



THE NATIONAL TREASURY AND ECONOMIC PLANNING

**REGULATORY IMPACT ASSESSMENT (RIA) STATEMENT ON THE
NATIONAL ELECTRONIC SINGLE WINDOW SYSTEM
(GENERAL) REGULATIONS, 2023**

FEBRUARY 2023

This Regulatory Impact Assessment (RIA) statement has been prepared by The National Treasury and Economic Planning pursuant to Sections 6 and 7 of the Statutory Instruments Act (No. 25 of 2022)

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EXECUTIVE SUMMARY

The National Treasury and Economic Planning in conjunction with Kenya Trade Network Agency (KenTrade) is pleased to present the Regulatory Impact Assessment statement for the National Electronic Single Window System (NESWS) Regulations, 2023. This Regulatory Impact Assessment (RIA) is a policy tool prepared pursuant to Sections 6 & 7 of the Statutory Instruments Act (No. 23 of 2013) and its purpose is to examine and measure the likely benefits, costs and effects of the proposed NESWS Regulations, 2023. It examines the impact of the establishment of the NESWS whose main objective is to provide an online platform that serves as a single-entry point for parties involved in international trade and transport logistics to lodge documents electronically, for processing approvals and to make payments electronically for fees, levies and duties due to the Government, on goods imported or exported in the country.

This RIA is divided into 10 parts.

Part 1 is the Introduction which outlines the Regulation Making Authority, legal mandate of KenTrade and the Statutory requirements for RIA.

Part 2 of the RIA captures a statement of the objectives of the proposed Regulations and the reasons for them.

Part 3 of the RIA provides a policy and legal background and local, regional and international contexts of automation of cross border trade in Kenya.

Part 4 of the RIA precisely states the problem to be solved, giving evidence of its nature and magnitude, and explaining why it has arisen.

Part 5 takes us into the policy and Legal Framework for International and regional trade and outlines commitments from Vision 2030, the Constitution of Kenya 2010 and other strategies and plans adopted by the country.

Part 6 of the RIA is on the consultative process adopted to develop the RIA. It states the initial consultative process and other engagements with experts, partner agencies, stakeholders and general public.

Part 7 of the RIA outlines the salient features of the proposed Regulations. It gives a general summary of the provisions of the Regulations.

Part 8 of the RIA is a cost benefit analysis that weighs the costs of implementing the proposed regulations against the benefits of what the proposed regulations are anticipated to bring.

Part 9 of the RIA provides for the regulatory and non-regulatory options available and the appropriateness of each option. It also justifies why the regulatory option is appropriate.

Part 10 of the RIA is the conclusion and recommendations on the option to adopt and also charts compliance and implementation of the proposed Regulations.

ABBREVIATIONS

CBA	-Cost Benefit Analysis
KenTrade	-Kenya Trade Network Agency
KLRC	-Kenya Law Reform Commission
KPA	-Kenya Ports Authority
NESWS	-National Electronic Single Window System
NESWS Act	-National Electronic Single Window System Act, No 25 of 2022
PGAs	-Partner Government Agencies
RIA	-Regulatory Impact Assessment
RMA	-Regulation Making Authority
SIA	-Statutory Instruments Act, No. 23 of 2013

CHAPTER I: INTRODUCTION

I.1.Regulatory-Making Authority and the Legal Mandate

Most countries and jurisdictions that have established a National Single Window System (NESWS), have the same managed centrally by a lead agency to enable Partner Government Agencies (PGAs) and users to receive or have access to the System and obtain information relevant for their purpose. In addition, participating authorities and agencies should coordinate their controls for purposes of trade facilitation through the use of NESWS. In some cases, the Single Window may provide facilities for payment of relevant duties, taxes and fees and application for permits and licenses. The NESWS overall aim is to expedite and simplify information flows between traders and government and bring meaningful gains to all parties involved in cross-border trade.

KenTrade is established under the National Electronic Single Window System Act, 2022 (NESWS Act) as the lead agency with the mandate of managing the National Electronic Single Window System in Kenya and to facilitate trade. As the lead Agency, KenTrade has established NESWS as an online platform that serves as a single-entry point for parties involved in international trade and transport logistics to lodge documents electronically, for processing, approvals and to make payments electronically for fees and levies due to the Government on goods imported or exported in the country.

Section 43(1) of the NESWS Act, 2022 empowers the Cabinet Secretary, National Treasury and Economic Planning (the Cabinet Secretary) in consultation with KenTrade, to make Regulations generally for the better carrying out of the purposes and objectives of the NESWS Act. Further, Section 43(2) of the Act is more specific and provides that the Regulations developed may prescribe:

- (a) administrative measures relating to the use of the System;
- (b) the integration of paperless customs clearance with other regulatory bodies issuing trade, import, export or transit-related permits and certificates;
- (c) the extension of the System to serve entire trade and logistics communities within airports, seaports and dry ports;

- (d) the creation of national logistics platform interlinking the department responsible for customs, trading companies and the service sectors;
- (e) the interconnection and integration of national single windows into bilateral or regional information exchange platforms;
- (f) the timelines for the processing of any applications under this Act;
- (g) procedures for registration, registrable particulars and other details relating to registration of users of the System;
- (h) fees and levies;
- (i) modes of payment of fees and levies;
- (j) the conditions to be complied with by users of the System;
- (k) the process of accessing the information from the System; and
- (l) any other matter required to achieve the objectives of the Act.

The Cabinet Secretary also has the collective responsibility of implementing the Government's Manifesto by leveraging on ICT to deliver services more efficiently and effectively thereby contributing to improving the ease of doing business in Kenya.

In exercise of the above powers, therefore, the Cabinet Secretary National Treasury & Economic Planning in consultation with KenTrade have developed the NESWS (General) Regulations 2023. This is a statutory instrument which seeks to strengthen the NESWS regulatory environment. It is likely to impose minimal user fees in the trade facilitation environment which plays a key role in Kenya's economic development. We now undertake public and stakeholder consultations and present this RIA in partial fulfilment of the requirements of the Statutory Instruments Act.

Requirements of the Statutory Instruments Act

The Statutory Instruments Act, No. 23 of 2013 (SIA) is the legal framework governing the conduct of RIA in Kenya. Sections 6 and 7 require that if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the Regulation-Making Authority (RMA) shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument.

