

# **THE STRATEGIC GOODS (SECURITY CONTROL) BILL, 2018**

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<b>THE STRATEGIC GOODS (SECURITY CONTROL) BILL, 2018</b>	
<p><b>A Bill for</b></p> <p><b>An Act of Parliament to prevent the proliferation of weapons of mass destruction by managing the trade in strategic goods, the provision of related services and for connected purposes</b></p>	
<p><b>ENACTED</b> by the Parliament of Kenya as follows —</p>	
<p><b>PART I- PRELIMINARY</b></p>	
Short title.	<p><b>1.</b> This Act may be cited as the Strategic Goods (Security Control) Act, 2018, and shall come into operation on such a date as the Cabinet Secretary may, by notice in the Gazette, appoint.</p>
Interpretation.	<p><b>2.</b> In this Act, unless the context otherwise requires—</p> <p>“authorized officer” means a person appointed under section 21;</p> <p>“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to internal security;</p> <p>“Certificate” means the certificate of registration issued under section 9(4);</p> <p>“Chairperson” means the chairperson of the Committee;</p> <p>“Committee” means the Strategic Goods Control Committee established under section 5;</p> <p>‘conventional arms’ include—</p> <p>(a) weapons, munitions, bombs, armaments, vessels, vehicles and aircraft designed or manufactured for use in war, warlike operations or security operations and any other articles of war;</p> <p>(b) any component, equipment, system, processes and technology of whatever nature capable of being used in the design, development, manufacture upgrading, refurbishment or maintenance of anything contemplated in paragraph (a),</p> <p>but does not include a weapon of mass destruction;</p> <p>“Director” means the Director appointed under section 7;</p> <p>“dual-use good” means an item, software or technology, which can be used for both civil and military end use, or in connection with the development, production, handling, operation, maintenance, storage,</p>

	<p>detection, identification or dissemination of weapons of mass destruction or their means of delivery;</p> <p>“end-user” means a person who, whether inside or outside Kenya, is the ultimate user of a strategic good that are imported to or exported from Kenya;</p> <p>“End-User Certificate” means a document that confirms that an end-user has undertaken to import a strategic good of a specific quantity and value for a purpose specified in the certificate;</p> <p>“end-use control” means a procedure authorizing the establishment of controls over any item, software or technology, not listed in the National Control List under section 21, that is based on concerns related to weapons of mass destruction, their means of delivery, or military end-use in destinations subject to embargoes decided by the United Nations Security Council, or to prohibited or restricted end-users;</p> <p>“export” means to take or cause to be taken a strategic good out of Kenya, including the transmission of computer data by electronic means;</p> <p>“financing” means making available or providing funds to facilitate the movement of —</p> <ul style="list-style-type: none"> <li>(a) a strategic good or provision of a related service if it contributes to weapons of mass destruction or their means of delivery; or</li> <li>(b) a strategic good if it is to be delivered to a destination subject to a United Nations Security Council embargo or to a prohibited or restricted end-user;</li> </ul> <p>“import” means to bring or cause to be brought a strategic good into Kenya, including the transmission of computer data by electronic means;</p> <p>“in-country transfer” means a reallocation of a strategic good previously exported from Kenya from one person to another within a single foreign country by any means, including the electronic transmission of software or technology;</p> <p>“licence” means a licence issued under section 13;</p> <p>“military end-use” means the —</p> <ul style="list-style-type: none"> <li>(a) incorporation into conventional weapons and arms;</li> <li>(b) use of production, test or analytical equipment and its components for the development, production or maintenance of conventional weapons and arms; or</li> </ul>
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	<p>(c) use of any unfinished products in a plant to produce conventional weapons and arms;</p> <p>“Nationally controlled goods” refer to strategic goods placed under unilateral controls for reasons of national security</p> <p>“National Control List” means a list of strategic goods and other items that a placed under unilateral controls for reasons of national security, foreign policy, anti-terrorism, crime control or public health and safety prescribed by the Cabinet Secretary under section 4;</p> <p>“national security organ” means a national security organ as defined under article 239(1) of the Constitution;</p> <p>“re-export” means the exportation of a strategic good that was previously imported from a foreign country;</p> <p>“Register” means a register kept in accordance with section 11;</p> <p>“related service” means brokering, financing, transportation or technical services;</p> <p>“service provider” means a broker, person who funds, transporter or technical services provider;</p> <p>“Secretariat” means the Secretariat of the committee established under section 7;</p> <p>“strategic goods” means products that, for security reasons or due to international agreements, are considered to be of such national importance that their manufacture, sale, export or import is either prohibited or subject to specific conditions and are generally suitable to be used for military purposes or for the production of weapons of mass destruction and for the purposes of this Act;</p> <p>“strategic trade” means the manufacture, sale, export, import, re-export, in-country transfer, transit and transshipment of strategic goods and the provision of related services;</p> <p>“technical services” means technical support, including repairs, development, manufacture, assembly, testing, maintenance or any other service, which may take such forms as instruction, training, transmission of working knowledge or skills or consulting services provided in relation to a strategic good, if such service is provided in connection with weapons of mass destruction, their means of delivery or for military end-use in an embargoed destination, or to restricted end users and which can be provided by verbal, written or electronic means;</p>
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	<p>“transit” means the movement of strategic goods through the territory of Kenya from a foreign country to another foreign country;</p> <p>“transshipment” means the transfer, either directly or indirectly, of a strategic good from an aircraft, vehicle or vessel arriving in Kenya from a foreign country to an aircraft, vehicle or vessel departing to a foreign country;</p> <p>“transportation” means the act of transferring, or undertaking to transfer, a strategic good, a supporting service being provided to a transport provider, and any act calculated to promote the delivery of a strategic good;</p> <p>“transporter” means a person who provides transportation services in accordance with this Act, including transportation between foreign countries;</p> <p>“visiting forces” means anybody of the forces of a designated country which for the time being is lawfully present in Kenya in time of peace under a treaty or agreement to which the Government is party to; and</p> <p>“weapon of mass destruction” means a weapon designed to kill, harm or infect people, animals or plants, through nuclear explosion, dispersion of the toxic properties of a chemical weapon, or the infectious or toxic properties of a biological weapon, and includes a delivery system designed, adapted or intended for the deployment of such a weapon.</p>
Application.	<p><b>3. (1) This Act shall apply to —</b></p> <ul style="list-style-type: none"> <li>(a) any natural or juridical person operating within Kenya who intends to engage in strategic trade;</li> <li>(b) any person who handles a prescribed strategic good, if the good may be used, partially or entirely, in connection with a weapon of mass destruction, their means of delivery, for terrorism purposes, to endanger national security, public health or safety, if the use of that good is not regulated under any law;</li> <li>(c) a citizen of Kenya who provides related services outside Kenya;</li> <li>(d) a recipient of strategic goods and related services of Kenyan origin who intends to engage or engages in — <ul style="list-style-type: none"> <li>(i) a re-export pursuant to a licence; and</li> <li>(ii) an in-country transfer to a new end-user pursuant to a licence issued under this Act.</li> </ul> </li> </ul> <p><b>(2) This Act shall not apply to —</b></p> <ul style="list-style-type: none"> <li>(a) the importation, exportation, transit and transshipment of strategic goods and related services by a national security</li> </ul>

