digital platform*' with the word '*digital marketplace*' wherever it appears in the Bill.

Committees' Observation/Recommendation

The Committee rejected the proposal as digital marketplace is not a term used in the Act or proposals in the Bill.

86. Delete paragraph 2(b) and insert the following new paragraph, *'a trade description or statement published in any newspaper, book or periodical, or disseminated through film, sound or television broadcast, website, application, digital marketplace, social-media service or other electronic media accessible to the public, shall not be deemed to be a trade description applied or statement made in the course of trade unless it is, or forms part of, an advertisement'.*

Committee's Observation/Recommendation

The Committee rejected the proposal as this is adequately addressed in the Act and Bill.

87. Amend clause 6 to read as follows, *'where goods bearing a false trade description are found in the possession or control of a person carrying on trade, or on premises used for trade and under that person's control, such possession or control shall constitute prima facie evidence that the goods were held for purposes of trade, unless the person adduces evidence to the contrary'.*

Committee's Observation/Recommendation

The Committee rejected the proposal as an accused has the right to a defence and rebut the presumption of possession under the Constitution and the Criminal Procedure Code.

88. Amend subclause 7(2) to read as follows, *'where a person is convicted of an offence under this Act, the court may, after giving the person an opportunity to be heard and having regard to the seriousness of the offence, in addition to any other penalty, prohibit that person from dealing in the goods or articles in respect of which the offence was committed for a specified period not exceeding twelve months.'*

Committee's Observation/Recommendation

The Committee adopted their proposal partially and provided a ban of two years.

89. Amend subclause 7(3) to read as follows, *'where a person has two previous convictions for similar offences under this Act, the court may, after giving the person an opportunity to be heard, prohibit that person from dealing in category of goods to which the offences relate for a specified period not exceeding three years.'*

Committee's Observation/Recommendation

The Committee observed that banning a repeat offender from dealing with or in the same goods or business will deter persons from repeating the offense.

90. Amend clause 8 by inserting the following new subclause 8(2) immediately after the proposed section 16A, *'it shall be a defence for an employer charged under this section to prove that the offence was committed without the employer's consent, connivance or neglect and that the employer exercised reasonable diligence to prevent the commission of the offence'*.

Committee's Observation/Recommendation

This proposal was adopted by the Committee since the employer may not be aware of the employee's dealings.

91. Amend clause 8 by inserting the following new subclause 8(2) immediately after the proposed section 16B, *'A partner shall not be liable under this section where the partner proves that the offence was committed without the partner's consent, connivance or neglect and that the partner exercised reasonable diligence to prevent the commission of the offence'*.

Committee's Observation/Recommendation

This proposal was adopted by the Committee since a one may not be aware of their partner's dealings.

92. Delete the proposed section 21A(c) and substitute with the following new provision, *'(c) may, by notice in writing, require a person who owns, operates or manages a digital market place and who hosts, publishes or controls the relevant advertisement or offer to: (i) provide information within that person's possession or control that is reasonably necessary to identify a trader or advertiser reasonably suspected of committing an offence under this Act; (ii) preserve information or electronic records reasonably related to the suspected contravention for the period specified in the notice; or (iii) restrict access to, remove or disable a specified advertisement or offer where the advertisement or offer has been determined, in accordance with*

this Act, to contravene the provisions of this Act. (2) A notice issued under paragraph (c) shall: (a) identify, the inspector and the statutory authority under which the notice is issued; (b) identify, with sufficient precision, the trader, advertiser, advertisement or offer concerned; (c) state the nature of alleged contravention and the reasons for the action required; (d) specify the information or action required, the period for compliance and the duration of any restriction; (e) be necessary and proportionate to the nature, seriousness and extent of the contravention; (f) be limited to information reasonably required for the investigation or enforcement of this Act; (g) comply with the Constitution, the Data Protection Act and applicable laws governing confidentiality, legal privilege, electronic records and electronic evidence; and (h) inform the recipient and the affected trader or advertiser of the right to make representations and apply for review or appeal. (3) Before issuing a notice requiring removal of an advertisement or offer, the inspector shall afford the affected trader or advertiser a reasonable opportunity to make representations. (4) Notwithstanding subsection (3), an inspector may issue an interim notice requiring the temporary restriction of a specified advertisement or offer where the inspector has reasonable grounds to believe that immediate action is necessary to prevent serious or imminent harm to consumers or to preserve evidence. (5) An order requiring the suspension or removal of a trader or advertiser from a digital marketplace shall only be made by a court upon proof of a serious, repeated or systemic contravention of this Act, after the affected person has been afforded an opportunity to be heard, and shall specify the scope and duration of the restriction'.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

4.5 Digital Platforms Association of Kenya

In a meeting with the Committee held on 2nd September 2026, the Chairperson, Mr Benjamin Sulle proposed the following amendments to the Bill on behalf of DPAK:

93. Amend clause 10 to clarify the process and safeguards for requiring a digital platform to provide information, including written notice, data sharing protocol, and the specific information to be shared.