SIA further sets out certain key elements that must be contained in the RIA namely:

- (a) a statement of the objectives of the proposed legislation and the reasons for them;

- (b) a statement explaining the effect of the proposed legislation including in the case of a proposed legislation which is to amend an existing statutory instrument the effect on the operation of the existing statutory instrument
- (c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
- (d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives;
- (e) the reasons why the other means are not appropriate;
- (f) any other matters specified by the guidelines;
- (g) a draft copy of the proposed statutory rule.

Section 5 of SIA requires an RMA to conduct public consultations drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument and ensuring that persons likely to be affected by the proposed statutory instrument are given an adequate opportunity to comment on its proposed content.

1.2. What is a Regulatory Impact Assessment?

RIA is a systemic approach of critically assessing the positive and negative effects of proposed or existing regulations and non-regulatory alternatives. It is an analytical report to assist decision makers to arrive at an informed policy decision. As an aid to decision making, RIA includes an evaluation of possible alternative regulatory and non-regulatory approaches with the overall aim of ensuring that the final selected regulatory option provides the greatest net public benefit.

RIA promotes evidence-based policymaking as new regulations typically lead to numerous impacts that are often difficult to foresee. From a societal viewpoint, RIA confirms whether a proposed regulation is welfare enhancing, in that, the benefits will surpass costs. RIA therefore has an overall objective of not only improving understanding of the real-world impact of regulatory action, including both the benefits and the costs of action, but also integrating multiple policy objectives, improving transparency and consultation; and enhancing governmental accountability.

CHAPTER 2: AN OVERVIEW OF THE PROPOSED NATIONAL ELECTRONIC SINGLE WINDOW SYSTEM REGULATIONS

The proposed Regulations will bring into effect Section 43(1) of the NESWS Act, 2022 by providing clarity on the Registration of users into the System and payment of the requisite fees. The Regulations are provided in the parts as detailed below:

Part I-This part entails the preliminaries which are the definition of terms and the object and purpose of the Regulations.

Part II- delves into the features of the System; this includes functions of the System, capabilities of the System, System architecture, System maintenance and the service level agreement with entities integrated into the System.

Part III- this Part generally gives directions on the registration of users on the System; from the application of registration; to notification of user credential logins if successful; and circumstances under which the Agency may reject an application. The Part further describes the register of users, the circumstances under which a user of the System may be suspended and how they can request for lifting of their suspension. This part also describes the circumstances under which a user may be deregistered from the System.

Part IV- This Part provides for rights of access to the System and the responsibility of users when accessing the System.

Part IV-This part discusses the Mechanisms for trade Facilitation; It entails the process of onboarding or integrating an entity into the System, and it also provides for the database of imported and exported goods; the simplification of import and export processes on the System; the part establishes a portal to provide information on import, export, and transit procedures; it also establishes a National Logistics Platform to promote efficient trade and provide online information to traders and transporters; the part further discusses the areas of support of County Governments by KenTrade and how KenTrade will use the System to provide relevant information in collaboration with other Agencies to ensure the protection of the economy and Protection of health, safety and environment.

Miscellaneous Provisions- This Part provides for miscellaneous provisions including publication by KenTrade of an annual trade statistics report; complaints handling procedure; application of the data protection Act on use of the System; access into the system to generate

a unique consignment number and pay the requisite fee; lodging of notice for an impending arrival and departure of a sea vessel at a seaport. The part also provides for the mandate of KenTrade under other laws of Kenya.

CHAPTER 3: THE PURPOSE AND OBJECT OF PROPOSED NESWS REGULATIONS

3.1. Purpose and Object

The object and purpose of these Regulations is to—

- (a) facilitate an effective administration of the System;
- (b) provide for the registration of the users of the System;
- (c) provide mechanisms to enable the single-entry point for submission and receipt of cargo clearance documents or any other information required to meet regulatory requirements;
- (d) establish the modes of integrating and onboarding an entity into the system;
- (e) provide mechanisms for the System to serve the entire trade and logistics within airports, seaports and dry ports; and
- (f) facilitate the electronic payment for fees and levies on permits and licenses of goods imported or exported and use of the System.

3.2. General Objective

The General objective of the Regulations is to give effect to the NESWS Act, fully operationalize the NESWS including registration and management of Users, grant levels of access to the Users, enhance mechanisms of trade facilitation, ensure information sharing and other connected purposes.

3.3. Specific Purpose

Specifically, the proposed Regulations prescribe:

- (a) functions and capabilities of the System;
- (b) System architecture and maintenance;
- (c) elements of Service Level Agreement between KenTrade and other entities (PGAs) authorized to use the System;
- (d) procedures and standards for registration, suspension, and deregistration of a User in the System with clarity on the terms and conditions for a User when interacting with the System;
- (e) access levels for Users in the System including User responsibility;
- (f) establishing a database for imported and exported goods;
- (g) simplification of import and export processes;

- (h) portal on trade information;
- (i) establishment of a National Logistics Platform; and
- (j) complaint resolution

CHAPTER 4: BACKGROUND AND CONTEXT

4.1. Policy and Legal Background

The Kenya Vision 2030 is the national long-term development blueprint to create a globally competitive and prosperous nation, transforming Kenya into a newly industrialized, middle-income country providing a high quality of life to all its citizens by 2030 in a clean and secure environment. Vision 2030's three pillars, namely the Economic, Social and Political pillars are anchored on macroeconomic stability; continuity in governance reforms; enhanced equity and wealth creation opportunities for the poor. The strategy of Vision 2030 is to undertake reforms in eight key sectors that form the foundation of society for socio-political and economic growth: Infrastructure, ICT, Energy, Science, Technology, and Innovation (STI), Land Reform, Labor and Employment, National Values and Ethics, Public Sector Reforms, Ending Drought Emergencies and Security and Peace Building and Conflict Resolution. The Economic Pillar, which captures the expectations of the ICT market, seeks to improve the prosperity of all sectors.

NESWS is a key deliverable on the economic pillar under Vision 2030. It addresses inefficiencies identified in cross border trade by simplifying, harmonizing, and standardizing import and export procedures. It coordinates all Partner Government Agencies by providing an ICT platform where they exchange information to support decisions on clearance of (goods and documentation) and, overall reducing the cost of doing business in Kenya. NESWS integrates a complex heterogeneous government agencies ecosystem into a single common platform as envisioned when KenTrade was set up.

NESWS also supports implementation of the Bottom-Up Economic Transformation Agenda 2022-2027 which is expected to contribute to broad based inclusive sustainable economic growth, faster job creation and reduction of poverty and inequality. By facilitating electronic exchange of trade information and enabling electronic processing of trade documents, NESWS supports the core pillars of the Transformation Agenda including the Digital Superhighway and Creative Economy.