	<p>organ or its agencies or by a service of force established under article 239(4) of the Constitution; or</p> <p>(b) the transit, transshipment and temporary exportation and importation of conventional weapons and arms by visiting forces:</p> <p>Provided that such goods shall be cleared through diplomatic channels.</p>
<p>The National Control List.</p>	<p><b>4.</b> (1) The Cabinet Secretary shall, on the recommendation of the Committee and by a notice in the Gazette, publish a National Control List.</p> <p>(2) The National Control List shall specify the strategic goods that are subject to licensing under this Act.</p> <p>(3) The National Control List may comprise of conventional arms, dual use goods and nationally controlled goods.</p> <p>(4) The National Control List shall be in conformity with the international and regional commitments of Kenya.</p> <p>(5) The National Control List shall be published in the Gazette at the beginning of every calendar year</p> <p>(6) The Cabinet Secretary may, on the recommendation of the Committee, update the National Control List.</p>
<p><b>PART II —THE STRATEGIC GOODS CONTROL COMMITTEE</b></p>	
<p>Establishment of the Strategic Trade Control Committee.</p>	<p><b>5.</b> (1) There is established the Strategic Goods Control Committee.</p> <p>(2) The Committee shall comprise of —</p> <p>(a) the Principal Secretary responsible for matters relating to internal security who shall be the chair person;</p> <p>(b) the Principal Secretary responsible for matters relating to defence;</p> <p>(c) the Principal Secretary responsible for matters relating to foreign affairs;</p> <p>(d) the Principal Secretary of the National Treasury;</p> <p>(e) the Principal Secretary responsible for matters relating to Agriculture;</p> <p>(f) the Principal Secretary responsible for matters relating to trade;</p> <p>(g) the Principal Secretary responsible for matters relating to Mining;</p> <p>(h) the Solicitor General;</p> <p>(i) the Chief of the Kenya Defence Forces;</p> <p>(j) the Inspector General of the National Police Service;</p>

	<p>(k) the Director General of National Intelligence Service;</p> <p>(l) two persons, who shall be of opposite gender who shall be persons who engage in strategic trade, appointed by the Cabinet Secretary; and</p> <p>(m) the Director, who shall be an <i>ex officio</i> member and secretary to the Committee.</p> <p>(3) The members of the Committee appointed under paragraph (1) shall not be public officers.</p> <p>(4) The chairperson shall preside at every meeting of the committee at which he is present, but in the absence of the chairperson the members present may elect a chairperson from among their number to preside.</p> <p>(5) The decisions of the Committee shall be signed by the Chairperson.</p> <p>(6) The quorum for a meeting of the Committee shall be nine members.</p> <p>(7) A member who has a direct or indirect interest in a matter being considered or to be considered by the Board shall, as soon as the relevant facts regarding the matter come to knowledge of the member, disclose the nature of such interest, and shall not be present during any deliberations on the matter</p> <p>(8) A member of the Committee who does not disclose their conflict of interest, commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.</p> <p>(9) Except as provided in this Act, the Committee shall regulate its own procedure.</p> <p>(10) The Committee may co-opt any other person to attend its meetings and participate in its deliberations, but that person shall not vote.</p> <p>(11) The remuneration payable to members of the Committee and the Secretariat shall be determined by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.</p>
<p>Functions of the Committee.</p>	<p><b>6.</b> The Committee shall —</p> <p>(a) provide leadership and oversight in the control of strategic goods and related services;</p> <p>(b) formulate and adopt strategies and guidelines for the effective implementation of this Act;</p> <p>(c) develop standards and procedures for the effective</p>



