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**TWELFTH PARLIAMENT- FOURTH SESSION (2020)**

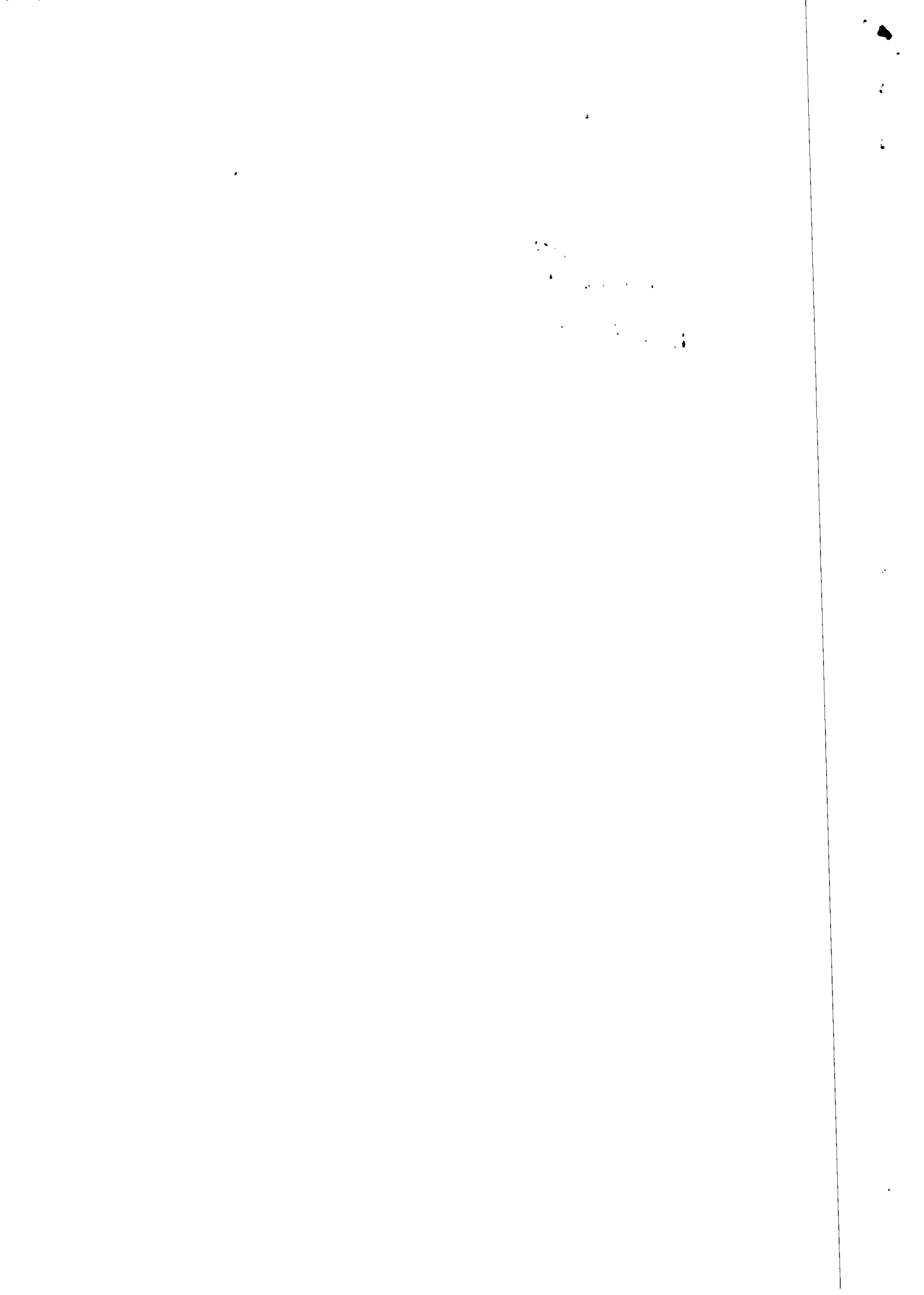
**COMMITTEE ON DELEGATED LEGISLATION**

**REPORT ON THE CONSIDERATION OF THE PUBLIC  
FINANCE MANAGEMENT (PARLIAMENTARY  
MORTGAGE (MEMBERS) SCHEME FUND)  
(AMENDMENT) REGULATIONS, 2020**

**(Legal Notice No. 185 of 2020)**

**NOVEMBER, 2020**

*The Directorate of Committee Services  
The National Assembly,  
Parliament Buildings,  
**NAIROBI.***



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## **ABBREVIATIONS**

<b>PFM</b>	Public Finance Management
<b>L.N.</b>	Legal Notice
<b>SI</b>	Statutory Instruments
<b>SO</b>	Standing Order

## **CHAIRPERSON'S FOREWORD**

Section 24(2A) of the Public Finance Management Act, 2012 empowers the Commission to make Regulations establishing various categories of Funds for Parliament. In exercise of these powers, the Hon. Justin Muturi, EGH, MP, Speaker of the National Assembly and Chairperson of the Parliamentary Service Commission, made the Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) (Amendment) Regulations, 2020 (*L.N. No. 185 of 2020*).

The Regulations were published in the Kenya Gazette on 16<sup>th</sup> September, 2020; submitted to the Clerk of the National Assembly on 23<sup>rd</sup> September, 2020; tabled on 24<sup>th</sup> September, 2020 and subsequently referred to the Committee on Delegated Legislation for consideration pursuant to section 12 of the Statutory Instruments Act, 2013.

The Regulations seek to amend the principal Regulations, i.e. the Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) Regulations, 2013 (*L.N. No. 67 of 2013*), so as to allow Members of the Parliamentary Mortgage (Members) Scheme Fund who profess the Islamic faith to benefit from the facility without fear of infringing on their religious beliefs.

The Regulations further provide for monthly meetings of the Loans Management Committee so as to ensure that loan applications are considered and approved on time so that applicants meet their contractual obligations.

Having examined the Regulations against the Constitution of Kenya, the Interpretations and General Provisions Act (Cap 2), the Public Finance Management Act (No. 18 of 2012) and the Statutory Instruments Act (*No. 23 of 2013*), the Committee was satisfied that the Regulations were submitted to the National Assembly within the statutory timelines stipulated in section 11 of the Statutory Instruments Act.

The Committee was also satisfied with the extent of public participation undertaken as required by Articles 10 and 118 of the Constitution and sections 5, 5A and the Schedule to the Statutory Instruments Act, read together with Standing Order 210.

With the foregoing, therefore, the Committee approved the Regulations in accordance with Standing Order 210 (4) (a) and section 24(2A) the Public Finance Management Act (*No. 18 of 2012*) which requires the approval of the National Assembly.

In conclusion, I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4) (b) and section 24(2A) the Public Finance Management Act (*No. 18 of 2012*), it is my pleasure and duty to present to the House, the Committee's **Report on the Consideration of the Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) (Amendment) Regulations, 2020 (*L.N. No. 185 of 2020*)**.

**HON. WILLIAM KASSAIT KAMKET, M.P.**

*Committee on Delegated Legislation: Report on the Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) (Amendment) Regulations, 2020 (Legal Notice No. 185 of 2020)*

## 1.0 PREFACE

### 1.1 Establishment and Mandate of the Committee

1. The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.
2. The Committee is mandated to consider in respect of any statutory instrument, whether it:
  - a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
  - b) infringes on fundamental rights and freedoms of the public;
  - c) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
  - d) contains imposition of taxation;
  - e) directly or indirectly bars the jurisdiction of the court;
  - f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
  - g) it involves expenditure from the consolidated fund or other public revenues;
  - h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
  - i) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
  - j) appears to have had unjustifiable delay in its publication or laying before Parliament;
  - k) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
  - l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
  - m) inappropriately delegates legislative powers;
  - n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
  - o) appears for any reason to infringe on the rule of law;
  - p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
  - q) accords to any other reason that the Committee considers fit to examine.