Committee's Observation/Recommendation

The Committee adopted the proposal with modification to require for the takedown and enforcement to be subject to a court order. The requirement for a court order will ensure persons have the right to appeal and are given notice before being subject to arbitrary enforcement measures.

94. Amend clause 10 under the proposed section 21A(c)(ii) to clarify the process and safeguards for requiring a digital platform to remove a trader from the platform, including written notice, timelines and protocol for appeal. For instance, require written notice specifying the alleged offence and evidence; a defined compliance window (7 to 14 days) except in documented urgent-safety cases; a review/appeal route for the platform and the affected trader; explicit alignment with Data Protection Act obligations.

Committee's Observation/Recommendation

The Committee adopted the proposal with modification to require for the takedown and enforcement to be subject to a court order. The requirement for a court order will ensures persons have the right to appeal and are given notice before being subject to arbitrary enforcement measures.

95. Amend clause 10 under the proposed section 21A(c)(iii) to clarify the process and safeguards for requiring a digital platform to remove advertisement or offer, including written notice, timelines and protocol for appeal.

Committee's Observation/Recommendation

The Committee adopted the proposal with modification to require for the takedown and enforcement to be subject to a court order. The requirement for a court order will ensures persons have the right to appeal and are given notice before being subject to arbitrary enforcement measures.

4.6 Micro and Small Enterprises Authority

In a meeting with the Committee held on 2nd September 2026, Ms. Mary Chege, Deputy Director, Legal services proposed the following amendments to the Bill on behalf of MSEA:

96. Amend the title of the Bill to read *'Trade Descriptions (Amendment) Bill, 2026'*.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

97. Amend the proposed section 16B to recommend that liability of partners in a firm should consider provisions of the partnership agreement entered between the partners.

Committee's Observation/Recommendation

The Committee adopted the proposal to align with provisions of the Partnerships Act.

98. Amend the proposed sections 21A(c)(i) to (iii) to provide that enforcement of the section should apply to major/bigger online operators. The government should be required to provide a system to make available information on goods to the informal and micro & small enterprises.

Committee's Observation/Recommendation

The Committee did not adopt the proposals because they can be put in place administratively.

99. Amend the principal Act by deleting section 4(1)(b).

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

100. Amend section 21(1) of the principal Act to provide mandatory requirement for identification/provision of credentials by inspectors to protect innocent entrepreneurs from exploitation by fraudsters who may pose as inspectors.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

101. Delete section 21(4) of the principal Act and replace it with the section 21A(b) that is proposed in the Bill.

Committee's Observation/Recommendation

The Committee rejected the proposal since the provisions relate to distinct provision of powers of an inspector.

4.7 Anti-Counterfeit Authority

102. In a meeting with the Committee held on 2nd September 2026, Ms Jully Kamollo, Ag. Deputy Director, Legal Services, proposed that paragraph 9(a)(i)(aa) be amended by inserting the phrase '*and during reasonable times*' immediately after the word '*jurisdiction*'.

Committee's Observation/Recommendation

The Committee rejected the proposal since use of the word 'reasonable times' is subjective.

4.8 Kenya Association of Manufacturers

In a meeting with the Committee held on 2nd September 2026, Ms. Ruth Lemlem, Manager, Legal and Regulatory Affairs, proposed the following amendments to the Bill on behalf of KAM:

103. Amend the Bill by harmonising trade descriptions for manufactured/produced goods with already existing labelling standards under the Standards Act and KEPHIS Act. The same should be applied for services.

Committee's Observation/Recommendation

The Committee observed that section 8(4) of the Act addresses this and therefore rejected the amendment.