	<p>implementation of this Act;</p> <p>(d) develop proposals for the formulation, review and update of the National Control List;</p> <p>(e) recommend to the Cabinet Secretary exemption from licensing taking into consideration national security;</p> <p>(f) enlisting the assistance and support of government agencies, the academia, private institutions, or any other person, for the effective implementation of this Act;</p> <p>(g) establish and maintain the coordination, cooperation, assistance and sharing of information within government agencies and other countries for the effective implementation of this Act;</p> <p>(h) report to the Cabinet Secretary and the National Security Council on matters relating to the control of strategic goods and services related matters, as may be necessary;</p> <p>(i) recommend policies for the effective implementation of this Act to the Cabinet Secretary;</p> <p>(j) modify, limit, suspend, revoke or annul, a licence as circumstances may warrant;</p> <p>(k) vary, modify or revoke, a Certificate as circumstances may warrant;</p> <p>(l) make an order for corrective action;</p> <p>(m) sensitize the public on this Act;</p> <p>(n) establish and operate end-use controls and compliance checks;</p> <p>(o) issue licences and certificates of registration for dealing with strategic trade</p> <p>(p) perform such other functions as it may deem necessary for the effective implementation of this Act.</p>
The Director.	<p><b>7.</b> (1) There shall be a Director who shall be a public officer appointed by the Cabinet Secretary on the recommendation of the Committee.</p> <p>(2) The Director shall—</p> <p>(a) be the head of the Secretariat;</p> <p>(b) keep all records of the Committee;</p> <p>(c) communicate the decisions of the Committee;</p> <p>(d) be responsible for the day to day management of the Secretariat; and</p> <p>(e) perform such other functions as may be assigned by the Committee.</p> <p>(3) The Director shall be appointed on such terms and conditions as may be determined by the Cabinet Secretary.</p>
The Secretariat.	<p><b>8.</b> (1) There shall be a secretariat of the Committee which shall comprise of such public officers as may be appointed or seconded to the Committee upon its request.</p> <p>(2) The Secretariat shall —</p>

	<ul style="list-style-type: none"> <li>(a) establish and maintain a comprehensive database on strategic goods and services or related services;</li> <li>(b) undertake the enforcement of the provisions of this Act in cooperation with other agencies;</li> <li>(c) conduct administrative investigations under this Act;</li> <li>(d) in conjunction with other public agencies monitor the transfer, movement and performance of strategic goods and related services;</li> <li>(e) with the approval of the Committee, coordinate and share information with other relevant Government departments, agencies in the implementation of this Act; and</li> <li>(f) perform such other functions that are necessary for the effective implementation of this Act.</li> </ul>
<b>PART III—REGISTRATION AND LICENSING</b>	
Registration.	<p><b>9.</b> (1) A person who engages, or intends to engage in strategic trade shall register with the Committee.</p> <p>(2) A person who intends to register with the Committee in accordance with sub section (1) shall apply for registration in the prescribed form, upon payment of the prescribed fees.</p> <p>(3) The Committee may, on consideration of an application made under sub section (2) approve or refuse to grant the application.</p> <p>(4) Where the Committee approves an application, the details of the applicant shall be entered in the Register and the Committee shall issue a certificate of registration.</p> <p>(5) The Committee may refuse to grant an application made under sub section (2) if —</p> <ul style="list-style-type: none"> <li>(a) the applicant falsely represents or conceals any material fact or submits misleading information, including submitting a forged document relating to the application;</li> <li>(b) the applicant was found liable for violating an international embargo or sanction that binds Kenya;</li> <li>(c) the applicant is a subject of ongoing national security related civil or criminal proceedings; or</li> <li>(d) there exists national security concerns.</li> </ul> <p>(6) A registration under this section shall remain valid unless cancelled or suspended by the Committee.</p>
Register.	<p><b>10.</b>(1) The Secretariat shall maintain a Register of persons engaged in strategic trade.</p> <p>(2) The Register maintained under subsection (1), shall contain, in</p>

	<p>respect of each application —</p> <p>(a) a copy of —</p> <ul style="list-style-type: none"> <li>(i) the application received;</li> <li>(ii) the Certificate or licence issued under this Act; and</li> <li>(iii) any other information the Committee may consider necessary.</li> </ul>
<p>Cancellation, suspension or restoration of registration.</p> <p>No. 4 of 2015</p>	<p><b>11.</b> (1) The Committee may suspend a registration where it has reasonable grounds to suspect a contravention of this Act.</p> <p>(2) The Committee may restore a suspended registration if the suspicion of contravention of this Act is not established.</p> <p>(3) The Committee may cancel a registration if —</p> <ul style="list-style-type: none"> <li>(a) the registered person so requests in writing;</li> <li>(b) new facts which would have resulted in a denial of the application for registration at the time when the application was made, emerge;</li> <li>(c) the registered person contravenes this Act, or any other law relating to national security;</li> <li>(d) the registered person violates an international sanction or embargo that binds Kenya;</li> <li>(e) the registered person dies;</li> <li>(f) the registered person is adjudged bankrupt;</li> <li>(g) an entry has been incorrectly or fraudulently made.</li> <li>(h) the registered person is a body corporate, if it is dissolved</li> <li>(i) there's change of shareholders, directors or signatories of the body corporate without written notification to the Committee;</li> <li>(j) the registered person does not transact strategic goods and related services for a period of three years; or</li> <li>(k) any other national security concerns arise.</li> </ul> <p>(4) The Committee shall remove from the Register the name of every person whose registration has been cancelled under subsection (3).</p> <p>(5) A registered person whose details have been removed from the Register shall cease, from the date of such removal, to be a registered person for the purposes of this Act.</p> <p>(6) In determining whether to cancel a registration, the Committee shall where applicable comply with Article 47 of the Constitution and the Fair Administrative Action Act.</p>
<p>Licensing.</p>	<p><b>12.</b> (1) No person shall engage in the strategic trade of a good</p>

