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THE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE BASIC EDUCATION REGULATIONS, 2015

Clerk's Chambers,
First Floor,
Parliament Buildings,
NAIROBI.

Hon. Speaker
You may approve
for tabling.
25/11/15

[Signature]
12/20/15

NOVEMBER, 2015

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on the table
of the Senate
on 2/12/2015
by Sen. Sarg.
LAP
02/12/15



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PREFACE

Establishment of the Committee on Delegated Legislation

The Sessional Committee on Delegated Legislation is established pursuant to the Senate Standing Order 214 which states:

- 1) There shall be a select Committee to be known as the Committee on Delegated Legislation.
- 2) Whenever a statutory instrument is submitted to the Senate pursuant to the Constitution, any law or these Standing Orders, the statutory instrument shall, unless a contrary intention appears in the relevant legislation, be laid before the Senate by the Chair of the Senate Committee on Delegated Legislation and thereafter stand referred to the Committee.
- 3) The Committee shall consider in respect of any statutory instrument whether the statutory instrument-
 - a) is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written law;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
 - d) directly or indirectly bars the jurisdiction of the courts;
 - e) gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;
 - f) involves expenditure from the Consolidated Fund or other public revenues;
 - g) is defective in its drafting or for any reason, the form or purport of the statutory instrument calls for any elucidation;

- h) appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;
- i) appears to have had unjustifiable delay in its publication or laying before Parliament;
- j) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions;
- k) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- l) inappropriately delegates legislative powers;
- m) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- n) appears for any reason to infringe on the rule of law;
- o) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
- p) accords to any other reason that the Committee considers fit to examine.

(4) If the Committee-

- a) resolves that the statutory instrument, be acceded to, the Clerk shall convey that resolution to the relevant state department or the authority that published the statutory instrument;
- b) does not accede to the statutory instrument, or part of a statutory instrument, the Committee may recommend to the Senate that the Senate resolves that all or any part of the statutory instrument, as the case may be, be annulled.

(5) If the Senate-

- a) fails to agree to the recommendation of the Committee under paragraph (4)(b), the statutory instrument shall be deemed to have been approved by Parliament;
- b) resolves to annul a statutory, or part of a statutory instrument, the resolution shall, within seven days of the passage of the resolution, be referred to the National Assembly for concurrence.

Membership of the Committee on Delegated Legislation

The Membership of the Committee is as follows:

- | | | |
|-----------------------------|---|------------------|
| 1. Sen. Stephen Sang | - | Chairperson |
| 2. Sen. Judith Sijeny | - | Vice-Chairperson |
| 3. Sen. (Dr.) Boni Khalwale | - | Member |
| 4. Sen. Emma Mbura | - | Member |
| 5. Sen. Daniel Karaba | - | Member |
| 6. Sen. Liza Chelule | - | Member |
| 7. Sen. Godliver Omondi | - | Member |
| 8. Sen. Joy Gwendu | - | Member |
| 9. Sen. Boy Juma Boy | - | Member |

Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in the execution of its mandate.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Section 17 of the Statutory Instruments Act, 2014 and Standing Order 214, to present the Report of the Sessional Committee on Delegated Legislation on the Basic Education Regulations, 2015.

Signed.....

Date.....18/11/2015

SEN. JUDITH SIJENY,

VICE-CHAIRPERSON

SESSIONAL COMMITTEE ON DELEGATED LEGISLATION.

ABBREVIATIONS

BoM	Board of Management
CS	Cabinet Secretary
ESQAC	Education Standard Quality Assurance Committee
FGM	Female Genital Mutilation
KCPE	Kenya Certificate of Primary Education
KICD	Kenya Institute of Curriculum Development
KEPSHA	Kenya Primary Schools Heads Association
KESSHA	Kenya Secondary Schools Heads Association
KNUT	Kenya National Union of Teachers
KUPPET	Kenya Union of Post Primary Education Teachers
NGOs	Non Governmental Organizations
TSC	Teachers Service Commission

EXECUTIVE SUMMARY

The Basic Education Regulations, 2015 were gazetted on 8th April, 2015 under Legal Notice No. 39 of 2015. The Regulations seek to regulate the management of basic education institutions, among other functions.