## 1.2 Committee Membership

3. The Committee membership comprises –

**The Hon. William Kassait Kamket, M.P. (Chairperson)**

Tiaty Constituency

**KANU**

**The Hon. Muriuki Njagagua, M.P. (Vice Chairperson)**

Mbeere North Constituency

**Jubilee Party**

### COMMITTEE MEMBERS

The Hon. Waihenya Ndirangu, M.P.

Roysambu Constituency

**Jubilee Party**

The Hon. Ronald Tonui, M.P.

Bomet Central Constituency

**Jubilee Party**

The Hon. William Cheptumo, M.P.

Baringo North Constituency

**Jubilee Party**

The Hon. William Kamoti, M.P.

Rabai Constituency

**Orange Democratic Movement**

The Hon. Cecily Mbarire, MGH, M.P.

Nominated

**Jubilee Party**

The Hon. Martha Wangari, M.P.

Gilgil Constituency

**Jubilee Party**

The Hon. Alice Wahome, M.P.

Kandara Constituency

**Jubilee Party**

The Hon. Gideon Mulyungi, M.P.

Mwingi Constituency

**Wiper Democratic Movement – Kenya**

The Hon. Robert Mbui, M.P.

Kathiani Constituency

**Wiper Democratic Movement -Kenya**

The Hon. (Dr.) Wilberforce Oundo, M.P.

Funyula Constituency

**Orange Democratic Movement**

The Hon. Daniel Maanzo, M.P.

Makueni Constituency

**Wiper Democratic Movement -Kenya**

The Hon. George G. Murugara, M.P.

Tharaka Constituency

**Democratic Party**

The Hon. Timothy Wanyonyi, M.P.

Westlands Constituency

**Orange Democratic Movement**

The Hon. Jennifer Shamalla, M.P.

Nominated

**Jubilee Party**

The Hon. Munene Wambugu, M.P.  
Kirinyaga Central Constituency  
**Jubilee Party**

The Hon. Patrick Mariru, M.P.  
Laikipia West Constituency  
**Jubilee Party**

The Hon. Sammy Seroney, M.P.  
Nominated  
**Wiper Democratic Movement – Kenya**

The Hon. Tindi Mwale, M.P.  
Butere Constituency  
**Amani National Congress**

The Hon. Edith Nyenze, M.P.  
Kitui West Constituency  
**Wiper Democratic Movement – Kenya**

The Hon. Abdi Koropu Tepo, M.P.  
Isiolo South Constituency  
**Kenya Patriots Party**

The Hon. Robert Gichimu, M.P.  
Gichugu Constituency  
**Jubilee Party**

### 1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises -

**Ms. Susan Maritim**  
*Senior Clerk Assistant (Team Leader)*

Mr. Mohamed Jimale  
*Clerk Assistant II*

Mr. Wilson Dima Dima  
*Principal Legal Counsel*

Mr. Josphat Motonu  
*Fiscal Analyst I*

Ms. Winnie Kiziah  
*Media Relations Officer II*

Mr. Anthony Wamae  
*Assistant Serjeant at Arms*

Mr. Charles Ayari  
*Superintendent of Electronics*

Ms. Mary Otieno  
*Office Superintendent*

## **2.0 CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (PARLIAMENTARY MORTGAGE (MEMBERS) SCHEME FUND) (AMENDMENT) REGULATIONS, 2020**

### **2.1 Introduction**

5. The Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund (Amendment) Regulations, 2020 were made by the Hon. Justin Muturi, EGH, MP, Speaker of the National Assembly and Chairperson of the Parliamentary Service Commission, pursuant to section 24(2A) of the Public Finance Management Act, 2012 which empowers the Commission to make Regulations establishing various categories of Funds for Parliament.
6. The Regulations were published in the Kenya Gazette as L.N. No. 185 of 2020 on 16<sup>th</sup> September, 2020; submitted to the Clerk of the National Assembly on 23<sup>rd</sup> September, 2020 and tabled on 24<sup>th</sup> September, 2020.

### **2.2 Legislative Context**

7. Section 24(2A) of the Public Finance Management Act, 2012 provides that the Parliamentary Service Commission may, with the approval of the National Assembly, establish a Fund for the purpose of Parliament or a House of Parliament.
8. The Parliamentary Mortgage (Members) Scheme Fund was previously established under the Government Financial Management (Parliamentary Mortgage Scheme Fund) Regulations, 2008 whose parent Act was the Government Financial Management Act (*now repealed*). The Parliamentary Service Commission re-established the Parliamentary Mortgage Scheme Fund for Members of Parliament under the Public Finance Management Act, 2012 vide the Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) Regulations, 2013 (*L.N. No. 67 of 2013*).
9. The Fund is established for purposes for availing loan facilities to the Scheme Members for the purchase, development, renovation or repair of residential property by members of the Scheme. Loan beneficiaries are required to repay the loans fully before the end of their term of parliament.

### **2.3 Purpose of the Regulations**

10. The Regulations seek to amend the principal Regulations, i.e., Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) Regulations, 2013 so as to allow Members of the Scheme who profess the Islamic faith to benefit from the facility without fear of infringing their religious beliefs.
11. The Regulations further provide for monthly meetings of the Loans Management Committee so as to ensure that loan applications are considered and approved on time so that applicants meet their contractual obligations.

### **2.4 Overview of the amendment to the principal Regulations**

12. Regulation 1 relates to citation.

13. Regulation 2 and 3 seek to amend Regulation 5(4) of the Public Finance Management (Parliamentary Mortgage) (Members) Scheme Fund) Regulations by deleting the word “interest” wherever it appears and substituting therefor the words “administrative costs”.
14. Regulation 4 seeks to amend Regulation 6 of the principal Regulations to introduce a requirement for the mortgage committee to sit more frequently, being at least once every month.
15. Regulation 5 and 6 seek to amend Regulations 14 and 18, respectively, to delete the words “interest” and “interests on loans” and substituting therefor the words “administrative costs”.

## **2.5 Committee Observations**

16. Having examined the Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) (Amendment) Regulations, 2020 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Public Finance Management Act (*No. 18 of 2012*) and the Statutory Instruments Act (*No. 23 of 2013*), the Committee observed as follows –

### **2.5.1 Statutory Timelines**

- 1) THAT, the Regulations were submitted to the Clerk of the National Assembly within the requisite statutory timelines under section 11(1) of the Statutory Instruments Act.

### **2.5.2 Consultation /Public Participation**

- 2) THAT, Articles 10 and 118 of the Constitution, section 5, 5A and the schedule to the Statutory Instruments Act, read together with Standing Order 210 requires the regulation-making authority to conduct public participation and sufficient consultation with the stakeholders and persons likely to be affected by the regulations. The regulation making authority being the Parliamentary Service Commission attached an Explanatory Memorandum as required by section 11(2) of the Statutory Instruments Act and indicated that a number of Members of Parliament who profess the Islamic faith gave opinions to indicate that the principal Regulations as currently obtaining prohibit them from benefitting from the loan facility on account of requirement to pay for interest. They requested that the Regulations be amended to make them Islamic-friendly.