NESWS has been in operation since 2013 and is administered, managed and operated by Kenya Trade Network Agency (KenTrade). KenTrade was initially established in January 2010

vide *Legal Notice No 6 of 2011* and later in 2022, it transitioned into a state agency under the National Treasury and Economic Planning through the enactment of the NESWS Act.

4.2. Domestic Context

NESWS serves as a single-entry point and platform for any person involved in trade and transport to lodge documents electronically including import or export documents for processing and approval. It also facilitates the electronic payment for fees and levies, due to the Government, on goods imported or exported for transactions submitted through the System.

The System also enables various PGAs to process their documents and clear goods. The system is integrated with Partner Government agencies and private sector systems for seamless exchange of information. The System provides capabilities for the automation of domestic trade processes aimed at improving efficiency and reducing the time taken to transact locally.

The future of the Single Window concept that KenTrade aims to achieve is a more elaborate Single Window environment. This system incorporates all systems in the logistics chain and allows for the use of big data in decision making. It leverages technology to lower the barrier for governments and businesses to better share data and collaborate digitally.

The Agency will continue to promote the Digital Superhighway and Creative Economy by integrating the various PGAs systems into the NESWS. The Agency shall also promote the Micro, Small and Medium Enterprise (MSME) economy by innovation of various measures to facilitate trade and reduce the cost of doing business.

4.3. Regional context

The region has made tremendous progress in the automation of cross border trade. This is seen through the implementation of the Single Window system in the region, especially in Kenya where tremendous progress has been made in implementation of the system. The regional economic blocs have also initiated the process of integrating the Single Window system to enable seamless exchange of trade data between them. This is aimed at enhancing trade through adoption of ICT.

The successful implementation of Africa Continental Trade Free Area (AfCFTA), the high impact trade agreement and one of the flagship projects of Africa 2063, includes critical areas of Africa's economy such as digital trade, cross border trade value chain and simplified trade

regimes. AfCFTA relies significantly on how information is shared within various African countries. This complements the other initiatives such as infrastructure upgrade, which is perceived to be expensive.

Regionally, several countries have adopted diverse institutional arrangements for the implementation of the Single Window system. These include Public Private Partnership model (Mauritius), State corporation approach (Kenya), Customs led system (Rwanda) and Limited companies (Morocco). These diverse institutional approaches have ensured that regional countries implement various business models for the sustainability of the system. Some systems are fully funded by the government like in the case of Kenya, while others levy fees and charges for the services they offer through their systems. A key example is Senegal through *Gainde 2000* which operates its system and charges for its use. Levying a fee or charge for the use of the system shifts over reliance on the National Exchequer and assures sustainability of the system.

KenTrade has benchmarked with various Single Window operators to arrive at its business model of implementation in Kenya. Some of the countries that KenTrade has benchmarked with include Singapore, Mauritius, Malaysia, Senegal, and Morocco. These countries have implemented successful systems, which have brought efficiency into their cargo clearance process. The benchmarking engagements were beneficial because KenTrade learnt what the industry is offering, what's changing, and the new systems and technologies needed to be adopted to stay on top of the game. Other technical lessons learnt by KenTrade, and important observations while benchmarking included:

4.3.1 Systems design and Architecture

Agencies administering and managing Single window systems should have robust and scalable enterprise software architecture and design guided by interoperability, high availability, and e-governance strategy awareness to ensure the systems run efficiently.

4.3.2 Systems Development

Collaboration amongst users and stakeholders using the system is key during system development lifecycle. This allows for regular review of business requirements and objectives during development.

4.3.3 Systems Implementation

There is a need to implement the system in a phased manner starting with a pilot phase then scheduled roll-out while building on lessons learned throughout the process. The affected stakeholders need to be involved in the process for feedback and acceptance of the system. This will enable smooth implementation and adoption by all users.

4.3.4 Systems Security

Access to the system should be guided or governed by predefined user rights and privileges for various categories of users. This safeguards the system against fraud, and vulnerability to cyber-attacks and identity theft. There should be a policy guiding how users are managed, including their data and any transactions they lodge in the system.

4.4 International Context

Internationally, the emergence of technology as a key driver in globalization has scaled up the use of systems along the supply chain. Global agencies such as UNCEFACT, World Customs Organization and World Trade Organization have recommended the use of the Single Window System to facilitate cross border trade. Technologies such as Block chain, Data analytic and Internet of things have enhanced international trade by simplifying processes along the supply chain.

In 2015, the United Nations General Assembly (UNGA) developed the Sustainable Development Goals (SDGs), which are a collection of 17 global goals. The SDGs are part of Resolution 70/1 of the United Nations General Assembly: "*Transforming our World: the 2030 Agenda for Sustainable Development*". The 17 Sustainable Development Goals (SDGs), with their 169 targets, form the core of the 2030 Agenda. They balance the economic, social, and ecological dimensions of sustainable development, and place the fight against poverty and sustainable development on the same agenda. Under the Sustainable Development Goals, KenTrade through NESWS plays a role under the following goals:

1. **End poverty in all its forms everywhere:** Through its role in facilitating trade, and reducing the cost of doing business, this eventually results in Economic growth and poverty reduction.
2. **Economic Growth:** *Promote sustained, inclusive, and sustainable economic growth, full and productive employment, and decent work for all:* Implementation of NESWS has led to Streamlining of trade processes, which include automation of manual processes, overall reducing cost of doing business, promoting manufacturing and exports in Kenya.

3. **Industry, innovation, and infrastructure:** *Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation.* The use of ICT as a driver for innovations will enable the agency to improve cross border trade logistics
4. **Life below water:** *Conserve and sustainably use the oceans, seas, and marine resources for sustainable development.* Implementation of Maritime Single Window and Marine Cargo Insurance complements the government effort in promoting the blue economy related activities.
5. **Partnerships for goals:** *Strengthen the means of implementation and revitalize the global partnership for sustainable development.* Partnerships and collaborations with other institutions. KenTrade will continue playing a role in the African Alliance for E-Commerce, continue partnerships with Trademark Africa and United Nations Conference on Trade and Development in improving the information for Trade Portal, the Trade Logistic Information Portal amongst other projects. The Agency will also participate in a regional project on data exchange.