	<p>specified in the National Control List or provide a related service without a licence issued under this Act.</p> <p>(2) A person who intends to engage in strategic trade under subsection (1) shall apply for a licence in the prescribed form, upon payment of the prescribed fee.</p> <p>(3) The re-exportation, transit and transshipment of a good specified in the National Control List or the provision of a related service may be prohibited by the Committee if the goods or services in question are or may be intended, in their entirety or in part, for use in connection with a weapons of mass destruction, their means of delivery, or for a military end-use to a destination which is subject to a United Nations Security Council sanction or embargo.</p> <p>(4) Prior to making a decision under sub section (3), the Committee may impose conditions on a case by case basis or, a licence for the specific transit or transshipment of the a good specified in the National Control List or the related service.</p> <p>(5) The Cabinet Secretary may grant an exemption from licensing on the recommendation of the Committee.</p> <p>(6) No person, other than a national security organ established under Article 239 (4) of the Constitution or a service or force, shall engage in the strategic trade for military end-use.</p>
<p>Conditions for the issuance of a licence.</p>	<p><b>13.</b> (1) The Committee may issue a licence to an applicant subject to such conditions as it may deem fit.</p> <p>(2) The Committee may renew a licence with or without additional conditions.</p> <p>(3) In deciding whether to issue a licence, the Committee shall consider the following —</p> <ul style="list-style-type: none"> <li>(a) the national security of Kenya and international obligations and commitments under United Nations Security Council Resolutions and African Union Peace and Security Council Resolutions or relevant international treaties and non-proliferation agreements;</li> <li>(b) the preservation of regional peace, security and stability;</li> <li>(c) the internal tensions or armed conflict in the destination country;</li> <li>(d) human rights and international humanitarian law;</li> <li>(e) terrorism or organized criminal activities;</li> <li>(f) the security interests of a country which is an ally to Kenya;</li> <li>(g) the risk of diversion to an unauthorized end user or end-use;</li> <li>(h) the applicant submitted false documents, made misleading representations or concealed material facts in the application;</li> </ul>

	<ul style="list-style-type: none"> <li>(i) the applicant has contravened any legal provision relating to national security;</li> <li>(j) the applicant has violated an international embargo or sanction that binds Kenya;</li> <li>(k) whether the applicant is subject to ongoing criminal or civil proceedings related to national security;</li> <li>(l) the goods for which the licence is being sought are the subject of a police investigation or court proceedings; and</li> <li>(m) any other relevant national security consideration.</li> </ul> <p>(4) The Committee shall refuse to issue a licence, if —</p> <ul style="list-style-type: none"> <li>(a) the applicant does not fulfil the conditions and requirements under this Act or the regulations made pursuant to this Act;</li> <li>(b) the proposed strategic trade is in breach of a United Nations Security Council sanction or embargo;</li> <li>(c) the proposed strategic trade will impede the fulfilment of other international commitments or obligations of Kenya;</li> <li>(d) there is credible information that the proposed strategic trade may endanger national or international security, regional stability, or contribute to terrorist acts;</li> <li>(e) there is credible information that the proposed strategic trade may result in the diversion of the good or service to an unauthorized end-use or end-user; or</li> <li>(f) there are any other national security concerns.</li> </ul>
Validity of licence.	<p><b>14.</b> (1) The Committee shall determine the validity period and the geographical application of each licence issued under this Act, taking into account the duration of the contract and other relevant factors.</p> <p>(2) A licence issued by the Committee shall be notified for general information of the public by publishing it in the Gazette.</p>
Revocation of licence.	<p><b>15.</b> (1) The Committee may revoke a licence if —</p> <ul style="list-style-type: none"> <li>(a) the holder of the licence, in writing, requests the Committee to revoke the licence;</li> <li>(b) new facts, which had they been known or existed at the time of making the application, would have resulted in the Committee declining to issue the licence, emerge;</li> <li>(c) a substantive change to the information specified in the licence occurs;</li> <li>(d) the holder of the licence fails to comply with the obligations, terms, or conditions of the licence;</li> <li>(e) the holder of the licence contravenes this Act or the regulations made pursuant to this Act or any other law relating to national security;</li> <li>(f) the holder of the licence does not comply with a request of the Committee for additional information about the</li> </ul>

<p>No. 4 of 2015.</p>	<p>activities conducted under the licence;</p> <p>(g) the licence is destroyed or lost;</p> <p>(h) the holder of the licence dies;</p> <p>(i) the registered person is a body corporate, if it is dissolved;</p> <p>(j) there is a change of shareholders, directors or signatories of the body corporate without notification to the Committee; or</p> <p>(k) the Committee becomes aware of any other reasons related to national security.</p> <p>(2) The Committee shall notify relevant government agencies or departments immediately it revokes a Licence.</p> <p>(3) In determining whether to revoke a licence, the Committee shall where applicable comply with Article 47 of the Constitution and the Fair Administrative Action Act.</p>
<p>Suspension of licence.</p>	<p><b>16.</b> (1) Where the Committee suspects that the strategic trade or provision of a related service is being conducted in contradiction of existing conditions of a licence, the Committee may suspend the licence.</p> <p>(2) The Committee shall, in writing, inform a holder of a licence of failure to comply with the conditions of a licence and shall specify the corrective action to be taken by the holder of a licence.</p> <p>(3) Where the holder of a licence does not take the corrective measures specified by the Committee under subsection (2), the Committee may suspend the licence until the holder of a licence complies with corrective action recommended by the Committee.</p> <p>(4) The Committee may stop a shipment of goods specified in the National Control List or the provision of related services at any stage in order to verify its legality.</p> <p>(5) If a shipment is already in transit, the Committee may direct that the shipment be returned or unloaded at any port of call.</p> <p>(6) The Committee may suspend a licence for a shipment of goods specified in the National Control List or the provision of related services to countries experiencing a sharp deterioration in security or instability.</p> <p>(7) The Committee shall, in writing, notify the holder of a licence of the suspension of their licence and the period of such suspension.</p> <p>(8) The Committee shall immediately notify relevant government agencies of the suspension of a licence.</p>