Further, Members of Parliament who made representations to the Commission indicated that loan approvals sometimes take too long to process thereby interfering with the contractual obligations of the sellers of the residential houses.

In addition, the concerned Members cited a number of amendments made to other statutes on Islamic Banking through the Finance Act, 2017 such as: Section 2 of Value Added Tax Act, 2013; Section 2 of Income Tax Act, 2013; Section 2 of the Stamp Duty Act; Section 2 of the Public Finance Management Act and Section 2 of the Sacco Societies Act, 2018.

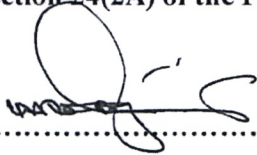
### 2.5.3 Regulatory Impact Statement

- 3) THAT, the Regulations do not require a Regulatory Impact Statement within the meaning of sections 6, 7 and 8 of the Statutory Instruments Act, as they deal with the interest of members in respect to the mortgage and have no significant effect on members of the community who are not Members of Parliament.

### 3.0 COMMITTEE RECOMMENDATION

17. Having examined the Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) (Amendment) Regulations, 2020 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Public Finance Management Act (*No. 18 of 2012*) and the Statutory Instruments Act (*No. 23 of 2013*), the Committee recommends that the House approves the said statutory instrument in accordance with section 24(2A) of the Public Finance Management Act, 2012.

Signed.....



Date.....

19th November, 2020

THE HON. WILLIAM KASSAIT KAMKET, M.P.  
(CHAIRPERSON)

## **ANNEXURES**

- 1. Adoption Schedule**
- 2. Legal Notice No. 185 of 2020 and the Explanatory Memorandum**
- 3. Committee Minutes**

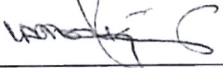
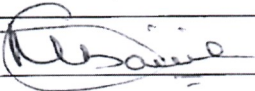
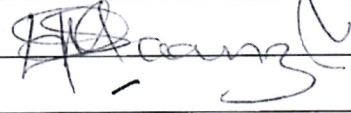
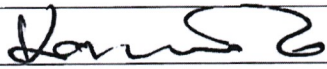
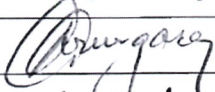



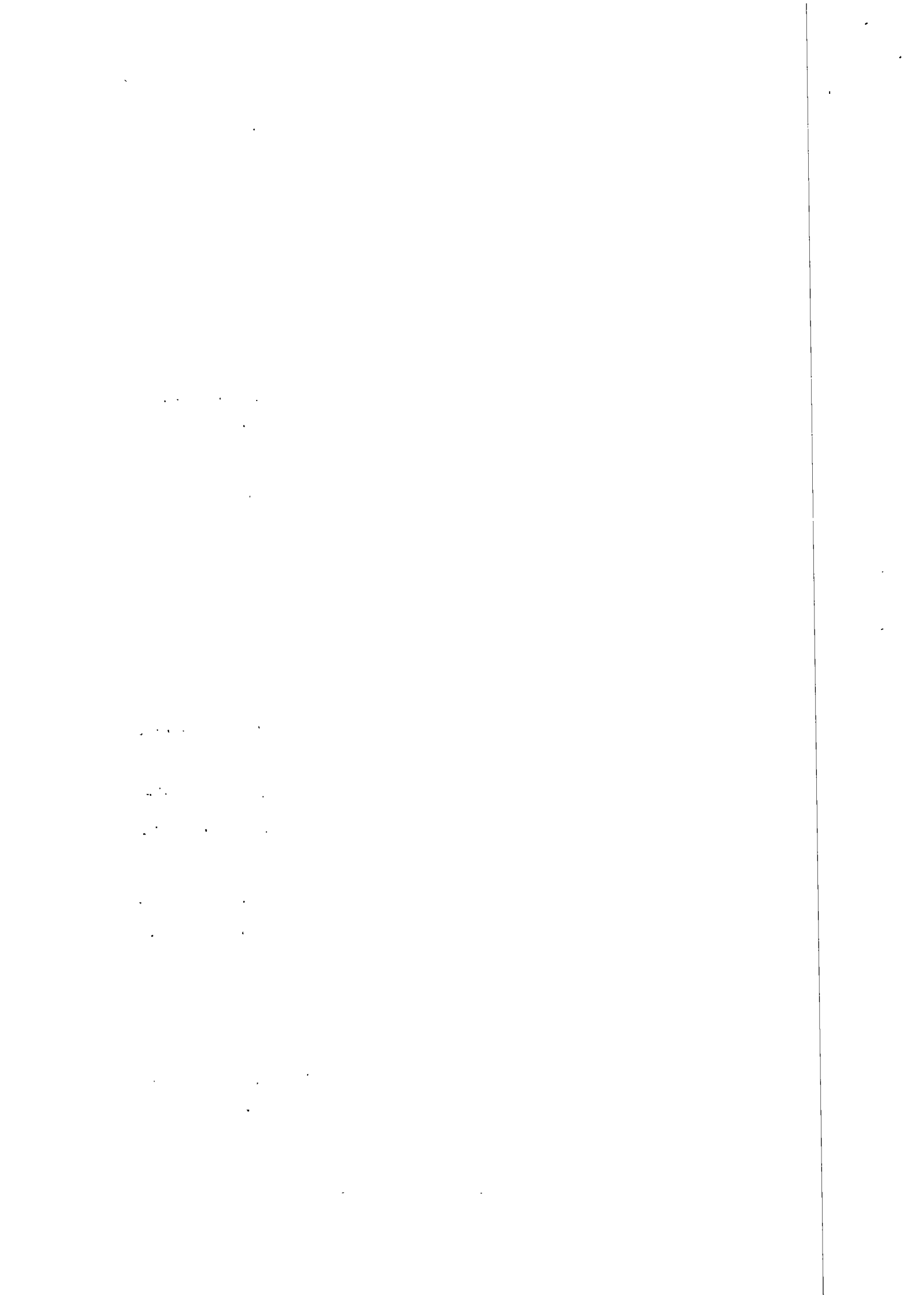
## COMMITTEE ON DELEGATED LEGISLATION

ADOPTION SCHEDULE 18 November, 2020

### Report on the Consideration of PFM (Parliamentary Mortgage (Members) Scheme Fund (Amendment) Regulations, 2020

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

	HON. MEMBER	SIGNATURE
1.	The Hon. William Kassait Kamket, MP (Chairman)	
2.	The Hon. Muriuki Njagagua, MP (Vice Chairman)	Virtual attendance
3.	The Hon. Waihenya Ndirangu, MP	-
4.	The Hon. Cecily Mbarire, MGH, MP	
5.	The Hon. Alice Wahome, MP	-
6.	The Hon. Daniel Maanzo, MP	
7.	The Hon. Martha Wangari, MP	-
8.	The Hon. Robert Mbui, MP	-
9.	The Hon. Timothy Wanyonyi, MP	-
10.	The Hon. William Cheptumo, MP	-
11.	The Hon. William Kamoti, MP	
12.	The Hon. Ronald Tonui, MP	Virtual attendance
13.	The Hon. (Dr.) Wilberforce Oundo, MP	-
14.	The Hon. Abdi Tepo, MP	Virtual attendance
15.	The Hon. Edith Nyenze, MP	Virtual attendance
16.	The Hon. George Murugara, MP	
17.	The Hon. Gideon Mulyungi, MP	Virtual attendance
18.	The Hon. Jennifer Shamalla, MP	Virtual attendance
19.	The Hon. Munene Wambugu, MP	
20.	The Hon. Patrick Mariru, MP	-
21.	The Hon. Robert Gichimu, MP	-
22.	The Hon. Sammy Seroney, MP	Virtual attendance
23.	The Hon. Tindi Mwale, MP	-