Further, implementing and maintaining the operations of the Maritime Single Window has ensured that the country complies with the Convention on Facilitation of International Maritime Traffic (FAL Convention). The Convention's main objectives are to prevent unnecessary delays in maritime traffic, to aid co-operation between Governments, and to secure the highest practicable degree of uniformity in formalities and other procedures. In particular, the Convention reduces the number of declarations which can be required by public authorities.

CHAPTER 5: EVALUATION OF THE PROBLEM

This chapter outlines and states the problem to be solved, giving evidence of its nature and magnitude, and explaining why it has arisen.

Identified challenges

5.1. Absence of standardized norms and processes for the operation of the System results to:

- a. Ineffective administration of the System.
- b. There are no established mechanisms for the registration of the users of the System.
- c. There are no standard mechanisms to enable the single-entry point for submission and receipt of cargo clearance documents or any other information required to meet regulatory requirements.
- d. There are no defined modes of integrating and onboarding an entity into the System.
- e. There isn't any guidance on System use by the entire trade and logistics industry within airports, seaports, and dry ports; and
- f. Challenges of pilferage, tracking and reconciliation of payments resulting from lack of standardizing methods or modes for payment of fees and levies on permits and licenses of goods imported or exported.

5.2. Resistance from stakeholders

Resistance to automation from various PGAs has led to a combination of manual and semi-manual cargo clearance processes leading to an increase in the time taken to process documents and clear goods at various entry and exit points.

5.3. Inefficient clearance process

The absence of a wholly automated cargo clearance process has necessitated human interaction thereby increasing the risk of fraud.

5.4. Cost of running the system and other operation issues

With the rapid development of the computer, mobile, and network technology, KenTrade's IT systems and infrastructure risks obsolescence and outmodedness. The cost of maintaining a contemporary IT infrastructure is significant, taking into account that the Agency does not

levy fees for system usage. Thus, the high cost of maintaining NESWS negatively impacts on KenTrade's liquidity.

5.5. Cyber security threats

With the automation of cargo clearance processes, there is a greater reliance on technology to manage and control the processes. This creates new vulnerabilities and opportunities for cybercriminals to exploit.

5.6. Data protection

With the development of new systems and processing personal data, there is an increased risk of either non-compliance with data protection legislation, privacy regulations or infringement of privacy rights.

5.7. Manual Back Office Processes at Partner Government Agencies

For the majority of the partner government agencies, NESWS is the only electronic system that is operational; most of the back-office processes are manual. As such, inefficiencies attributed to manual procedures supporting the automated processes in NESWS have an effect on the overall efficiencies of the full trade facilitation process.

5.8. Manual Interventions in Automated Processes

Despite the automation of most of the processes, some PGAs issue manual supporting documentation as part of the pre-clearance process but do not upload these supporting documents into the NESWS. This means that stakeholder/users have to collect these documents physically from the PGA office, scan and upload the documents on their own onto NESWS. This has seen an increase in clearance time and delays efficiency.

5.9. Duplication of Procedures in Automated and Semi Automated Processes

Some PGAs request physical documents and multiple data entries in parallel systems which are already uploaded on NESWS negating the very fundamental functionality and objective of the single window system.

5.10. Missing, Suboptimal Processes and Procedures

Some PGAs require payments to be made directly to their institutions, physically at their offices as opposed to the payment process supported by NESWS thereby creating delays in the completion of the process.

CHAPTER 6: LEGAL AND POLICY FRAMEWORK FOR THE PROPOSED NESWS REGULATIONS

6.1 Constitutional Basis

Section 5 of the NESWS Act provides that:

” The Agency and users of the System shall be guided by the following principles—

- (a) simplicity and practicability;
- (b) cost-effectiveness;
- (c) non-discrimination;
- (d) consistency and predictability;
- (e) modernization and use of new technology; and
- (f) due process and co-operation.”

An analysis of the guiding principles aforementioned portrays that the same are aligned to our national values and principles of governance enshrined in **Article 10(2)** of the Constitution of Kenya, 2010 such as good governance, non-discrimination, integrity, transparency, and accountability and sustainable development.

Article 6(3) of the Constitution provides that a national state organ shall ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so having regard to the nature of the service. In developing these Regulations, KenTrade will be facilitating an effective administration of the System; providing for the registration of the users of the System and providing mechanisms to enable the single-entry point for submission and receipt of cargo clearance documents or any other information required to meet regulatory requirements. This means that any user of the System can access the same from any corner of the Republic.

Article 6 (2) of the Constitution provides that the governments at the national and County levels are distinct and interdependent and shall conduct their mutual relations on the basis of consultation and cooperation. Article 189 of the Constitution reinforces cooperation between both levels of Government and states that: **“Government at either level shall liaise with government at the other level for the purpose of exchanging information, coordinating policies and administration and enhancing capacity.** The Fourth Schedule to the Constitution recognizes International Trade and Trade development as different functions of government assigned at the National and County levels respectively. This means that while the two levels of government have their respective roles as far as trade

is concerned, they are obligated to cooperate on the same. This reinforces the guiding principle on cooperation under Section 5 of the NESWS Act.

6.2. National Policy Framework.

6.2.1. Kenya Vision 2030

The manufacturing sector under Vision 2030 contains fourteen programs spanning various players. By getting rid of trade documentation bottlenecks, the System helps to improve cross-border trade. The "Blue Economy" is another area where the Single Window System is relevant. It includes a variety of economically viable industries, including aquaculture, tourism, shipbuilding, energy bioprospecting, and undersea mining. The time it takes clients to transport clearance documents from one location to another is decreased by the Maritime Single Window System module in the NESWS. Promotion of exports, establishment of market access and diversification, logistics bases and distribution hubs, and EAC Jumuiya Trade and Investment centers are among the development targets listed under the economic pillar on trade. The Agency will also keep promoting the Creative Economy and Digital Superhighway by incorporating the many PGAs systems into the NESWS. The Agency is supporting the Micro, Small and Medium Business (MSME) economy by coming up with new ways to ease trade and lower operating costs.

6.2.2. National Trade Policy, 2017

The National Trade Policy focuses on domestic, regional, and international markets in an effort to maximize Kenya's potential. The Policy seeks to define the government's aspirations for these outcomes, including opportunities for expanded markets, revenue generation and distribution, employment and competitiveness, and the eradication of poverty. To maximize Kenya's potential, the National Trade Policy focuses on domestic, regional, and global markets. The global, regional integration, and bilateral trade agreements that currently define the space that Kenya's international trade enjoys give Kenya a great opportunity to accomplish this strategic objective. The NESWS is a great value add to the trade policy as it facilitates trade in both domestic and international market.