In light of the public discourse on the Regulations, the Committee, at its 7th Sitting held on 5th May, 2015 resolved to invite stakeholders in the education sector to give their submissions on the Regulations. At its meeting held on 14th May, 2015, the Committee received submissions from various stakeholders including the Kenya National Union of Teachers (KNUT), Kenya Primary Schools Heads Association (KEPSHA), Kenya Secondary Schools Heads Association (KSSHA) and Kenya Union of Post Primary Education Teachers (KUPPET).

The Committee further invited the Cabinet Secretary, Ministry of Education Science and Technology for a consultative meeting to discuss the issues raised on the Regulations. The Ministry, however, did not attend the meeting but sent a written response dated 23rd June, 2015.

Chapter one of the report gives a summary of the purpose and legal basis of the Regulations. The key purpose of the Regulations is to give effect to the purposes, goals and objectives embodied in the Basic Education Act, 2014. This Chapter further outlines the Ministry's submission on stakeholder consultations, as well as the Committee's scrutiny of the Regulations.

Chapter two gives an account of the submissions received from stakeholders in the industry. KNUT, KUPPET, KEPSHA and KSSHA raised a number of concerns with various provisions in the Regulations. They asserted that stakeholder consultation was not satisfactorily carried out in the development of the Regulations and that concerns raised

on contentious issues raised by the various stakeholders, were not incorporated prior to publication of the Regulations.

Chapter three highlights the Committee's observations. The Committee observed that the consultations carried out by the Ministry of Education, Science and Technology during the development of the Regulations were inconsistent with the provisions of section 5 of the Statutory Instruments Act, 2015 and Article 10(2) of the Constitution, and were unsatisfactory. The Committee further noted that the proposals made by the stakeholders were mainly proposed amendments to the Regulations, which would be better dealt with through further consultations with the Ministry of Education, Science and Technology with a view to amend the provisions of the Basic Education Act No. 14 of 2013 to incorporate their proposals.

Chapter four outlines the Committee's recommendations, specifically the provisions the Committee annuls. The Committee resolved to annul Regulation 30 and Regulation 84, and further recommends that the Ministry of Education, Science and Technology should consult further with the stakeholders in the education sector with a view to amend the provisions of the Basic Education Act No. 14 of 2013 to incorporate their proposals.

CHAPTER ONE

INTRODUCTION

1.1 The Basic Education Regulations, 2015

The Basic Education Regulations, 2015 were gazetted on 8th April, 2015 under Legal Notice No. 39 of 2015. The key purpose of the Regulations is to give effect to the purposes, goals and objectives embodied in the Basic Education Act, 2014.

1.2 Legal Basis of the Basic Education Regulations, 2015

Section 95 of the Basic Education Act No. 14 of 2013 provides for the Cabinet Secretary's power to make Regulations in the following terms:

95. (1) *The Cabinet Secretary may upon consultation with the Board make regulations-*

(a) prescribing anything that may be prescribed under this Act; and

(b) generally for the better carrying out of provisions of this Act.

(c) on the establishment of Boards of Management for primary schools.

(2) *Without prejudice to the generality of subsection (1) the Cabinet Secretary may make regulations to provide for –*

(a) an appropriate structure for education and training

(b) incentives to learners, teachers and non teaching staff;

(c) discipline, corrective measures and expulsion to facilitate compliance;

(d) admission, progression and transfer of learner;

(e) integration of the madrassa, Duksi and pastoral programmes of instructions into the formal education system as appropriate to improve access and retention;

(f) to secure appropriate institutional linkages and relative autonomy for the Kenya National Commission for United Nations Educational Scientific and Cultural Organization to enable it to promote education through culture, natural science, social and human sciences, and information and communication technology.