## LEGAL NOTICE NO. 186

## THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 24(2A) of the Public Finance Management Act, 2012, the Parliamentary Service Commission makes the following Regulations—

THE PUBLIC FINANCE MANAGEMENT (PARLIAMENTARY CAR LOAN (STAFF) SCHEME FUND) (AMENDMENT) REGULATIONS, 2020

1. These Regulations may be cited as the Public Finance Management (Parliamentary Car Loan (Staff) Scheme Fund) (Amendment) Regulations, 2020. Citation.
2. Regulation 6 of the principal Regulations is amended by inserting the following new sub-regulation immediately after sub-regulation (4)— Amendment of R.6 of L.N 68 of 2013
  - (5) The Committee shall meet at least once every calendar month. Amendment of R.11 of L.N 68 of 2013
3. Regulation 11 of the principal Regulations is amended—
  - (a) by deleting the title “Interest rate” and inserting the title “Administrative costs”.
  - (b) by deleting the words “carry an interest” appearing immediately after the words “these regulations shall” and substituting therefor the words “be charged administrative costs at the” in paragraph (1).
  - (c) by deleting the word “interest” appearing immediately before the words “charged under” and substituting therefor the words “administrative costs” in paragraph (2).

Dated the 11th September, 2020.

JUSTIN MUTURI,  
*Speaker of the National Assembly/  
Chairperson, Parliamentary Service Commission.*

## LEGAL NOTICE NO. 187

## THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 24(2A) of the Public Finance Management Act, 2012, the Parliamentary Service Commission makes the following Regulations—

THE PUBLIC FINANCE MANAGEMENT (PARLIAMENTARY MORTGAGE (STAFF) SCHEME FUND) (AMENDMENT) REGULATIONS, 2020

1. These Regulations may be cited as the Public Finance Management (Parliamentary Mortgage (Staff) Scheme Fund) (Amendment) Regulations, 2018. Citation.

2. Regulation 5(4) of the Parliamentary Mortgage (Staff) Scheme Fund Regulations, 2013, in these Regulations referred to as “the principal Regulations”, is amended by deleting the word “interest” appearing immediately before the words “accruing to the fund” and substituting therefor the words “administrative costs”. Amendment of R. 5 of L.N 18 of 2013
3. The principal Regulations is amended at Regulation 5(4) by deleting the word “interest” wherever it appears and substituting therefor the words “administrative costs”. Amendment of R. 5 of L.N 18 of 2013
4. Regulation 6 of the principal Regulations is amended by inserting the following new paragraph immediately after paragraph (5)— Amendment of R.6 of L.N 18 of 2013
- (6) The Committee shall meet at least once every calendar month.
5. Regulation 13 of the principal Regulations is amended by deleting the word “fifteen years” appearing immediately after the word “within a period of” and substituting therefor the words “twenty-five years”. Amendment of R.13 of L.N 18 of 2013.
6. Regulation 14 of the principal Regulations is amended— Amendment of R.14 of L.N 18 of 2013.
- (a) by deleting the title “interest on loans” and inserting the title “administrative costs”.
- (b) In paragraph 1 by deleting the word “interest” appearing immediately before the words “chargeable on a loan” and substituting therefor the words “administrative costs”.
- (c) In paragraph 2 by deleting the words “interest” appearing immediately after the words “Fund may charge an” and substituting therefor the words “administrative costs”.
- (d) by deleting the word “interest” appearing immediately before the words “charged under” and substituting therefor the words “administrative costs” in paragraph 3.
7. Regulation 15 of the principal Regulations is amended by deleting paragraph (5) and substituting therefor the following new sub-regulation— Amendment of R.15 of L.N 18 of 2013.
- (5) No borrower shall be eligible for more than one loan at a time.
8. Regulation 18 of the principal regulations is amended in paragraph 1 (b) by deleting the word “interest” appearing immediately after the words “utilize the” and substituting therefor the words “administrative costs”. Amendment of R. 18 of L.N 18 of 2013

Dated the 11th September, 2020.

JUSTIN MUTURI,  
*Speaker of the National Assembly/  
Chairperson, Parliamentary Service Commission.*

## **EXPLANATORY MEMORANDUM**

**EXPLANATORY MEMORANDUM TO THE PUBLIC FINANCE MANAGEMENT (PARLIAMENTARY MORTGAGE (MEMBERS) SCHEME FUND) (AMENDMENT) REGULATIONS, 2020.**

### **PART 1**

**NAME OF THE STATUTORY INSTRUMENT:** THE PUBLIC FINANCE MANAGEMENT (PARLIAMENTARY MORTGAGE (MEMBERS) SCHEME FUND) (AMENDMENT) REGULATIONS, 2020.

**NAME OF THE PARENT ACT:** THE PUBLIC FINANCE MANAGEMENT ACT NO. 18 OF 2012.

**ENACTED PURSUANT TO:** SECTION 24 OF THE PUBLIC FINANCE MANAGEMENT ACT NO. 18 OF 2012.

**NAME OF MINISTRY/DEPARTMENT:** PARLIAMENTARY SERVICE COMMISSION

**GAZETTED ON:** 16<sup>TH</sup> SEPTEMBER 2020 .

**TABLED ON:**

### **PART 2**

#### **PURPOSE OF THE STATUTORY INSTRUMENT.**

To amend the Regulations so as to allow Members of the Scheme who profess the Islamic faith to benefit from the facility without fear of infringing their religious believes; and to encourage the loan management committee to meet more often to approve loan applications.

#### **LEGISLATIVE CONTEXT**

Pursuant to section 24(2A) of the Public Finance Management Act, 2012, the Parliamentary Service Commission ("the Commission") may with the approval of the National Assembly. Establish a Fund for the purpose of Parliament or a House of Parliament. The Commission re-established the Parliamentary Mortgage Scheme Fund for Members of Parliament. The Fund had previously been established by the Minister for Finance under the Government Financial Management Act (now repealed). The Fund has been established for purposes of availing loan facilities to Members of Parliament to purchase residential houses for their immediate family. Once a Members obtains a loan from the scheme, he or she is required to repay the same fully before the end of his or her term of parliament.

The Parliamentary Service Commission enacted The Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) Regulations, 2013 to establish procedures and systems for proper and effective utilization, security and management of the Fund among other things. The Regulations have been amended from time to time.

The Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) (Amendment) Regulations, 2020 hereinafter referred to as “the instrument” seeks to amend The Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) Regulations, 2013 so as to improve the same. The amendments shall ensure that the regulations allow more Members of Parliament, particularly Muslim Members of Parliament, benefit from the Scheme.

The amendments also seek to ensure that loan applications are approved on time so that an applicant meets contractual obligations. This shall be realized when the meetings of the Loans Management Committee are regular and consistent.

## **POLICY BACKGROUND**

The Parliamentary Service Commission may enact Regulations for the utilization and management of the Parliamentary Mortgage Fund;

Section 24 (3) of the Public Finance Management Act, 2012 provides as follows;

“Notwithstanding any other provisions of this Act, where a Fund is established under this Act or any other law for the purposes of Parliament or a House of Parliament, the Parliamentary Service Commission shall—

- (a) establish procedures and systems for proper and effective management of the monies and property of the Fund;
- (b) establish accounting procedures and systems for the Commission to properly account for the monies and property;
- (c) superintend the expenditure of the monies of the Fund to ensure that the monies are properly accounted for;
- (d) prepare and submit accounts for each financial year in accordance with the written law for the time being relating to audit for audit by the Auditor-General; and
- (e) ensure that accounts prepared under paragraph (d) comply with the provisions of this Act.”

The Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) Regulations, 2013 ensures compliance with Section 24 of the Public Finance Management Act, 2012. It establishes procedures and systems for the proper utilization, security and management of the Fund.

The Instrument shall amend The Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) Regulations, 2013 as follows;

- 1) Regulation 6 of the Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) Regulations, 2013 is amended by introducing a new clause which provides  
“The Committee shall meet at least once every calendar month.”  
The amendment is geared at ensuring that the Loan Management Committee meets regularly and consistently.
- 2) Regulation 5 (4) of the Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) Regulations, 2013 is amended by deleting the word “interest” therein and replacing the same with the words “administrative costs”.
- 3) Regulation 14 of the Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) Regulations, 2013 is amended by deleting the title “interest rate” and replacing the same with the title “Administrative Cost”  
It is further amended by deleting the words “interest” and substituting with the words “administrative cost” in paragraph 1, 2 and 3.
- 4) Regulation 18 of the Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) Regulations, 2013 is amended by deleting the title “interest rate” and replacing the same with the title “Administrative Cost”

This amendment is made to encourage Muslim Members of Parliament benefit from the Fund without fear of infringing their religious believes. In Islam, Muslims are prohibited from paying and/or consuming interest.

#### **Consolidation.**

The instrument shall at all times be construed together with the Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) Regulations, 2013.

#### **CONSULTATION OUTCOME.**

The Parliamentary Service Commission received representations from both Members and staff of Parliament that loan approvals sometimes take a bit too long to process thereby interfering with the contractual provisions that they have with the sellers of motor vehicles. They requested for administrative measures to be put in place to ensure faster loan consideration and approval.

The Parliamentary Service Commission further received representations from both Members and staff of Parliament who profess the Islamic faith that the Regulations as currently gazetted prohibit them from benefiting from the loan facility on account of the requirement for payment of interest. They therefore requested that the Regulations be amended to make them Islamic friendly. They cited the following amendments to the law that have been passed to make banking in the country Islamic friendly:

#### **AMENDMENTS ON ISLAMIC BANKING; INTRODUCED THROUGH THE FINANCE ACT, 2017**

##### **VALUE ADDED TAX**

7. Section 2 of the Value Added Tax Act, 2013, is amended—

- a) in subsection (1) by inserting the following new definitions in proper alphabetical sequence—

"Islamic finance arrangement" has the meaning assigned to it in section 2 of the Income Tax Act;

"Islamic finance return" has the meaning assigned to it in section 2 of the Income Tax Act;

"*Sukuk*" has the meaning assigned to it in section 2 of the Public Finance Management Act, 2012;

- b) by inserting the following new subsection immediately after subsection (2)-

"(3) For the purposes of this Act—

(a) Islamic finance return is treated as interest, whether received or paid on a financial arrangement; and

(b) reference to "interest" includes a reference to Islamic finance return."

##### **INCOME TAX**

Section 2 of the Income Tax Act is amended—

- (a) by inserting the following new definitions in proper alphabetical sequence—

"Islamic finance arrangement" means all financial arrangements, including transactions, instruments, products or related activities that are structured in accordance with Islamic law;

"Islamic finance return" means any amount received or paid in relation to *Sukuk* or an Islamic finance arrangement;

"*Sukuk*" has the meaning assigned to it in the Public Finance Management Act, 2012;

- (b) By adding the words "or an Islamic finance return" at the end of the definition of the word "interest".

## STAMP DUTY ACT

Section 2 of the Stamp Duty Act is amended by inserting the following new definitions in proper alphabetical sequence—

"Islamic finance arrangement" has the meaning assigned to it in section 2 of the Income Tax Act;

"Islamic finance return" has a meaning assigned to it in section 2 of the Income Tax Act;

"Islamic property finance" means property or land leased or sold to a financial institution and then leased or resold to a person for a return in accordance with Islamic law;

"*Sukuk*" has the meaning assigned to it in section 2 of the Public Finance Act, 2012.

Section 5 of the Stamp Duty Act is amended in the proviso, by inserting the words "or an Islamic property finance arrangement" immediately after the word "mortgage".

Section 27 of the Stamp Duty Act is amended by inserting the words "or Islamic finance return" immediately after the word "interest" wherever it appears.

The Stamp Duty Act is amended by inserting a new section immediately after section 68 as follows—

**68A.** In any mortgage under which—

(a) A financial institution provides an Islamic finance arrangement that enables a person to own property or land; and

(b) Where the title or interest in the property or land is first transferred to the financial institution from the vendor and afterwards to that person,

41. The Stamp Duty Act is amended by inserting the following new section immediately after section 96A—

**96B.** (1) A *Sukuk* arrangement shall be exempt from stamp duty where the arrangement requires the transfer of title in an asset if—

- (a) At the beginning of the arrangement, the title shall be transferred from the original owner of the asset to the entity representing the interests of the *Sukuk* holders; and
- (b) During or at the end of the arrangement, the title shall be transferred back to the original owner of the asset from the entity representing the interests of the *Sukuk* holders.

#### **PUBLIC FINANCE MANAGEMENT ACT**

47. Section 2 of the Public Finance Management Act, of 2012 2012, is amended—

(a) In the definition of "national government security" by inserting the word "*Sukuk*" immediately after the words "Treasury Bond"

(b) By inserting the following new definitions in proper alphabetical sequence—  
"*Sukuk*" means certificates of equal value, representing undivided shares in ownership of tangible or intangible assets, usufruct of assets; services or an investment activity, structured in conformity with Islamic law;

(c) By inserting the following new subsection immediately after subsection (2)—

(3) For the purposes of this Act, the reference to the term 'interest' in relation to a national government security shall also apply to reference to Islamic finance return on *Sukuk*. Islamic finance return" has the same meaning assigned to it under section 2 of the Income Tax Act;

Section 205 of the Public Finance Management Act, 2012, is amended by inserting the following new subsections immediately after subsection (3)—

(3A) despite the generality in subsection (1), the Cabinet Secretary may make regulations for raising money by issuing a *Sakuk* bond which shall specify the purpose for which money may be raised.

(3B). Money raised through *Sakuk* bond may be raised within or outside Kenya in Kenya Shillings or in any other currency or medium of exchange.

## **SACCO SOCIETIES ACT, 2008**

Section 2 of the Sacco Societies Act, 2008, is amended—

- a) in the definition of the word "deposit", by inserting the words "a return" immediately after the word "interest";
- b) In the definition of the expression "deposit taking business", by deleting the words "to members" appearing at the end of paragraph (b) and substituting therefor the words "or funding or in compliance with the Islamic law";
- c) In the definition of the expression "sacco business", by inserting-
  - (i) The words "or in compliance with Islamic law" immediately after the words "in accordance with this Act,"

The Members and staff of Parliament who profess the Islamic faith therefore submitted that there is a general policy in the country to make banking and other related facilities Islamic friendly. They further stated that by making the facilities Islamic friendly, they would not affect the rights or faith of other Members and staff of Parliament in any way.

The instrument was prior to publication presented and deliberated upon by the Board of Senior Management of the Parliamentary Service Commission. The Board recommended to allow setting up of a separate Fund for Members and Staff of Parliament who are Muslims to ensure complete segregation of funds and prohibit payment of interest.