6.3. Statutory Framework

6.3.1. The National Electronic Single Window Systems Act, 2022

The Act establishes the NESWS which serves as a single-entry point and platform for any person involved in trade and transport, the system enables users to lodge documents electronically including import or export documents for processing and approval; and facilitates the electronic payment for fees and levies, due to the Government, on goods imported or exported for transactions submitted through the System. Section 43 of the Act provides that the Cabinet Secretary may, in consultation with KenTrade, make Regulations generally for the better carrying out of the purposes and objectives of the Act.

The Following legislation was amended by the NESWS Act. The Proposed regulations will impact on the laws as discussed below:

6.3.2. The Kenya Maritime Authority Act

The Act establishes the Kenya Maritime Authority. The proposed Regulation shall enable the establishment of a digital and an electronic platform to promote trade required under section 5(ca) of the Kenya Maritime Authority Act.

The Public Archives and Documentation Services Act

The Act establishes the Kenya National Archives and Documentation Service. The proposed Regulation shall enable the issuance of an electronic license under Section 9(2A) the Public Archives and Documentation Service Act.

The Radiation Protection Act

The Act establishes the Radiation Protection Board. The Proposed Regulation shall enable automation of a register of licenses issued under section 11(5) of the Radiation Protection Act.

The Pharmacy and Poisons Act

This Act establishes the Pharmacy and Poisons Board. The proposed Regulation shall enable automation of a register of licenses for the purpose of section 6(3) of the Pharmacy and Poisons Act.

Export Processing Zone Act

The Act establishes the Export Processing Zones Authority. The proposed Regulation shall enable maintenance of an electronic register of licenses under section 20(1) Export Processing Zone Act through the system.

Environmental Coordination and Management Act

The Act establishes the National Environmental Management Authority. The proposed Regulations shall enable issuance of an electronic license under section 83 (2) of the Environmental Management and Co-ordination Act.

Alcoholic Drinks Control Act

The Act establishes the Alcoholic Drinks Control Fund. The Proposed Regulations shall enable automation of an electronic register required under section 25(8) of the Alcoholics Drinks Control Act.

The Crops Act

The Act establishes the Commodities Fund, the proposed Regulations shall enable electronic authorization for exports and imports of designated crops or produce required under section 4(ea) of the Crops Act, 2013.

CHAPTER 7: PUBLIC CONSULTATIONS

7.1. Legal requirements relating to consultation and public participation

The process of stakeholder consultations in preparation of the proposed Regulations is in line with Article 10, of the Constitution of Kenya 2010, and Section 5 of the Statutory Instruments, Act 2013.

7.2. Initial Development & Consultation Process

The need for the NESWS Regulations was conceived following the enactment of the NESWS Act No. 25 of 2022 on 21st June 2022. The KenTrade Board of Directors at its meeting held on 23rd August 2022 directed the management to engage the KLRC and the Office of the Attorney General to develop Regulations to fully operationalize the Act.

Following the approval by the Board, an internal working group was appointed to develop the Regulations. The team comprises of representatives from the legal department as well as the technical departments of Trade Facilitation, IT and Finance. The Agency further engaged with the KLRC and the Office of the Attorney General for nomination of representatives to support the internal working group in drafting the NESWS Regulations.

Letters were sent in September 2022 to KLRC and the Office of the Attorney General to nominate suitable officers to be part of the working group to formulate the Regulations. KLRC nominated two representatives to provide technical support to the Agency team in drafting the Regulations. The Office of the Attorney General, however, indicated that their representatives would join the working group at a later stage.

The working group held a working retreat between 3rd October to 6th October 2022 in Machakos. During the Retreat, the team was able to unbundle the functions of KenTrade and provisions of the NESWS Act, 2022 to identify areas that required Regulations. The team was also able to develop the Legislative Scheme and the Roadmap for the Development of the Regulations.

This was followed by a second working retreat in Naivasha between 14th – 18th November 2022 where the team developed a zero-draft of the Regulations. The working group then held virtual consultative meetings in December 2022 to discuss and further enrich the zero-draft.

7.3. Internal Stakeholder Consultations

7.3.1. Senior Management and Staff Consultations

A virtual meeting with Senior Management at KenTrade was held on 13th December 2022 chaired by the Ag. Chief Executive Officer to receive comments from the Senior management on the zero draft Regulations. This was followed by a virtual meeting on 9th January 2023 where the draft Regulations were presented to all staff of the Agency for the purpose of collecting their comments and input.

Input from the senior management and staff were considered and assessed by the working group during a virtual meeting held on 2nd January 2023 and issues that were agreed upon to be included in the Regulations were incorporated. A matrix of comments and responses was also prepared.

7.3.2. Board Consultations

A meeting was held with the Board of Directors of KenTrade on 2nd February 2023 where the Board was taken through the zero draft Regulations. The Board members gave their input for enriching the Regulations.

Following the meeting with the Board, the working group reconvened for another working retreat in Machakos from 13th to 17th February 2023 to consider the comments received and to refine the draft Regulations. The working group incorporated the comments received from all stakeholders and developed the first draft of the Regulations and the Draft Regulatory Impact Assessment Report.

7.4. External Stakeholder Consultations

Pursuant to section 5 of the Statutory Instruments Act, the working group identified the key stakeholders whom it intends to engage for consultations. These included the Partner Government Agencies; industry players and institutions and individuals who will be directly or indirectly affected by the proposed Regulations. They include:

- i. National Treasury
- ii. Ministry of Trade
- iii. Ministry of Transport
- iv. Kenya International Freight & Warehousing Association
- v. Shippers Council of Eastern Africa
- vi. Kenya Ports Authority
- vii. Kenya Revenue Authority
- viii. Kenya Maritime Authority

- ix. Kenya Bureau of Standards
- x. Partner Government Agencies
- xi. Shipping Lines/Agents
- xii. Consolidators
- xiii. County Governments
- xiv. General Public

The working group also identified the following four regions that were earmarked for public participation being geographically representative of the territory of Kenya:

- a. Nairobi
- b. Mombasa
- c. Kisumu
- d. Kajiado
- e. Busia
- f. Eldoret
- g. Malaba

7.5. Approach and Methodologies

According to the working group calendar of events, the stakeholder consultations were intended to be undertaken in the month of March and April, 2023. The working group opted to adopt the following methodology:

- i. Post draft copies of the proposed Regulations together with a notice of the Regulatory Impact Assessment onto the Agency's Website.
- ii. Write letters and emails to the stakeholders inviting them to make their submissions on the draft Regulations within a specified time.
- iii. Post an advertisement in a newspaper with national circulation inviting any person or institution to make their submissions within a specified date and directing them to where they can get copies of the Regulations.
- iv. Hold physical meetings with key stakeholders
- v. Hold virtual/online meetings with select stakeholders where possible.