104. Align the provisions of the Bill with WTO TBT and TFA Agreement and good regulatory practice.

105. Amend paragraph 2(a)(iii) by clarifying whether services offered through digital platforms are covered.

Committee's Observation/Recommendation

The Committee observed that the amendments in the Bill including definition of the term 'business' addresses this proposal.

106. Amend paragraph 2(a)(iv) to provide a clear threshold of liability for digital platform operators.

Committee's Observation/Recommendation

The Committee observed that all digital platform operators should be held liable regardless of the threshold.

107. Amend clause 3 to include importer only where importer is the entity setting or recommending the retail price.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

108. Amend clause to limit mileage disclosure requirement to relevant goods such as motor vehicles and machinery.

Committee's Observation/Recommendation

The Committee rejected the proposal and observed that mileage may apply to other goods other than motor vehicles.

109. Delete clause 6 or substantially revise it for the burden of proof to be left to inspectors.

Committee's Observation/Recommendation

The Committee rejected the proposal. The Evidence Act allows for burden of proof to be on the accused in certain instances.

110. Amend clause 7 to introduce proportionality safeguards and a clear appeals mechanism.

Committee's Observation/Recommendation

The Committee adopted with modifications to set limit for prohibition.

111. Amend clause 8 under the proposed section 16A to limit liability to circumstances where the employer knowingly authorised, participated in, or negligently failed to prevent the offence.

Committee's Observation/Recommendation

This proposal was adopted by the Committee because the employer may not be aware of what the employee is doing.

112. Amend clause 8 under the proposed section 16B by inserting the following new paragraph, '*A partner shall not be liable for an offence committed by another partner if the partner proves that they did not consent to or connive in the commission of the offence and that they exercised reasonable due diligence and took all reasonable precautions to prevent the commission of the offence*'.

Committee's Observation/Recommendation

This proposal was adopted by the Committee because a person may not be aware of what their partner is doing.

113. Amend paragraph 9(a)(i)(aa) to read as follows, '*undertake risk-based inspections, including unannounced inspections where justified, in accordance with documented and transparent risk-based criteria*'.

Committee's Observation/Recommendation

This proposal was not adopted by the Committee.

114. Amend clause 9 to add confidentiality safeguards and introduce the maximum visits inspectors can do in a year.

Committee's Observation/Recommendation

The Committee rejected the proposal as businesses are going concerns and inspections on compliance with the Act should therefore not be restricted.

115. Amend clause 10 under the proposed section 21A(a) to limit serious offences and require involvement of police officers.

Committee's Observation/Recommendation

The Committee adopted the proposal with modification to require a warrant of arrest.

116. Amend Clause 10 under the proposed section 21A(b) to require reasonable grounds, written justification and timelines for release of goods.

Committee's Observation/Recommendation

This proposal was adopted by the Committee.

117. Amend clause 10 under the proposed section 21A(c) to require judicial oversight/court orders and require due process before removal of traders, advertisements or listings.

Committee's Observation/Recommendation

The Committee adopted the amendment and proposed the requirement of a court order. The requirement for a court order will ensure persons have the right to appeal and are given notice before being subject to arbitrary enforcement measures.

118. Amend clause 10 under the proposed section 21A to provide for prior notice and an opportunity to respond, except where immediate action is necessary to prevent imminent consumer harm. Any removal direction should be based on recorded reasons and be subject to review/appeal. Permanent or prolonged removal should require further due process/court oversight.

Committee's Observation/Recommendation

The Committee adopted amendment and proposed the requirement of a court order. The requirement for a court order will ensure persons have the right to appeal and are given notice before being subject to arbitrary enforcement measures.

119. Amend clause 10 under the proposed section 21B (2) to clarify the procedures and chain-of-custody requirements.

Committee's Observation/Recommendation

The Committee observed that sections 21, 23 and 31 of the Act and introduction of the seizure notice adequately address this concern.

120. Amend clause 10 to introduce recognition of products already certified by competent authorities.

Committee's Observation/Recommendation

The Committee observed that the proposal was misplaced and section 8 of the Act addresses this.

4.9 Kenya Consumers Protection and Advisory Committee

121. In a meeting with the Committee held on 2nd September 2026, Mr. Lucas Mwago, acting Chief Executive Officer submitted that the Bill is consumer-protective in substance and KECOPAC supports its objectives and most of its enforcement provisions. He proposed that targeted amendments should be made to strengthen digital platform safeguards, institutional coordination and post-enforcement consumer remedies to make the Bill not only an enforcement law against false descriptions but a stronger instrument for fair trade, consumer confidence and overall market welfare.