The Board recommended that the meetings of the Loans Management Committee should be held at least once every month.

The recommendations of the Board were presented and deliberated upon before the Committee on Members Welfare and the Loans Management Committee of the Parliamentary Service Commission. Both Committees and the Commission resolved that it was sufficient to amend all the sections of the regulations that provide for interest by removing the term "interest" and substituting the same with the term "administrative costs".

It was further noted that the term "administrative costs" was actually more accurate than interest as the fund was a revolving fund with no profit payable to any person. The 3% charged on all loans goes to pay administrative expenses such as valuers and auctioneer charges. All surplus is used to increase the fund. No money is paid out as "profit".

The Committees and the Commission also approved that the Loans Management Committee should be held once every month to consider loan applications.

### **GUIDANCE.**

The instrument amends the Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) Regulations, 2013, to the effect that person who benefits from the Fund shall be required to be paying administrative costs in place of interest. The rate and modalities of payment remain the same.

The Secretariat of Loan Management Committee shall organize meetings of the Committee that shall be held at least once a month to consider applications for loans.

#### **IMPACT**

No impact assessment has been prepared. The instrument applies exclusively to Members of Parliament.

#### **MONITORING AND REVIEWING.**

The Parliamentary Service Commission shall review the outcome of the implementation of the instrument after 24 months. The review shall entail the following

Whether or not the regulations have encouraged Muslim Members of Parliament to benefits from the Fund after removal of the term "interest" and replacing the same with the term "administrative cost" from the regulations.

Whether or not applications for loans are being considered and approved on time.

#### **CONTACT.**

ANTHONY NJOROGE,

0722755551,

DIRECTOR, LITIGATION AND COMPLIANCE,

PARLIAMENTARY SERVICE COMMISSION.

MINUTES OF THE 53<sup>RD</sup> SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 11<sup>TH</sup> NOVEMBER, 2020 AT 2.30 P.M. IN THE COMMITTEE ROOM ON GROUND FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS

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PRESENT

1. The Hon. Kassait Kamket, M.P. - Chairperson
2. The Hon. Muriuki Njagagua, M.P. - Vice Chairperson
3. The Hon. Waihenya Ndirangu, M.P.

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4. The Hon. Cecily Mbarire, MGH, M.P.
5. The Hon. Daniel Maanzo, M.P.
6. The Hon. Patrick Mariru, M.P.
7. The Hon. Martha Wangari, M.P.
8. The Hon. (Dr.) Wilberforce Oundo, M.P.
9. The Hon. George Murugara, M.P.
10. The Hon. Munene Wambugu, M.P.
11. The Hon. Jennifer Shamalla, M.P. (*Virtual attendance*)
12. The Hon. Robert Gichimu, M.P.
13. The Hon. Kamoti Mwamkale, M.P.
14. The Hon. Edith Nyenze, M.P.
15. The Hon. Abdi Tepo, M.P. (*Virtual attendance*)

ABSENT WITH APOLOGY

1. The Hon. William Cheptumo, M.P.
2. The Hon. Robert Mbui, M.P.
3. The Hon. Alice Wahome, M.P.
4. The Hon. Ronald Tonui, M.P.
5. The Hon. Gideon Mulyungi, M.P.
6. The Hon. Timothy Wanyonyi, M.P.
7. The Hon. Tindi Mwale, M.P.
8. The Hon. Sammy Seroney, M.P.

IN-ATTENDANCE

National Assembly Secretariat

1. Ms. Susan Maritim - Senior Clerk Assistant
2. Mr. Mohamed Jimale - Clerk Assistant II
3. Mr. Charles Ayari - Superintendent of Electronics (Audio)
4. Mr. Anthony Wamae - Assistant Serjeant-at-Arms
5. Ms. Mary Otieno - Office Superintendent

MIN.NO. /NA/CDL/2020/335

PRAYER & PRELIMINARIES

The meeting commenced at 2.45 p.m. with the Prayer.

MIN.NO. /NA/CDL/2020/336      ADOPTION OF THE AGENDA

The Committee unanimously adopted the Agenda as presented having being proposed by Hon. Munene Wambugu, MP and seconded by Hon. Abdi Tepo, MP.

MIN.NO. /NA/CDL/2020/337      CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

Minutes of the 43<sup>rd</sup> Sitting held on 14<sup>th</sup> October, 2020 were confirmed as a true record of the proceedings having been proposed by Hon. George Murugara, M.P. and seconded by Hon. (Dr.) Wilberforce Oundo, M.P.

Minutes of the 47<sup>th</sup> Sitting held on 27<sup>th</sup> October, 2020 (afternoon sitting) were confirmed as a true record of the proceedings having been proposed by Hon. Martha Wangari, M.P. and seconded by Hon. George Murugara, M.P.

Minutes of the 48<sup>th</sup> Sitting held on 28<sup>th</sup> October, 2020 (afternoon sitting) were confirmed as a true record of the proceedings having been proposed by Hon. Patrick Mariru, M.P. and seconded by Hon. George Murugara, M.P.

Minutes of the 49<sup>th</sup> Sitting held on 28<sup>th</sup> October, 2020 (afternoon sitting) were confirmed as a true record of the proceedings having been proposed by Hon. Muriuki Njagagua, M.P. and seconded by Hon. George Murugara, M.P.

Minutes of the 51<sup>st</sup> Sitting held on 29<sup>th</sup> October, 2020 (afternoon sitting) were confirmed as a true record of the proceedings having been proposed by Hon. Patrick Mariru, M.P. and seconded by Hon. Muriuki Njagagua, M.P.

Minutes of the 52<sup>nd</sup> Sitting held on 3<sup>rd</sup> November, 2020 (afternoon sitting) were confirmed as a true record of the proceedings having been proposed by Hon. Martha Wangari, M.P. and seconded by Hon. Patrick Mariru, M.P.

MIN.NO. /NA/CDL/2020/338      MATTERS ARISING

No matter arose.

MIN.NO. /NA/CDL/2020/339      ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE CROPS (FIBRE CROPS) REGULATIONS, 2020 (L.N. NO. 120 OF 2020)

The Committee Members unanimously adopted the Report on the Consideration of the Crops (Fibre Crops) Regulations, 2020 (Legal Notice No. 120 of 2020) as proposed and seconded by Hon. (Dr.) Wilberforce Oundo, M.P and Hon. Daniel Maanzo, MP, respectively.

MIN.NO. /NA/CDL/2020/340      CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (PARLIAMENTARY CAR LOAN) (MEMBERS) (SCHEME FUND) REGULATIONS, 2020 (L.N. NO. 184 OF 2020)

The Committee was informed that the Public Finance Management (Parliamentary Car loan) (Members) Scheme Fund (Amendment) Regulations were made by the Parliamentary Service

Commission pursuant to section 24(2A) of the Public Finance Management Act, which empowers the Commission to make Regulations establishing various categories of Funds for Parliament.

#### Overview of the amendment to the principal Regulations

- (i) Regulation 1 relates to citation.
  - (ii) Regulation 2 seeks to amend Regulation 6 of the Public Finance Management (Parliamentary Car loan) (Members) Scheme Fund) Regulations, 2013 by introducing a requirement that the committee dealing with members' car loans to sit more frequently being at least once every month to make the meetings of the Loan Management Committee regular and consistent.
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- (iii) Regulation 3 seeks to amend Regulation 11 of the principal Regulations by deleting the word "interest" and "carry an interest" wherever they appear and substituting therefor the words "administrative costs".