CHAPTER 8: COST-BENEFIT ANALYSIS

Cost-benefit analysis (CBA) is a tool used by regulatory decision makers, in our case, the Regulation Making Authority (RMA) to identify the costs and benefits, in financial terms, of a proposed regulation to society as a whole. In preparing the CBA, the RMA makes an attempt to assign a monetary value to all the predicted costs and benefits of a proposed regulation. These include not only the direct costs and benefits, but any tangential effects a proposed regulation may impose on society. In evaluating the effects on society, CBA includes costs and benefits to industry, government, individual citizens, communities, the environment, and the economy at large. Cost-benefit analysis helps alleviate democratic concerns by making the development of statutory instruments more transparent, accessible and open to both the public, stakeholders, experts and Parliament, who can exercise influence over the RMA. Cost-benefit analysis requires an RMA to attempt to quantify its reasoning process—revealing which aspects of a problem the RMA has taken into account. It allows the public, stakeholders, experts and Parliament to understand and challenge the RMA’s calculations or even its choices about which factors count in the decision-making process. Section 7(1) of SIA provides that: A regulatory impact statement shall include the following information about the proposed statutory instrument in clear and precise language: **an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives.**

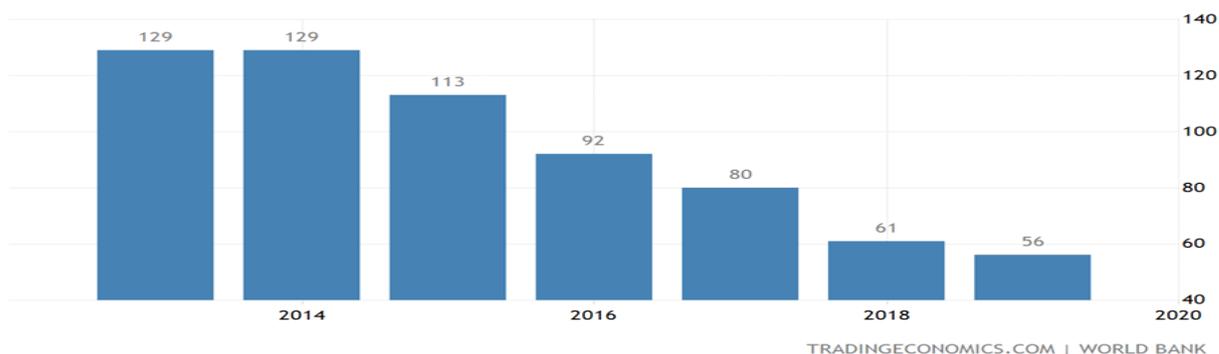
8.1 Costs and Benefits of the National Electronic Single Window System Regulations

The approval of the proposed Regulations is deemed to have the following accruing benefits:

I. Improved ease of doing business

For users NESWS enables and provides faster clearance times, a more transparent and predictable transaction process, less bureaucracy and a reliable platform for implementation of the ease of doing business agenda. NESWS also offers a single point of entry and single submission of trade relevant data for users and a more efficient and faster processing time in a paperless environment in line with the digitization drive of H.E President William Ruto’s administration. Further, Kenya is ranked 56 among 190 economies in the ease of doing business, according to the latest World Bank annual ratings. **The rank of Kenya improved to 56 in 2019 from 61 in**

2018.



2. Increased Revenue Collection by the Government

With the proposed Regulations in place, NESWS facilitates the electronic payment for fees and levies due to the Government on goods imported or exported for transactions submitted through the System. NESWS will increase revenue collected by the Government and reduce corruption risk due to improved transparency and governance due to less human interaction in the System.

3. Increased Regional Competitiveness

NESWS will reduce lengthy and costly trade procedures that leads to facilitation of international trade in Kenya by reducing delays and lowering costs associated with clearance of goods at the borders, while maintaining the requisite controls and collection of levies, fees, duties and taxes, where applicable, on imports or exports.

4. Compliance with regulatory procedures

The level of user compliance is greatly improved as NESWS relies on systematic compliance enforcement. NESWS promotes comprehensive, streamlined and automated business compliance to Governments commitments at international level, legislative and regulatory requirements.

5. Improved efficiency and effectiveness of trade facilitation in Kenya

NESWS promotes faster lodgment and processing of manifest which has led to reduction of cargo dwell time at the port to three days, one day at the airport. NESWS makes it easy for users to monitor the progress of their documents through a dashboard 24/7 basis without visiting or calling any office as was the norm before.

6. Complementing existing legal frameworks

The draft National Electronic Single Window System Regulations, 2023 **do not propose** to have any new legislation enacted or any of the existing laws amended. They complement other

laws making their implementation more effective. It is therefore clear that the Regulations do not conflict or have any negative effect on existing legislation.

Financial Cost

Implementation of the proposed Regulations will increase revenue collection raised by KenTrade and reduce the over reliance on the Exchequer to cater for related costs of hosting the System, its maintenance or its integration with other partner government agencies, renewal of licenses, purchase of office equipment and staff costs. The Government currently funds KenTrade as follows: Kshs. 488,250,000.00 Development Grant and Kshs. 364,400,000 as Recurrent Grant annually.

With the proposed new user fees in the Regulations, KenTrade projects to raise approximately Kshs. 1,474,225,000. This will cater for current funding received from Exchequer and remain with a Net benefit of Ksh.621,575,000 as highlighted below:

Proposed Revenue Collection by KenTrade			
Pay Determinant	No. of Registered Users/Transactions	User Fees	Total
Application for registration(Based on an average of registered users from F/Y 2019/20,2020/21 and 2021/22)	1,500.00	5,000.00	7,500,000.00
Annual Subscription Fee	5,000.00	5,000.00	25,000,000.00
Application for UCR	1,100,000.00	1,000.00	1,100,000,000.00
Application for notification for Impending Arrival/Departure of consignments	1,500.00	8,000.00	12,000,000.00
Grand Total			1,144,500,000.00
Recurrent Grant			414,400,000.00
Development Grant			588,250,000.00
Net Benefit			141,850,000.00

8.2 Assessment of the Impacts

Economic

The System contributed to the reduction of cargo dwell time at the port from seven days to three days at the port of Mombasa and one day at the airport. Through increased centralization of information, there will be reduced clerical efforts leading to cost reductions and shorter time taken to lodge trade documents. The System enables increased revenue collection by Partner Government Agencies and providing ICT platform to facilitate trade that will increase the country's Gross Domestic Product (GDP).