No. of 2015	<p>(9) Where at the end of the period specified in sub section (7), the grounds for suspension are still prevalent, the period of suspension may be extended, and the holder of a licence shall be notified of such an extension in writing.</p> <p>(10) The suspension of a licence may be lifted where the Committee considers it appropriate to do so.</p> <p>(11) In determining whether to suspend a licence, the Committee shall where applicable comply with Article 47 of the Constitution and the Fair Administrative Action Act.</p>
Administrative Appeals.	<p><b>17.</b>(1) Any person who is aggrieved by a decision of the Committee shall have the right to appeal to the Cabinet Secretary within thirty days of being notified of the decision.</p> <p>(2) The right to appeal to the Cabinet Secretary shall be in addition to any other remedy available in law.</p>
<b>PART IV—ENFORCEMENT, OFFENCES AND PENALTIES</b>	
Compliance requirements.	<p><b>18.</b>A person who engages in strategic trade shall —</p> <p>(a) comply with the conditions upon which the licence or end-use assurance document was issued and inform the Committee immediately of any change that occurred in an export, import, transit, transshipment of strategic goods as well as provision of related services;</p> <p>(b) inform the Committee, in writing, of any change concerning the end-user or another party to an export, import, transit, transshipment of strategic goods or provision of related services, within forty-eight hours from the date of change;</p> <p>(c) inform the Committee, upon request, about the finalized export, import, transit, transshipment, re-export, or in-country transfer of strategic goods, or the provision of related services, and to submit the documentation based on which the export, import, transit, transshipment, extra-territorial re-export, or re-transfer of strategic goods or provision of related services was finalized, if required;</p> <p>(d) notify the Committee about the grounds for suspecting that strategic goods are or may be used, partly or entirely, for any of the uses related to weapons of mass destruction, their means of delivery for military end-use in an embargoed destination by restricted persons, or for suspecting that the related service which he intends to provide would facilitate that use;</p> <p>(e) at the request of the Committee, secure confirmation of the delivery and receipt of the strategic goods;</p> <p>(f) indicate clearly in relevant commercial documents including</p>

	<p>any sales contract, order confirmation, invoice, or dispatch note relating to domestic transfers of goods in the National Control List manufactured in Kenya, that those strategic goods are subject to controls if exported from Kenya;</p> <p>(g) notify the Committee of any loss or theft of strategic goods or nationally controlled goods in their possession; and</p> <p>(h) comply with other obligations, terms and conditions which are part of licences or certificates issued by the Committee in accordance with this Act.</p>
Verification of compliance.	<p><b>19.</b> (1) The Committee shall be responsible for verifying compliance of all persons engaged in strategic trade, in consultation and cooperation with other regulatory authorities and enforcement agencies, in fulfilment of their responsibilities.</p> <p>(2) The Committee or Director may refer to relevant law enforcement agencies or the Director of Public Prosecutions any matter that falls within their jurisdiction.</p> <p>(3) The verification of compliance shall be conducted before, during, and after issuance of a Licence.</p> <p>(4) During the verification of compliance, the Committee, in collaboration with other regulatory authorities, may—</p> <p>(a) request necessary information from the applicant or licence holder for compliance control purposes;</p> <p>(b) inspect the documents of an applicant or holder of a licence and business premises, including offices, production facilities, warehouses, and distribution centres, related to strategic goods and nationally controlled goods as well as the goods themselves;</p> <p>(c) request information from other governmental institutions necessary for the implementation of the supervision;</p> <p>(d) request assistance from competent authorities of other countries in order to collect additional information necessary for the fulfilment of the supervision;</p> <p>(e) monitor licence holder compliance with the obligations, terms, and conditions of the issued licence;</p> <p>(f) monitor the end-users of the strategic good; and</p> <p>(g) undertake enforcement activities within their respective mandate.</p>
Offences.	<p><b>20.</b> (1) A person who —</p> <p>(a) engages in any of the regulated activities prohibited by this Act or its regulations or refrains from engaging in an act required by this Act or its regulations.</p> <p>(b) makes false or misleading representations or conceals any material fact, in any submission, to the Committee;</p> <p>(c) fails to act in accordance with any order or instructions issued by the Committee;</p>