122. Absence of express interagency mechanism creates a risk of duplication, jurisdictional conflict or fragmented enforcement hence the need to create an institutional coordination mechanism in the Bill.

4.10 State Department for Trade

In a meeting with the Committee held on 2nd September 2026, Mr. John Wamwana, acting Director, Weights and Measures, submitted as follows on the Trade Descriptions (Amendment) Bill (National Assembly Bill No. 42 of 2026) on behalf of the State Department for Trade:

123. There have been challenges in dealing with cases where reconditioned items are misdescribed in a manner that falls within offences under the Trade Descriptions Act. The introduction of the term *'reconditioned'* in the Bill is intended to address this gap and provide greater clarity in the regulation of such goods.

124. The reference to pricing in the Bill relates to the person offering the goods for sale and is intended to ensure that the price represented to consumers accurately reflects the goods being offered.

125. The reference to mileage in the Bill relates to the misdescription or false representation of mileage of goods, particularly where such information is material to the transaction.

126. The penalties provided for under the Bill would be imposed by a court upon determination of a case and that the proposed provisions do not confer powers on enforcement officers to impose such penalties.

127. The overall objective of the Bill is to strengthen the legal framework for preventing and discouraging the misdescription of goods and services, thereby promoting fair trading practices and protecting consumers from misleading representations.

4.11 Law Society of Kenya

In a memorandum, Mr. Charles Kanjama, SC, President, proposed the following amendments to the Bill on behalf of LSK:

128. Amend subclauses 7(2) and 7(3) to require the court to specify the period for which a prohibition on a convicted person dealing in specified goods or continuing the relevant business shall remain in force, having regard to the nature and seriousness of the offence and, where applicable, the person's previous convictions.

Committee's Observation/Recommendation

The Committee amended subclause 7(2) to provide a ban of two years for a first-time offender.

129. Amend clause 8 under the proposed section 16B to read as follows, *'A partner in any firm shall be answerable for an act or omission of another partner in the same firm, in so far as the act or omission concerns the business of the firm, where the partner had actual knowledge, or reasonable cause to believe, that the act or omission had occurred or was likely to occur and, having such knowledge or reasonable cause, failed to take responsible steps to prevent, discontinue, report or otherwise mitigate the act or omission.'*

Committee's Observation/Recommendation
This proposal was adopted by the Committee because a person may not be aware of the dealings of their partner.

130. Amend clause 10 under the proposed section 21A(b)(ii) to read as follows, *'the inspector has reasonable grounds to believe that the person is likely to fail to appear in response to a summons'*.

Committee's Observation/Recommendation

The Committee adopted the proposal as it seeks to remove ambiguity and subjectivity.

4.12 Consumers Federation of Kenya

In a memorandum, Consumers Federation of Kenya proposed the following amendments to the Bill:

131. Redraft the proposed section 14A's presumption of possession as an evidential burden with a rational-connection threshold, to withstand the scrutiny of Article 50(2)(a).

Committee's Observation/Recommendation

The Committee rejected the proposal since rebuttable presumptions are allowed in law. Further, the provision does not limit a person from the right to defend themselves.

132. Extend the section 21(3) dwelling-warrant safeguard expressly to the new sections 21A and 21B search, seizure and arrest powers.

Committee's Observation/Recommendation

The Committee adopted the proposal with the modification to require a warrant.

133. Insert a compliance-notice-and-cure-period requirement before digital-platform takedown demands under the proposed section 21A(c), save for imminent public-safety cases.

Committee's Observation/Recommendation

The Committee proposed to subject the processes to a court order. The requirement for a court order will ensure persons have the right to appeal and are given notice before being subject to arbitrary enforcement measures.

134. Insert a due-diligence defence into the proposed sections 16A and 16B employer/partner liability provisions.

Committee's Observation/Recommendation

The Committee adopted the proposal.

135. Insert an express harmonisation clause aligning TDA remedies with the Consumer Protection Act, 2012 and the Sale of Goods Act, Cap. 31, and adopt shared definitions across the three statutes.

Committee's Observation/Recommendation

The Committee rejected the proposal as it was unnecessary.

136. Refer the broader question of statutory consolidation to the Kenya Law Reform Commission, drawing on the United Kingdom's 2008 merger of the Trade Descriptions Act into the Consumer Protection from Unfair Trading Regulations.