Environmental

The System promotes paperless environment as there is no manual handling and processing of trade documentation. The draft Regulation is not expected to have any possible negative impact on the environment or environmental rights of the people. The use of the System promotes green economy due to reduced carbon footprints in the environment.

Social

The System makes it easy for users to monitor the progress of their documents through a dash board 24/7 basis without visiting or calling any office. The System generates reports indicating time taken by each of the cargo interveners making it possible for stakeholders to hold each other to account and hence ensure faster processing of documents.

Technological

The System creates convenience through a paperless application for permits by users on a 24/7 basis and security in terms of the processes of payments for traders. The System has promoted electronic processing and confirmation of payments and provision of multiple payment channels.

Political

The System enjoys political goodwill and support which has realized its operationalization. The regional countries/economic blocs have initiated the process of integrating the system to enable seamless exchange of Trade data between them. This is aimed at enhancing trade through adoption of ICT.

Human Rights

The draft Regulation is not expected to have a negative impact on fundamental rights of persons or institutions that are subject to it. The draft Regulations has committed to handling personal data of data subjects in compliance with the Data Protection Act specifically in adherence to the principles of data protection. We commit to comply with access to information Act.

CHAPTER 9: CONSIDERATION OF ALTERNATIVES TO THE NESWS REGULATIONS

This Part considers the question whether the proposed regulation is the best regulatory option. The Statutory Instruments Act requires an RMA to undertake an informed comparison of a variety of regulatory and non-regulatory policy measures as options, considering relevant issues such as costs, benefits, distributional effects, and administrative requirements as well as the impacts that these options have on the public and private sector, economic and social impacts, human rights impact, impact on business sector and impact on existing legal framework. The options considered under this part are the following:

9.1 Option one: Maintenance of the Status Quo - In this case no regulations are developed, and as such the NESWS Act is implemented as is without developing standard norms and processes for the operation of the System.

9.2 Option two: Self-regulation/administrative measures - This is where the industry regulates itself with minimal role of Government and norms from the Regulation Making Authority. Various actors in the sector set the standards and the need for prescriptive legislation is lessened.

9.3 Option three: Promulgating NESWS Regulations- In this option regulations are developed and approved to guide in the administration of the system. Given the general nature of the Act and the multiple stakeholders of NESWS, there is need for a regulatory framework to guide on specific aspects of the NESWS. Among the salient features of the regulation include: -

- a) Facilitate an effective administration of the System.
- b) Provide for the registration of the users of the System.
- c) Provide mechanisms to enable the single-entry point for submission and receipt of cargo clearance documents or any other information required to meet regulatory requirements
- d) Establish the modes of integrating and onboarding an entity into the system
- e) Provide mechanisms for the System to serve the entire trade and logistics within airports, seaports, and dry ports; and
- f) Facilitate the electronic payment for fees and levies on permits and licenses of goods imported or exported and use of the System.

9.4 Impact analysis of the Options

Table: Consideration of Alternatives to the NESWS Regulations

IMPACT ON SECTORS	OPTION ONE: MAINTAINING THE STATUS QUO	OPTION TWO: SELF-REGULATION	OPTION THREE: PROMULGATING NESWS REGULATIONS
	This entails doing nothing and retaining the current situation	This entails allowing the industry players to self-regulate themselves and government doesn't intervene	This entails parliamentary approval of the NESWS Regulations
Impact on Public Sector	<ul style="list-style-type: none"> a) Risk of ineffective administration of the System. b) No established mechanism for the registration of the users of the System. c) No standard mechanisms to enable the single-entry point for submission and receipt of cargo clearance documents or any other information required to meet regulatory requirements d) No defined modes of integrating and onboarding an entity into the system e) No mechanism for the System to 	<ul style="list-style-type: none"> a) Risk of big player bias and monopolistic tendencies b) Risk of duplication of functions among PGAs 	<ul style="list-style-type: none"> a) Provides for effective administration of the system b) Provides a standard mechanism for user registration c) Enables the single-entry point for submission and receipt of cargo clearance documents or any other information required to meet regulatory requirements d) Provides for a standardized way of integrating and onboarding an entity into the system e) Provides mechanisms for the System to serve the entire trade and logistics industry within airports, seaports, and dry ports. f) Provides for standardized method for payment of fees and levies on permits and

IMPACT ON SECTORS	OPTION ONE: MAINTAINING THE STATUS QUO	OPTION TWO: SELF-REGULATION	OPTION THREE: PROMULGATING NESWS REGULATIONS
	This entails doing nothing and retaining the current situation	This entails allowing the industry players to self-regulate themselves and government doesn't intervene	This entails parliamentary approval of the NESWS Regulations
	serve the entire trade and logistics industry within airports, seaports, and dry ports; and		licenses of goods imported or exported
Impact on Private Sector	<p>a) With no Standard method for payment of fees and levies on permits and licenses of goods imported or exported there is no accountability and transparency.</p> <p>b) Without the regulations, the current misaligned and inefficient Import export processes by various government entities with different requirements will persist.</p>	<p>a) There is an opportunity for industry players to design favorable rules for themselves without considering others and there by resulting in exclusion of smaller players or entry of new players.</p>	<p>a) The regulations provide that the System shall facilitate the electronic payment for fees and levies on permits and licenses of goods imported or exported thereby ensuring transparency and accountability</p> <p>b) The regulation will ensure alignment and efficient import and export processes by various government entities with different regulatory requirements sharing information under one System</p>