#### Committee Observations

- (i) Statutory Timelines - The Regulations were published in the gazette as LN No. 184/2020 on 16<sup>th</sup> September, 2020; submitted to the Clerk of the National Assembly on 23<sup>rd</sup> September, 2020 and tabled on 24<sup>th</sup> September, 2020. This was within the requisite statutory timelines under section 11(1) of the Statutory Instruments Act.
- (ii) Consultation / Public Participation - Articles 10 and 118 of the Constitution, section 5, 5A and the schedule to the Statutory Instruments Act, read together with Standing Order 210 requires the regulation-making authority to conduct public participation and sufficient consultation with the stakeholders and persons likely to be affected by the regulations. The regulation making authority being the Speaker of the National Assembly has attached an Explanatory Memorandum as required by section 11(2) of the Statutory Instruments Act and indicated that a number of members of Parliament and staff who profess the Islamic faith gave opinions to indicate that the principal Regulations as currently obtain prohibit them from benefitting from the loan facility on account of requirement to pay for interest. That they further requested that the Regulations be amended to make them Islamic-friendly. That further, Members of Parliament and some Parliamentary staff who made representations to the Commission indicated that loan approvals sometimes take too long to process thereby interfering with the contractual obligations of the sellers of the motor vehicles.

Further that during the consultations, the concerned Members cited a number of amendments made to other statutes on Islamic Banking through the Finance Act, 2017 such as: Section 2 of Value Added Tax Act, 2013; Section 2 of Income Tax Act, 2013; Section 2 of the Stamp Duty Act; Section 2 of the Public Finance Management Act and Section 2 of the Sacco Societies Act, 2018.

- (iii) Regulatory Impact Statement: The Regulations do not require a Regulatory Impact Statement within the meaning of sections 6, 7, and 8 of the Statutory Instruments Act, as they deal with the interest of members in respect to the car loans and have no significant effect on members of the community who are not members of Parliament.

### Committee Resolution

Having examined the Public Finance Management (Parliamentary Car loan) (Members) Scheme Fund (Amendment) Regulations against the Constitution, the Interpretations and General Provisions Act (Cap 2), the Public Finance Management Act (No. 18 of 2012) and the Statutory Instruments Act (No. 23 of 2013), the Committee resolved to approve them as proposed by Hon. Patrick Mariru, M.P. and seconded by Hon. George Murugara, M.P.

MIN.NO. /NA/CDL/2020/341      CONSIDERATION OF THE PUBLIC FINANCE  
MANAGEMENT (PARLIAMENTARY MORTGAGE  
(MEMBERS) SCHEME FUND) (AMENDMENT)  
REGULATIONS, 2020 (L.N. NO. 185 OF 2020)

The Committee was informed that the Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) (Amendment) Regulations were made by the Parliamentary Service Commission pursuant to section 24(2A) of the Public Finance Management Act, which empowers the Commission to make Regulations establishing various categories of Funds for Parliament.

### Overview of the amendment to the principal Regulations

- (i) Regulation 1 relates to citation.
- (ii) Regulation 2 and 3 seek to amend Regulation 5(4) of the Public Finance Management (Parliamentary Mortgage) (Members) Scheme Fund) Regulations by deleting the word “interest” wherever it appears and substituting therefor the words “administrative costs”.
- (iii) Regulation 4 seeks to amend Regulation 6 of the principal Regulations to introduce a requirement for the mortgage committee to sit more frequently, being at least once every month.
- (iv) Regulation 5 and 6 seek to amend Regulations 14 and 18, respectively, to delete the words “interest” and “interests on loans” and substituting therefor the words “administrative costs”.

### Committee Observations

- (i) **Statutory Timelines** - The Regulations were published in the gazette as LN No. 185/2020 on 16th September, 2020; submitted to the Clerk of the National Assembly on 23<sup>rd</sup> September, 2020 and tabled on 24<sup>th</sup> September, 2020. This was within the requisite statutory timelines under section 11(1) of the Statutory Instruments Act.
- (ii) **Consultation /Public Participation** - Articles 10 and 118 of the Constitution, section 5, 5A and the schedule to the Statutory Instruments Act, read together with Standing Order 210 requires the regulation-making authority to conduct public participation and sufficient consultation with the stakeholders and persons likely to be affected by the regulations. The Regulation making authority being the Speaker of the National Assembly has attached an Explanatory Memorandum as required by section 11(2) of the Statutory Instruments Act and indicated that a number of Members of Parliament and staff who profess the Islamic faith gave opinions to indicate that the principal Regulations as currently obtain prohibit them from benefitting from the loan facility on account of requirement to pay for interest.

That they further requested that the Regulations be amended to make them Islamic friendly. That Further members of Parliament and some Parliamentary staff who made representations to the commission indicated that loan approvals sometimes take too long to process thereby interfering with the contractual obligations of the sellers of the Houses.

Further that during the consultations, the concerned Members cited a number of amendments made to other statutes on Islamic Banking through the Finance Act, 2017 such as: Section 2 of Value Added Tax Act, 2013; Section 2 of Income Tax Act, 2013; Section 2 of the Stamp Duty Act; Section 2 of the Public Finance Management Act and Section 2 of the Sacco Societies Act, 2018.

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- (iv) Regulatory Impact Statement: The Regulations do not require a Regulatory Impact Statement within the meaning of sections 6, 7 and 8 of the Statutory Instruments Act, as they deal with the interest of members in respect to the car loans and have no significant effect on members of the community who are not members of Parliament.

#### Committee Resolution

Having examined the Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) (Amendment) Regulations, 2020 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Public Finance Management Act (*No. 18 of 2012*) and the Statutory Instruments Act (*No. 23 of 2013*), the Committee resolved to approve them as proposed by Hon. Patrick Mariru, M.P. and seconded by Hon. Muriuki Njagagua, M.P.

MIN.NO. /NA/CDL/2020/342      CONSIDERATION OF THE PUBLIC FINANCE  
MANAGEMENT (PARLIAMENTARY CAR LOAN  
(STAFF) SCHEME FUND) (AMENDMENT)  
REGULATIONS, 2020 (L.N. NO. 186 OF 2020)

The Committee was informed that the Public Finance Management (Parliamentary Car Loan) (Staff) Scheme Fund (Amendment) Regulations were made by the Parliamentary Service Commission pursuant to section 24(2A) of the Public Finance Management Act, which empowers the Commission to make Regulations establishing various categories of Funds for Parliament.

#### Overview of the amendment to the principal Regulations

- (i) Regulation 1 relates to citation.
- (ii) Regulation 2 seeks to amend Regulation 6 of the Public Finance Management (Parliamentary Car loan) (Members) Scheme Fund) Regulations, 2013 by introducing a requirement that the committee dealing with members' car loans to sit more frequently being at least once every month to make the meeting of the Loan Management Committee regular and consistent.
- (iii) Regulation 3 seeks to amend Regulation 11 of the principal Regulations by deleting the word "interest" and "carrying interests" wherever they appear and substituting therefor the words "administrative costs".