Committee's Observation/Recommendation

The Committee noted the proposal.

4.13 Mr. Andrew Juma Makokha Tumbu

In his memorandum dated 26th August 2026, Mr. Andrew Tumbu proposed the following amendments to the Bill:

137. Amend definition of '*advertisement*' to be technology neutral, covering any commercial communication made through electronic or digital means, including websites, applications, social-media platforms and digital marketplaces.

Committee's Observation/Recommendation

138. Amend definition of '*online platform operator*' to be clear and cover a person or entity that operates a digital service through which third parties advertise, offer, sell or promote goods or services.

Committee's Observation/Recommendation

The Committee did not adopt this amendment because the word online platform operator has not been used in the Bill.

139. Define the word '*digital listing*' to recognise an electronic representation through which goods or services are offered, advertised or promoted.

Committee's Observation/Recommendation

The Committee did not adopt this amendment because the word digital listing has not been used in the Bill.

140. Amend the Bill to require platforms, upon receiving a sufficiently substantiated complaint concerning an allegedly unlawful commercial listing, to take reasonable and timely action.

Committee's Observation/Recommendation

The Committee proposed to subject the processes to a court order. The requirement for a court order will ensure persons have the right to appeal and are given notice before being subject to arbitrary enforcement measures.

141. Amend the Bill to require commercial sellers on significant digital marketplaces to provide proportionate identification information.

Committee's Observation/Recommendation

The Committee proposed to subject the processes to a court order. The requirement for a court order will ensure persons have the right to appeal and are given notice before being subject to arbitrary enforcement measures.

142. Amend the Bill to provide a mechanism through which an affected trader can challenge removal where the trader disputes the allegation.

Committee's Observation/Recommendation

The Committee proposed to subject the processes to a court order. The requirement for a court order will ensures persons have the right to appeal and are given notice before being subject to arbitrary enforcement measures.

143. Amend the Bill to permit immediate removal where continued publication presents a serious imminent risk to consumers.

Committee's Observation/Recommendation

The Committee proposed to subject the processes to a court order. The requirement for a court order will ensure persons have the right to appeal and are given notice before being subject to arbitrary enforcement measures.

144. Amend the Bill to provide judicial oversight for serious enforcement measures, particularly business prohibitions and intrusive searches.

Committee's Observation/Recommendation

The Committee proposed to subject the processes to a court order. The requirement for a court order will ensure persons have the right to appeal and are given notice before being subject to arbitrary enforcement measures.

145. Amend the Bill to expressly require a warrant for searches of exclusively residential premises except in narrowly defined circumstances provided by law.

Committee's Observation/Recommendation

The Committee observed that section 21 of the Act makes provision for search warrants including the proposed new section 21A.

146. Amend the Bill to provide clear procedures for preservation and use of electronic evidence.

Committee's Observation/Recommendation

The Committee observed sections 21, 24 and 31 of the Act provide for the preservation of Evidence.

147. Amend the Bill to establish differentiated penalties based on seriousness, intent, harm and whether the offender is a repeat offender.

Committee's Observation/Recommendation

The Committee adopted the proposal and prosed graduated penalties in section 15 of the Act.

148. Amend the Bill to strengthen mechanisms for refunds, replacement and compensation.

Committee's Observation/Recommendation

The Committee observed that section 31 of the Act addresses this matter.

149. Amend the Bill to expressly prohibit materially deceptive fake reviews and testimonials.

Committee's Observation/Recommendation

The Committee observed that section 8 of the Act addresses this matter.

150. Amend the Bill to require appropriate disclosure of paid or materially incentivised commercial endorsements.

Committee's Observation/Recommendation

The Committee observed that section 8 of the Act addresses this matter including the proposed regulation of digital platforms.

151. Amend the Bill to empower regulations to identify and prohibit materially deceptive digital interface practices.

Committee's Observation/Recommendation

The Committee observed that section 8 of the Act addresses this matter including the proposed regulation of digital platforms.

CHAPTER FIVE

5.0 COMMITTEE OBSERVATIONS

Having considered the Trade Description (Amendment) Bill (National Assembly Bill No. 42 of 2026) and the views of stakeholders set out in Chapter Four of this Report, the Committee made the following observations on the Bill:

1. The inclusion of '*processed or reconditioned*' goods requires greater clarity. The Bill proposes to extend the application of the principal Act to goods that have been '*processed or reconditioned*', however, it does not sufficiently define what constitutes a processed or reconditioned good, or prescribe the extent of processing or reconditioning that would trigger the requirements of the Act.