IMPACT ON SECTORS	OPTION ONE: MAINTAINING THE STATUS QUO	OPTION TWO: SELF-REGULATION	OPTION THREE: PROMULGATING NESWS REGULATIONS
	This entails doing nothing and retaining the current situation	This entails allowing the industry players to self-regulate themselves and government doesn't intervene	This entails parliamentary approval of the NESWS Regulations
	c) Delays in import and export (increased dwell time at ports of entry/exit) due to manual processes of sharing information between multiple players – PGAs, EXIMS		
Economic Impact	<p>a) No framework for automated information sharing on processes and procedures by PGAs compromises transparency thereby resulting in low revenue collections</p> <p>b) Absence of wholly automated cargo clearing processes has necessitated human intervention thereby</p>	a) Undue influence by big players that may create unfavorable rules to the public and small players and make it difficult for smaller players and new entrants.	<p>a) The regulation ensures automated information sharing on processes, procedures and mode of payments by PGAs which enhances transparency thereby resulting in increased revenue collection</p> <p>b) The regulations will ensure automation of import export processes thus making information readily available and ability to transact any time anywhere, thus improved ease of doing business</p> <p>c) Reduced Risk of Corruption through</p>

IMPACT ON SECTORS	OPTION ONE: MAINTAINING THE STATUS QUO	OPTION TWO: SELF-REGULATION	OPTION THREE: PROMULGATING NESWS REGULATIONS
	This entails doing nothing and retaining the current situation	This entails allowing the industry players to self-regulate themselves and government doesn't intervene	This entails parliamentary approval of the NESWS Regulations
	increasing the risk of corruption		reduction of human interaction, manual interventions, and provision of transactions details. d) Improve Kenya's global economic competitiveness
Social Impact	Without the regulations there is no harmonized rules of engagement that promote transparency through automated sharing of information. This will make it difficult to hold players accountable.	Possibility of having different desperate and inaccurate trade information. i.e. No Single source of truth.	Enhanced accountability through automation and harmonized rules of engagement that enhance access to accurate trade information
Human Rights Impact	Risk of noncompliance to the Data protection act, Access to Information Act, and breach of data privacy	Risk of noncompliance to the Data protection act, Access to Information Act, and breach of data privacy	The proposed regulations are in conformity with provisions of the Data Protection Act, Access to Information Act, protection of personal data and upholding of privacy.
Impact on Business	a) Without the regulations, the bureaucracy and complex repetitive manual processes shall persist leading to	Risk of Cartels forming, solidifying and controlling the import and export business	a) The Regulations provides for use of electronic trade processes thereby opportunities for businesses to Innovate b) Enhanced efficiency

IMPACT ON SECTORS	OPTION ONE: MAINTAINING THE STATUS QUO	OPTION TWO: SELF-REGULATION	OPTION THREE: PROMULGATING NESWS REGULATIONS
	This entails doing nothing and retaining the current situation	This entails allowing the industry players to self-regulate themselves and government doesn't intervene	This entails parliamentary approval of the NESWS Regulations
	<p>delays and lost opportunities</p> <p>b) With no regulations players may continue operating manual systems that result in High cost of doing business due to lack of accurate, timely trade information</p> <p>c) Siloed information on Import and export impact on the duration of transactions and efficiency of Businesses.</p>		<p>c) Increase ease of doing business</p> <p>a) Reduction in bureaucracy through process simplification and defined process of conducting Import export business</p> <p>b) Readily available information and statistics on cross border trade</p>
Impact on environment	Continued use of Manual processes results in increased carbon footprint	May result in hybrid model of both manual systems and automated systems that will impact on Carbon emission	Automation promotes green economy hence reducing the Carbon footprint.
Impact on exiting Legal Framework	a) No rules of engagement on	a) Regulatory concerns will remain un-addressed	a) Provides harmony with related legal regulatory framework

IMPACT ON SECTORS	OPTION ONE: MAINTAINING THE STATUS QUO	OPTION TWO: SELF-REGULATION	OPTION THREE: PROMULGATING NESWS REGULATIONS
	This entails doing nothing and retaining the current situation	This entails allowing the industry players to self-regulate themselves and government doesn't intervene	This entails parliamentary approval of the NESWS Regulations
	adoption and use of NESWS b) The existing legal gaps will not be addressed c) Legal frameworks relating to NESWS industry will continue to be implemented in silos without a common reference point	b) Interpretation of provisions of the act is left to individual players and may create disharmony	b) The existing legal gaps will be addressed c) Operationalizes and put into effect the provisions of the NESWS act

9.5 Preferred Option

Based on the above analysis it is clear the third option (promulgating NESWS regulation) is the preferred option. It is clear that the benefits and impact of promulgating g NESWS regulations by far outweigh any estimated cost of its implementation. The other two options have negative impact in addressing the problem

CHAPTER 10: COMPLIANCE AND IMPLEMENTATION

It is important to determine how compliance and implementation of the proposed NESWS regulations will be achieved. It is the duty of KenTrade to assess the adequacy of the institutional framework through which the regulation will take effect, and design responsive implementation strategies.

Implementation of the NESWS Regulations should enable coordination of PGAs for purposes of improving trade facilitation initiatives.

The NESWS Regulations will be implemented through the existing legal and institutional framework at the national level in order to simplify trade processes and to increase Kenya's competitiveness in trade facilitation. KenTrade, in consultation with the Cabinet Secretary, National Treasury and Economic Planning, will be responsible for implementing the Regulations.

10.1. Conforming to legal requirements in developing the proposed Regulations based on the above analysis, the following matters are apparent:

- a. Exchange of information between Governmental authorities or agencies requires an appropriate regulatory framework. The exchange of information between Governmental authorities or agencies is often restricted to trader consent, disclosure by order of a court, or in the public interest. Also, data protection legislation may affect the obtaining, use and disclosure of personal data
- b. For effective, efficient and sustainable management of the System, the regulations provide for registration, training and support of System users. The regulations further provide mechanisms for the protection of information assets relating to the NESWS by providing for penalties in case of abuse of the system.
- c. The Agency will put in place plans and deploy resources to enable actualization of the NESWS Regulations. The Regulations adequately provided for onboarding and integration of partner government agencies into the System through a clear mechanism in order to improve ease of doing business in the Country.
- d. Regulatory-Making Authority and the legal mandate: Section 43 of the NESWS Act, 2022 empowers the Cabinet Secretary to make regulations to give effect to the Act. The Cabinet Secretary, therefore, has the required legislative powers to propose the Regulations.

- e. Requirements of the Statutory Instruments Act: Section 5 requires that a regulation-making authority conduct public consultations and to drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument and to ensure that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content.
- f. The proposed Regulations do not propose to have any new legislation be enacted or any of the existing laws be amended. It harmonizes with other laws making their implementation more effective.
- g. The proposed Regulations as drafted are clear, consistent, comprehensive, and comprehensible enough to cover all matters.

10.2. Recommendation

In view of the above conclusions, it is recommended that the National Electronic Single Window System Regulations, 2023 be adopted.