	<p>(d) fails to report to or notify the Committee, as required by this Act and its implementing regulations;</p> <p>(e) fails to comply with record keeping requirements, as provided in this Act or implementing regulations;</p> <p>(f) causes, aids or abets a contravention of this Act or any order or licence issued thereunder or implementing regulations;</p> <p>(g) attempts to contravene a provision of this Act or any order or licence issued hereunder or implementing regulations;</p> <p>(h) conspires or acts in concert with one or more persons in any manner or for any purpose to bring about or to perform any act that constitutes a violation of this Act, its implementing regulations, or any order or licence issued hereunder;</p> <p>(i) engages in any activity with the intent to evade the provisions of this Act or any order or licence issued hereunder;</p> <p>(j) obstructs or hinders the Committee, its representatives, any government agency or any authorized officer in the execution of its powers conferred under this Act; or</p> <p>(k) forges or alters any registration, licence, end-use assurance document, certificate, or any other document issued under the provisions of this Act, or any order or licence issued hereunder,</p> <p>commits an offence.</p> <p>(2) Any person who commits an offence under subsection (1) shall on conviction be liable for a fine not exceeding fifty million shillings or to imprisonment for a term not exceeding ten years or to both.</p> <p>(3) Any person who —</p> <p>(a) engages in strategic trade or provides related services without being registered and licenced by Committee under this Act;</p> <p>(b) contravenes any conditions attached to a certificate or licence issued under this Act;</p> <p>(c) fails to furnish any information as required under this Act;</p> <p>(d) uses any confidential information for any purpose not authorized under this Act;</p> <p>(e) uses strategic goods and nationally controlled goods in a manner inconsistent with registration certificate and licence issued by the Committee; or</p> <p>(f) obstructs or fails to assist the Committee or authorised officers of the Committee in the performance of their duties under this Act,</p> <p>commits an offence and shall be liable on conviction to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding ten years, or to both.</p> <p>(4) A person who facilitates or makes funds available for strategic trade contrary to the provisions of this Act commits an offence and shall be liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding six months, or to</p>
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	<p>both.</p> <p>(5) A person who is in possession of conventional weapons prescribed in the National Control List of components thereof commits an offence and shall be liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding six months, or to both.</p>
<p>Authorised officers.</p>	<p><b>21.</b>(1) The Cabinet Secretary may, on the recommendation of the Committee, by notice in the Gazette, appoint a suitably qualified person to be an authorized officer.</p> <p>(2) An authorized officer may —</p> <p>(a) investigate an administrative violation committed under this Act;</p> <p>(b) undertake the enforcement of this Act in cooperation with other agencies; and</p> <p>(c) perform such other functions as may be assigned under this Act.</p> <p>(3) No person appointed under subsection (1) shall, while being so appointed, engage in strategic trade.</p> <p>(4) An authorised officer shall be furnished with a certificate of his appointment as an authorised officer and on entering any places or premises for purposes of sub section (2) shall so, be required to provide the certificate to the person in charge thereof.</p>
<p>Access to places or premises.</p>	<p><b>22.</b>(1) An authorized officer shall, for the purposes of this Act, with a warrant, have full and free access to any building, place, property, documents, network or data storage device for the purposes of administering this Act.</p> <p>(2) Where any authorized officer enters upon any place or premises in accordance with the provisions of this section, he may —</p> <p>(a) require any person therein to produce any books, accounts or other documents, including computerized data, or other record, whether in print or electronic format, or items which such person is required to keep under the provisions of this Act;</p> <p>(b) examine any books, accounts or other documents, including computerized data, or other record, whether in print or electronic format, facility, apparatus, equipment, device or item and make copies of or take extracts from any such books, accounts, documents or records;</p> <p>(c) seize or detain any books, accounts or other documents, including computerized data, or other record, whether in print or electronic format, facility, apparatus, equipment, device or item which contains or is reasonably suspected to contain</p>

	<p>information as to any offence suspected to have been committed under this Act;</p> <p>(d) require any person therein or the employees to answer questions relating to—</p> <p>(i) any book, data, document or other record, or item;</p> <p>(ii) any entry in any book, data, document or other record; or</p> <p>(iii) any other item that the Committee deems necessary; or</p> <p>(e) require at the expense of any person therein, to open and examine any container, envelope, package or other items and materials in any such place or premises.</p> <p>(3) If by reason of its nature, size or amount, it is not practicable to remove any items, books, accounts or other documents, including computerized data, or other record, whether in print or electronic format, seized or detained under this section, the seizing officer shall, by any means, seal such items, books, accounts or other documents, including computerized data, or other record in the place or premises or container in which it is found.</p> <p>(4) Where the authorized officer acting under the provisions of this Act is unable to obtain free access to any place or premises or to any container in that place or premises, he may, at any time, enter such place or premises and open such container in such manner, if necessary by force, as he may think necessary.</p> <p>(5) Where, on the entry upon any place or premises under the provisions of this Act, any strategic goods are found in relation to which any offence has been committed, then such strategic goods or Nationally Controlled Goods shall be liable to forfeiture.</p>
<p>Power to search conveyances.</p>	<p><b>23.(1)</b> An authorized officer may, with a warrant —</p> <p>(a) board any conveyance;</p> <p>(b) require the master of a vessel, the pilot of an aircraft or person in control of any other conveyance to give such information relating to the conveyance, cargo, stores, crew, passengers or voyage as he may consider necessary;</p> <p>(c) search all parts of such conveyance for strategic goods;</p> <p>(d) examine all items on board and all items being loaded or unloaded;</p> <p>(e) demand all documents of items which ought to be on board; and</p> <p>(f) require all or any such documents to be brought to him for inspection.</p> <p>(2) A master of a vessel, pilot of an aircraft or person in control of any conveyance who refuses to allow such authorized officer to board or search such conveyance or refuses to give such information or to produce such documents on demand commits an offence and is liable</p>