2. That the inclusion of '*mileage*' is significant but requires an enforcement mechanism. Clear mechanisms for the verification and determination of mileage should be provided to facilitate effective enforcement of the proposed provision.

3. The proposed restriction under section 15 on convicted persons dealing in the same goods may have significant commercial consequences. the provision should clearly distinguish between an offence involving particular goods and the broader right of a person to conduct business.

4. The expanded arrest and search powers under section 21A raise concerns regarding the scope of inspectors, potential for abuse, and whether the safeguards relating to obstruction, flight risk and false or refused identification provide sufficient protection against arbitrary exercise of power.

5. The new powers over digital platforms raise practical and jurisdictional questions, particularly regarding platforms operating outside Kenya. There is also need to clarify their interaction with the Data Protection Act and existing consumer protection and e-commerce regulatory frameworks.

6. The stated position that the Bill will occasion no additional expenditure should be examined against the proposed imprest mechanism under section 21B (4) for financing test purchases, including the source of funds and the sustainability of the arrangement.

7. The Bill significantly expands the functions and powers of inspectors, yet the existing definition of *'inspector'* is linked to weights and measures inspectors under Cap. 513. The adequacy of their legal mandate, training, technical capacity and resources to exercise digital-platform, search and arrest powers therefore requires consideration.

CHAPTER SIX

6.0 COMMITTEE RECOMMENDATION

The Committee, having reviewed the Trade Description (Amendment) Bill (National Assembly Bill No. 42 of 2026), recommends that the House approves the Bill with amendments as proposed in the Schedule set out in Chapter Seven of this Report.

CHAPTER SEVEN

7.0 SCHEDULE OF PROPOSED AMENDMENTS

The Committee proposes the following amendments to the Trade Description (Amendment) Bill (National Assembly Bill No. 42 of 2026), to be moved by the Chairperson of the Departmental Committee on Trade, Industry and Cooperatives in the Committee of the Whole House:

Clause 2

1. **THAT,** clause 2 of the Bill be amended in paragraph (a) by deleting subparagraph (iv) and substituting therefor the following new subparagraph—
(iv) by inserting the following new definitions in their proper alphabetical sequence—
'business' includes any trade, profession or vocation, and every manufacture, adventure and concern in the nature of trade, but does not include employment;
'digital platform' means a business model that uses online infrastructure to facilitate interactions and transactions between groups, and it includes social media channels, online marketplaces, crowdsourcing websites and apps;

Justification

The amendment introduces a new definition of the term 'business' which is used in the Act but is not defined and further aligns the proposed new definition of 'digital platform' with the UNESCO definition of a digital platform which includes 'transactions' between groups, and it includes social media channels, online marketplaces, crowdsourcing websites and apps.

Clause 3

2. **THAT,** clause 3 of the Bill be amended by deleting the words 'or importer' and substituting therefor the words 'or where the importer is required to recommend a price'.

Justification

The amendment seeks to clarify that an importer may only be liable for indication of pricing where they are required to recommend the price of a good.

Clause 4

3. **THAT,** the Bill be amended by deleting clause 4 and substituting therefor the following new clause—
4. Section 7 of the principal Act is amended by in subsection (1)—

(a) by deleting the words 'manufactured or produced' appearing in paragraph (a) and substituting therefor the words 'manufactured, produced, processed or reconditioned'; and
(b) inserting the following new proviso immediately after paragraph (b)—

Provided that where goods imported into Kenya have been reconditioned in a county other than the country in which they were originally manufactured or produced, the importer shall ensure that the goods bear a conspicuous indication that they are reconditioned goods, the name of the country in which they were originally manufactured or produced and the country in which they were reconditioned.

Justification

The word 'reconditioned' is technically ambiguous, since reconditioning implies restoring a used, worn or damaged product to a safe and marketable condition and may only require a simple process or the addition of a small item, allowing a good to be claimed to have originated in a country other than the one in which it originated. In this regard the amendment requires for additional disclosure of country of origin where a good is reconditioned.