### Committee Observations

- (i) **Statutory Timelines** - The Regulations were published in the gazette as LN No. 184/2020 on 16<sup>th</sup> September, 2020; submitted to the Clerk of the National Assembly on 23<sup>rd</sup> September, 2020 and tabled on 24<sup>th</sup> September, 2020. This was within the requisite statutory timelines under section 11(1) of the Statutory Instruments Act.
- (ii) **Consultation / Public Participation** - Articles 10 and 118 of the Constitution, section 5, 5A and the schedule to the Statutory Instruments Act, read together with Standing Order 210 requires the regulation-making authority to conduct public participation and sufficient consultation with the stakeholders and persons likely to be affected by the regulations. The regulation making authority being the Speaker of the National Assembly has attached an Explanatory Memorandum as required by section 11(2) of the Statutory Instruments Act and indicated that a number of members of Parliament and staff who profess the Islamic faith gave opinions to indicate that the principal Regulations as currently obtain prohibit them from benefitting from the loan facility on account of requirement to pay for interest. That they further requested that the Regulations be amended to make them Islamic-friendly. That further, Members of Parliament and some Parliamentary staff who made representations to the Commission indicated that loan approvals sometimes take too long to process thereby interfering with the contractual obligations of the sellers of the motor vehicles.  
  
Further that during the consultations, the concerned Members cited a number of amendments made to other statutes on Islamic Banking through the Finance Act, 2017 such as: Section 2 of Value Added Tax Act, 2013; Section 2 of Income Tax Act, 2013; Section 2 of the Stamp Duty Act; Section 2 of the Public Finance Management Act and Section 2 of the Sacco Societies Act, 2018.
- (iii) **Regulatory Impact Statement:** The Regulations do not require a Regulatory Impact Statement within the meaning of sections 6, 7 and 8 of the Statutory Instruments Act, as they deal with the interest of members in respect to the car loans and have no significant effect on members of the community who are not members of Parliament.

### Committee Resolution

Having examined the Public Finance Management (Parliamentary Car Loan (Staff) Scheme Fund) (Amendment) Regulations against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Public Finance Management Act (*No. 18 of 2012*) and the Statutory Instruments Act (*No. 23 of 2013*), the Committee resolved to approve them as proposed by Hon. George Murugara, M.P. and seconded by Hon. Muriuki Njagagua, M.P.

MIN.NO. /NA/CDL/2020/343      **CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (PARLIAMENTARY MORTGAGE (STAFF) SCHEME FUND) (AMENDMENT) REGULATIONS, 2020 (L.N. NO. 187 OF 2020)**

The Committee was informed that the Public Finance Management (Parliamentary Mortgage) (Staff) Scheme Fund (Amendment) Regulations were made by the Parliamentary Service Commission pursuant to section 24(2A) of the Public Finance Management Act, which empowers the Commission to make Regulations establishing various categories of Funds for Parliament.

## Overview of the amendment to the principal Regulations

- (i) Regulation 1 relates to citation.
  - (ii) Regulation 2 and 3 seek to amend Regulation 5(4) of the Public Finance Management (Parliamentary Mortgage) (Staff Scheme Fund) Regulations by deleting the word “interest” wherever it appears and substituting therefor the words “administrative costs”.
  - (iii) Regulation 4 seeks to amend Regulation 6 of the principal Regulations to introduce a requirement to allow the mortgage committee to sit more frequently being at least once every month.
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- (iv) Regulation 5 seeks to amend Regulation 13 of the principal Regulations by expanding the loan repayment period for staff from fifteen to twenty-five years.
  - (v) Regulation 6 seeks to amend Regulations 14 of the principal Regulations to delete the words “interest” and “interests on loans” and substituting therefor the words “administrative costs”.
  - (vi) Regulation 7 seeks to amend Regulation 15 of the principal Regulations to limit the staff to access only one loan at a time.
  - (vii) Regulation 8 seeks to amend Regulations 18 of the principal Regulations to delete the words “interest” and “interests on loans” and substituting therefor the words “administrative costs”.

## Committee Observations

- (i) Statutory Timelines - The Regulations were published in the gazette as LN No. 184/2020 on 16<sup>th</sup> September, 2020; submitted to the Clerk of the National Assembly on 23<sup>rd</sup> September, 2020 and tabled on 24<sup>th</sup> September, 2020. This was within the requisite statutory timelines under section 11(1) of the Statutory Instruments Act.
- (ii) Consultation / Public Participation - Articles 10 and 118 of the Constitution, section 5, 5A and the schedule to the Statutory Instruments Act, read together with Standing Order 210 requires the regulation-making authority to conduct public participation and sufficient consultation with the stakeholders and persons likely to be affected by the regulations. The regulation making authority being the Speaker of the National Assembly has attached an Explanatory Memorandum as required by section 11(2) of the Statutory Instruments Act and indicated that a number of members of Parliament and staff who profess the Islamic faith gave opinions to indicate that the principal Regulations as currently obtain prohibit them from benefitting from the loan facility on account of requirement to pay for interest. That they further requested that the Regulations be amended to make them Islamic-friendly. That further, Members of Parliament and some Parliamentary staff who made representations to the Commission indicated that loan approvals sometimes take too long to process thereby interfering with the contractual obligations of the sellers of the motor vehicles.

Further that during the consultations, the concerned Members cited a number of amendments made to other statutes on Islamic Banking through the Finance Act, 2017 such as: Section 2 of Value Added Tax Act, 2013; Section 2 of Income Tax Act, 2013; Section 2 of the Stamp Duty Act; Section 2 of the Public Finance Management Act and Section 2 of the Sacco Societies Act, 2018.

- (iii) Regulatory Impact Statement: The Regulations do not require a Regulatory Impact Statement within the meaning of sections 6, 7 and 8 of the Statutory Instruments Act, as they deal with the interest of members in respect to the car loans and have no significant effect on members of the community who are not members of Parliament.

#### Committee Resolution

Having examined the Public Finance Management (Parliamentary Mortgage) (Staff Scheme Fund) (Amendment) Regulations, 2020 against the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Public Finance Management Act (*No. 18 of 2012*) and the Statutory Instruments Act (*No. 23 of 2013*), the Committee resolved to approve them as proposed by Hon. (Dr.) Wilberforce Oundo, M.P. and seconded by Hon. Martha Wangari, M.P.

MIN.NO. /NA/CDL/2020/344      CONSIDERATION OF REGISTRATION OF PERSONS  
(NATIONAL INTEGRATED IDENTITY  
MANAGEMENT SYSTEM) RULES, 2020

The Committee deferred consideration of the Registration of Persons (National Integrated Identity Management System) Rules, 2020 to 7<sup>th</sup> December, 2020.

MIN.NO. /NA/CDL/2020/345      CONSIDERATION OF DATA PROTECTION (CIVIL  
REGISTRATION) REGULATIONS, 2020

The Committee deferred consideration of the Data Protection (Civil Registration) Regulations, 2020 7<sup>th</sup> December, 2020.

MIN.NO. /NA/CDL/2020/346      ANY OTHER BUSINESS

The Committee resolved to undertake a consultative meeting in with various regulation making authorities whose business is pending before it for conferring purposes, pursuant to Section 16 of the Statutory Instruments Act (*No. 23 of 2013*). The retreat is proposed to be held from 6<sup>th</sup> to 11<sup>th</sup> December, 2020 in Mombasa.

It was, however, further resolved, that urgent business requiring House approval will be considered before the December recess.

MIN.NO. /NA/CDL/2020/347      ADJOURNMENT AND DATE OF NEXT MEETING

The meeting was adjourned at 3.50 p.m. until Wednesday, 25<sup>th</sup> November, 2020 at 2.30 p.m. at a venue to be communicated in due course.

Signed.....

HON. KASSAIT KAMKET, M.P.  
(CHAIRPERSON)

Date..... 18/11/2020