	<p>on conviction to a fine not exceeding one million shillings or imprisonment for a term not exceeding three years or both.</p> <p>(3) If any place, box or chest on board in such conveyance is locked and the key withheld, the authorized officer may break open any such place, box or chest at the expense of the other party.</p> <p>(4) If any items are found concealed on board in any conveyance, such items shall be deemed to be strategic goods.</p>
Entry and search of premises without warrant	<p><b>24.</b> An authorised officer may without a warrant exercise any power referred to in section 22 and 23 where—</p> <p>(a) a person who is competent to do so consents: or</p> <p>(b) that a delay in obtaining the warrant would defeat the object of the warrant.</p>
List of items seized or detained.	<p><b>25.</b> Where any strategic good and any container, package, conveyance or other article in which the goods are stored, kept or found, record, book, account, document or electronic data are seized, the authorized officer seizing the items shall prepare a list of the items seized and share thereafter deliver a copy signed by him to the owner or person in charge of the place, premises or conveyance which has been searched, or to such owner's or person's agent or servant, at that place, premises or conveyance.</p>
Disposal of seized strategic goods.	<p><b>26.</b>(1) The Committee may at any time it considers appropriate, obtain a court order for the disposal of the goods together with any container, package, conveyance or other article in which the strategic goods are stored, kept or found, record, book, account, document or electronic data seized subject to the following procedures being complied with —</p> <p>(a) an inventory specifying the description, markings and other particulars which clearly identifies the items seized prepared by an authorized officer;</p> <p>(b) photographs of the items seized taken in the presence of an authorized officer, and the said authorized officer has certified that the photographs are true; and</p> <p>(c) copies of any record, book, account, document or electronic data seized are duly certified by an authorized officer.</p> <p>(2) The disposal of goods under subsection (1) shall be carried out at the expense of the owner of the goods.</p>
Forfeiture of strategic goods when there is no prosecution.	<p><b>27.</b>(1) Where there is no prosecution or conviction in respect of any goods or electronic data seized in the exercise of any power conferred under this Act, such items shall be held for a period of ninety days from the date of seizure and at the end of that period shall be deemed forfeited, unless a written claim thereto is received within such</p>

	<p>period.</p> <p>(2) Any person claiming ownership of any strategic goods, container, package, conveyance, article, records, books, accounts, documents, or computerized data seized under this Act and that the strategic goods, container, package, conveyance, article, records, books, accounts, documents, or electronic data are not liable to forfeiture may personally or by his agent authorized in writing, give written notice to the authorized officer who made the seizure of his claim.</p> <p>(3) On receipt of the written claim under subsection (2), the authorized officer shall refer the matter to the Committee for decision.</p> <p>(4) The Committee shall conduct an inquiry on such claims and the person being inquired into shall be entitled to appear and to be heard in person or to be represented by an advocate.</p> <p>(5) For purposes of proceedings at any inquiry held, the Committee shall have power —</p> <ul style="list-style-type: none"> <li>(a) to administer oaths;</li> <li>(b) to summon persons to attend and give evidence; and</li> <li>(c) to order the production of documents.</li> </ul> <p>(6) All summons and orders issued under the hand of the director shall be deemed to be issued by the Committee.</p> <p>(7) The Director shall record or cause to be recorded a summary of any oral evidence given at any inquiry held by the Committee.</p> <p>(8) Subject to this section and to any regulations made under section 35, the Committee shall have the power to regulate its own procedure at an inquiry held by it.</p> <p>(9) Whenever there is proof that an offence under this Act has been committed and that such strategic goods, container, package, conveyance, article, records, books, accounts, documents, or computerized data were the subject matter of or were used in the commission of such offence, the Committee shall order that the strategic goods, container, package, conveyance, article, records, books, accounts, documents or computerized data be forfeited or may, in the absence of such proof, order the release of such strategic goods, container, package, conveyance, article, records, books, accounts, documents, or computerized data to the person entitled to them.</p>
<p>Cost of holding strategic goods seized.</p>	<p><b>28.</b> Where any strategic goods, or any container, package, conveyance or other article in which the strategic goods are stored, kept or found, record, book, account, document or electronic data seized under this Act, is held in the custody of the Government pending</p>

	completion of any proceedings in respect of an offence under this Act, the cost of holding such strategic goods, container, package, conveyance, article, record, book, account, document or electronic data in custody shall, in the event of any person being convicted of an offence, be a debt due to the Government by such person and shall be recoverable accordingly.
No costs or damages arising from seizure to be recoverable.	<b>29.</b> No person shall, in any proceedings before any court in respect of any strategic goods, or any container, package, conveyance or other article in which the strategic goods are stored, kept or found, record, book, account, document or electronic data seized in the exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.
Obstruction of an authorized officer.	<b>30.</b> (1) No person shall obstruct, impede or interfere with an authorized officer in the performance of his functions under this Act.  (2) No person shall impersonate an authorised officer; and  (3) A person who contravenes subsections (1) and (2) commits an offence and shall be liable on conviction to a fine not exceeding five million shillings or imprisonment for a term not exceeding five years or both.
<b>PART V—MISCELLANEOUS PROVISIONS</b>	
General penalty.	<b>31.</b> Any person who contravenes any of the provisions of this Act for which no penalty is provided shall be on conviction; liable to a fine not exceeding one million shillings, or imprisonment for a term not exceeding five years, or to both.
Confidentiality.	<b>32.</b> (1) Any confidential information obtained under this Act shall not be disclosed to any other party except in the furtherance of justice and law enforcement or national security, as may be determined by the Committee or unless the party providing such information has consented to its disclosure.  (2) The Committee and the secretariat shall keep confidential official secrets, trading and production secrets.
Voluntary disclosure.	<b>33.</b> (1) The Committee shall encourage voluntary self-disclosure, if any person believes that he may have contravened the provisions of this Act, and a licence issued hereunder.  (2) Voluntary self-disclosure to the Committee is a mitigating factor in determining what administrative sanctions, if any, will be imposed by the Committee.
Protection from personal liability.	<b>34.</b> (1) No action or thing done by a member of the Committee or by any authorized officer, employee or agent of government authority