Clause 5

4. **THAT,** the Bill be amended by deleting clause 5 and substituting therefor the following new clause—

5. Section 8 of the principal Act is amended—

(a) in subsection (1) by—

(i) inserting the word 'mileage' immediately after the word 'quantity' appearing in paragraph (a);

(ii) inserting the following new paragraph immediately after paragraph (a)—

(aa) in relation to a motor vehicle, its mileage as indicated by the odometer or other mileage recording device, including any replacement, resetting, alteration or tampering of the odometer or such device, the previous mileage where ascertainable and may material information relating to its previous use, accident or damage history, repairs, reconstruction or reconditioning;

(b) by inserting the following new subclause immediately after subclause (4)—

(5) Notwithstanding the previous provisions of this section, any description or mark applied pursuant to the Standards Act, shall be deemed not to be a trade description for the purposes of this Act.

Justification

The amendment seeks to provide for description of mileages and to provide for disclosure of certain information with regards to mileage of motor vehicles including odometer or other mileage recording device, including any replacement, resetting, alteration or tampering of the odometer, previous use, accident or damage history, repairs, reconstruction or reconditioning. To provide for consumer safeguards for purchasers of motor vehicles.

The amendment also seeks to ensure there is no overlap between the Trade Descriptions Act and marks or schemes administered by KEBS under the Standards Act.

Clause 7

5. **THAT,** clause 7 of the Bill be amended by in paragraph (b)—
   (a) in the proposed new subsection (2) by inserting the words 'for a period not exceeding twelve months' immediately after the word 'committed'; and
   (b) in the proposed new subsection (3) by deleting the words 'or business' and substituting therefor the words 'or business involving the supply of similar goods or articles for a period not exceeding two years'.

Justification

Clause 7 empowers the court to prohibit a convicted person from dealing in specified goods or continuing the relevant business, but neither provision specifies the duration of the prohibition, risking an indefinite restriction and inconsistency between orders imposed by different courts. In this regard the amendment seeks to provide for limit in prohibition of dealing in the goods and business for a period of twelve months for first offenders and two years for subsequent offenders.

Clause 8

6. **THAT,** clause 8 of the Bill be amended—
   (a) by deleting the proposed new section 16A and substituting therefor the following new section—
   16A. Any person who employs an agent, servant or other person shall be liable for an offence committed by the agent, servant or other person in the course of employment or in connection with the business of the employer, unless such employer proves the offence was committed without his or her knowledge, consent or connivance and such employer had taken reasonable steps to prevent the commission of the offence.

   (b) in the proposed new section 16B by inserting the words 'who had knowledge of the commission of the offence and did not exercise due diligence, efficiency and economy to prevent the commission of the offence' immediately after the words 'every partner'.

Justification

The amendment seeks to limit liability of employers and partners in a firm for the acts of employees or partners respectively in circumstances such employers/partners did not consent, connivance and took reasonable steps to prevent the commission of the offence.

The amendment takes cognizance of the due diligence defense to prevent automatic liability of employers for actions taken without their knowledge or control. The amendment on liability to partners aligns the Bill with the provisions of the Partnership Act, Cap. 29. Partnerships are governed by agreements which may limit liability and extent of involvement in business dealings and in this regard, it would be unfair to hold liable a partner for acts or omissions they had no knowledge or involvement in.

Clause 9

7. **THAT,** clause 9 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) in subsection (1) —

(i) in the opening statement by deleting the words 'if required';

(ii) by inserting the following new paragraph immediately after paragraph (a)—

(aa) make random visits to traders' premises within his or her area of jurisdiction for the purpose of inspecting, examining, testing and analysing goods therein to ensure compliance with the provisions of this Act;

(iii) by inserting the words 'take photographs, whether digital or otherwise, or video or oral recordings that may be used as evidence in any proceedings' immediately after the words 'any such book or document' appearing in paragraph (b); and

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

Provided that, in exercising powers under this section, an inspector shall comply with applicable data protection laws and take all reasonable measures to protect confidential information, manufacturing process, trade secrets and proprietary business information against unauthorized access, use or disclosure.

Justification

The amendment seeks to make it mandatory for inspectors to produce their credentials when conducting inspections. The amendment also seeks to ensure the inspection is in accordance with data protection laws and that inspectors protect commercially sensitive information such as trade secrets and manufacturing processes gathered during inspections.