	<p>shall, if the action or thing is done in good faith for executing the functions, powers or duties under this Act or its regulations, render the member, officer, employee or agent or any person acting on their direction personally liable to any action, claim or demand whatsoever</p> <p>(2) If the Committee denies, suspends, limits, revokes or annuls a licence or registration, the Committee shall not be liable for any damages that may be caused by such acts.</p>
Regulations.	<p><b>35.</b> (1) The Cabinet Secretary may, in consultation with the Committee, make regulations to give effect to and for the better carrying out of the objects and purposes of this Act.</p> <p>(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations—</p> <p>(a) for the safety, storage, transportation and security of strategic goods;</p> <p>(b) prescribing the fees payable for registration and obtaining a licence or any processes done under this Act;</p> <p>(c) prescribing the manner and form in which data will be stored by the Secretariat and;</p> <p>(d) prescribing procedures for voluntary self-disclosure;</p> <p>(e) prescribing the forms to be used under this Act;</p> <p>(f) for record keeping by persons registered under the Act</p> <p>(g) any other matter for the better carrying into effect of the provision of this Act.</p>
<b>PART VI –CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS</b>	
Amendment of Cap 114.	<p><b>36.</b> The Fire Arms Act is amended —</p> <p>(a) in section 4 by inserting the following new subsection immediately after section (1A) —</p> <p>(1B) A certificate of approval issued under section 1A shall only be issued with the approval of the Strategic Goods Control Committee if the armoured vehicle is prescribed as a strategic good under the Strategic Goods (Security Control) Act.</p> <p>(b) in section 27 by inserting the following new subsection immediately after subsection (9) —</p> <p>(10) A licence or a permit issued under this section for firearms and ammunition exceeding such quantities as may be prescribed in the National Control List shall only be issued with the approval of the Strategic Goods Control Committee. Established under the Strategic Goods (Security Control) Act.</p>
Amendment of Cap 243.	<p><b>37.</b> The Radiation Protection Act is amended by inserting the</p>

	<p>following new section immediately after section 7 —</p> <p>Strategic good. <b>7A.</b> Notwithstanding the provisions of section 7, the Board shall not license the use or importation of an irradiating device or radioactive material without the consent of the Strategic Goods Control Committee if the irradiating device or radioactive material is gazetted as a strategic good under the Strategic Goods (Security Control) Act.</p>
<p>Amendment of Cap 247.</p>	<p><b>38.</b> The Use of Poisonous Substances Act is amended by inserting the following new section immediately after section 9 —</p> <p>Strategic good. <b>9A.</b> Where a substance is gazetted as a strategic good under the Strategic Goods (Security Control) Act, the licence to be issued under section 33 (c) shall be issued with the approval of the Strategic Goods Control Committee.</p>
<p>Amendment of Cap 254.</p>	<p><b>39.</b> The Food, Drugs and Chemical Substance Act is amended by inserting the following new section immediately after section 39 —</p> <p>Strategic good. <b>39A.</b> Where a chemical substance is gazetted as a strategic good under the Strategic Goods (Security Control) Act, the public health board shall only issue a licence relating to the said chemical substance with approval of the Strategic Goods Control Committee.</p>
<p>Amendment of Cap. 345.</p>	<p><b>40.</b> Section 2B of the Fertilizer and Food Stuffs Act is amended —</p> <p>(a) by inserting the following new subsection —</p> <p>(1) Notwithstanding the provisions of paragraph 2B (i), fertilizer and animal food stuffs that are listed in the National Control List shall be regulated by the Strategic Goods Control Committee established under section 5 of the Strategic Goods (Security Control) Act, 2018.</p> <p>(b) in paragraph (a) by inserting the words “exportation and transhipment” immediately after the word “importation”;</p> <p>(c) in paragraph (f) by inserting the words “exporters and importers” immediately after the word “retailers”; and</p> <p>(d) by inserting the following new paragraph immediately after paragraph (h) —</p> <p>(i) implement administrative strategies and measures to ensure that persons do not use fertilizers in a manner prejudicial to national security.</p>



Amendment of Cap. 345.	<p><b>41.</b> Section 2C of the Fertilizer and Food Stuffs Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (h) —</p> <p>(i) one person representing the National Intelligence Service.</p>
Amendment to of Cap. 345.	<p><b>42.</b> Section 2E of the Fertilizer and Food Stuffs Act is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (f) —</p> <p>(g) to prescribe the concentration of the ingredients in a fertilizer in consultation with the Kenya Bureau of Standards.</p>
Amendment of Cap. 345.	<p><b>43.</b> Section 9 of the Fertilizer and Food Stuffs Act is amended in subsection (1) —</p> <p>(a) in paragraph (a) by inserting the word “exportation” immediately after the word “importation”; and</p> <p>(b) in paragraph (b) by inserting the word “exportation” immediately after the word “importation.”</p>
Amendment of Cap 346.	<p><b>44.</b> The Pest Control Products Act is amended by inserting the following new section immediately after section 6 —</p> <p>Strategic good.      <b>6A.</b> Notwithstanding the provisions of section 6, a pest control product that is gazetted as a strategic good under the Strategic Goods (Security Control) Act, shall not be registered by the board except with the approval of the strategic goods control committee.</p>
Transitional provisions.	<p><b>45.</b> (1) Any register kept, registration effected, certificate, permission, licence, authority issued and or granted, notice or information given, return made, or other thing done under any written law immediately before the commencement of this Act shall continue in force and have effect as if kept, effected, issued, given, made or done under the corresponding provision of this Act.</p> <p>(2) Any form used and any requirement as to the particulars to be entered in any form used for the purposes of any written law Act which was in force immediately before the date of commencement of this Act shall continue in force and have effect as though prescribed under this Act until forms or particulars are so prescribed.</p>