Clause 10

8. **THAT,** clause 10 of the Bill be amended in—

(a) the proposed new section 21A—

(i) renumbering the existing provision as subsection (1);

(ii) in paragraph (a) by deleting the words 'without warrant' and substituting therefor the words 'with a warrant';

(iii) in paragraph (b) by deleting the words 'it appears' appearing in subparagraph (ii) and substituting therefor the words 'the inspector has reasonable grounds to believe that'; and

(iv) in paragraph (c) by inserting the words 'pursuant to an order of the court' immediately after the word 'may';

(b) the proposed new section 21B—

(i) in subsection (2) by inserting the words 'request the voluntary refund of the test purchase money and where the money is not refunded may'; and

(ii) by deleting subsection (4).

Justification

The amendment seeks to limit the discretion of inspector to arrest persons without warrant to avoid abuse of policing powers. It further removes subjectivity of the provision in the use of the words 'it appears' which is discretionary.

The amendment seeks to further ensure the take down provision on digital platforms is subject to judicial process by requiring the same to be subject to a court order. The requirement for a court order will ensures persons have the right to appeal and are given notice before being subject to arbitrary enforcement measures.

The amendments also seek to delete the provision requiring that test-purchase expenses shall be met from public funds by way of standing imprest and accounted for at the conclusion of proceedings which is a purely administrative issue that does not warrant legislation. The amendment further makes provision to require the inspector to first request a refund of the test purchase money before resorting to search or seizure, prioritising voluntary refund and promoting procedural fairness.

New Clause 10A

9. **THAT,** the Bill be amended by inserting the following new clause immediately after clause 10—

10A. Section 31 of the principal Act is amended—
(a) in subsection (1) by deleting the words 'section 21' and substituting therefor the words 'section 21 and 21A'; and
(b) in subsection (2) by deleting the words 'section 21' and substituting therefor the words 'section 21 and 21A'.

Justification

The amendment is a consequential amendment to section 31 which sets out the manner of disposal and release of goods seized under section 21. The Bill introduces a new section 21A that provides for further powers of inspectors to seize goods. In this regard, the amendment seeks to expand the provisions of section 31 to provide for disposal of goods and release of goods detained or seized under section 21A.

Clause 11

10. **THAT,** clause 11 of the Bill be amended in the proposed new schedule by inserting the following new item immediately after the item 'seizing officers name'—
Details of other officers participating in the seizure (where applicable)
Name of Officer.....Designation
Agency/Institution.....
Role in the seizure.....
Signature.....Date.....

Justification

Section 21(4) of the Act enables an inspector to take any other person as may be necessary when entering a premises for purposes of inspection. This power is discretionary and may be subject to abuse. The proposal provides for disclosure in the seizure notice those other persons accompanying the inspector and their role to ensure only relevant persons are involved in the process.

SIGNED..... **DATE**.....03/11/2026.....

HON. BENARD MASAKA SHINALI, CBS, MP
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 03 NOV 2026 DAY. Tuesday
TABLED BY: Chairperson, DC on Trade Industry and Cooperative
CLERK-AT-THE-TABLE: Getrude Chebet

THIRTEENTH PARLIAMENT - FIFTH SESSION - 2026

DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES

ADOPTION SCHEDULE

We, the undersigned Honorable Members of the Departmental Committee on Trade, Industry and Cooperatives today, **Wednesday, 28th October 2026** do hereby affix our signatures to this **Report on the Trade Description (Amendment) Bill (National Assembly Bill No. 42 of 2026)** to affirm our approval and confirm its accuracy, validity and authenticity:

S/NO.	NAME	SIGNATURE
1.	Hon. Benard Masaka Shinali, CBS, MP - **Chairperson**	
2.	Hon. Marianne Jebet Kitany, MP - **Vice-Chairperson**	
3.	Hon. Adhe Wario Guyo, MP	
4.	Hon. Anthony Tom Oluoch, MP	
5.	Hon. (Dr.) Beatrice Kahai Adagala, MP	
6.	Hon. Joshua Mbithi Mutua Mwalyo, MP	
7.	Hon. Joyce Kamene, MP	
8.	Hon. Robert Githinji Gichimu, MP	
9.	Hon. (Dr.) Wilberforce Ojiambo Oundo, MP	
10.	Hon. Adams Korir Kipsanai, MP	
11.	Hon. Alfred Kiprono Mutai, MP	
12.	Hon. Amos Maina Mwago, MP	
13.	Hon. John Okano Bwire, MP	
14.	Hon. Samuel Sakimba Parashina, MP	
15.	Hon. Michael Wainaina Wambugu, MP	