- (3) The Cabinet Secretary may make regulations with respect to the conduct and management of schools and such regulations may-
- (a) prescribe standards with regards to the numbers and qualifications of staff, the size of classes and the expenditure on educational standards in accordance with international best practices;
 - (b) provide for the preparation or approval of curricula, syllabuses, books and other educational materials;
 - (c) prescribe minimum standards for the health and safety of pupils and for a satisfactory environment for education;
 - (d) provide for the keeping of registers and records and the submission of returns, including EMIS data;
 - (e) provide for incentives for submission of reports, returns and related EMIS data;
 - (f) provide for sanctions and penalties for non submission and falsification of records, reports, returns, and related EMIS data;
 - (g) provide for admission, suspension, discipline, punishment and expulsion of pupils;
 - (h) provide for educational calendar;
 - (i) prescribe how schools shall be classified;
 - (j) make different provisions with respect to different classes or kinds of schools, impose conditions and make exemptions;
 - (k) provide for the promotion, development, management and governance of education through ICT Integration and Education, and EMIS, and statutory structural adjustment;
 - (l) provide for religious instruction and religious education in basic education having regard to the national values and principles under Article 10 and Chapter Six of the Constitution;
 - (m) provide for teacher education and development;

- (n) provide for the implementation of international instruments on education and child rights to which Kenya is a party; and*
 - (o) provide for or prescribe such other matters as the Cabinet Secretary considers necessary or desirable to provide for or prescribe.*
- (4) The Cabinet Secretary may make regulations prescribing the duties and rights of students.*

1.3 Stakeholder Consultations on the Basic Education Regulations, 2015

In developing the regulations in question, the Ministry indicated that it had made wide-ranging consultations with key stakeholders. Among the stakeholders included the two teacher unions, Kenya Secondary School Heads Association (KESSHA), Kenya Primary Schools Heads Association (KEPSA), Teachers' Service Commission, Kenya Institute of Education, Kenya Private Schools Association, Religious organizations and Parents Associations. The Ministry organized four consultative meetings on 29/8/2014, 9/10/2014, 14/10/2014 and 28/10/2014.

Contrary to this assertion, the stakeholders claimed that unsatisfactory stakeholder participation was carried out during the development of the Regulations and concerns raised were not incorporated before publication.

1.4 Committee Scrutiny of the Basic Education Regulations, 2015

The Committee scrutinized the Basic Education Regulations, 2015 at its meeting held on 7th May, 2015. In light of the public discourse on the Regulations, the Committee resolved to invite stakeholders in the education sector to submit contentious issues that they may have on the Regulations. At its meeting held on Thursday, 14th May, 2015, the Committee received submissions from various stakeholders including the Kenya National Union of Teachers (KNUT), Kenya Union of Post Primary Education Teachers (KUPPET), Kenya Secondary Schools Heads Association (KESSHA) and Kenya Primary Schools Heads Association (KEPSA).

Pursuant to section 16 of the Statutory Instruments Act, 2013, the Committee subsequently invited the Cabinet Secretary, Ministry of Education for a consultative meeting on 16th June, 2015 to discuss the concerns raised on the Regulations. However, by a letter dated 23rd June, 2015, the Ministry stated responded to some issues raised on various provisions of the Regulations.



CHAPTER TWO SUBMISSIONS FROM STAKEHOLDERS IN THE EDUCATION SECTOR

At its 10th sitting, held on 14th May, 2015, the Committee received submissions from the following stakeholders:

1. Kenya National Union of Teachers (KNUT);
2. Kenya Union of Post Primary Education Teachers (KUPPET);
3. Kenya Secondary School Heads Association (KESSHA); and
4. Kenya Primary Schools Heads Association (KEPSA).

2.1 Submissions from the Kenya Union of Post Primary Education Teachers (KUPPET)

Mr. Omboko Milemba, National Chairman of KUPPET noted that the Basic Education Regulations, 2015 did not adequately provide for various issues such as the special needs education, school academic calendar and the definition of various terms such as the head of institution, home-based schooling, hospital schooling, summative evaluation among others. He informed the Committee that stakeholder input and participation was inadequately considered prior to publication of the Regulations.

Below is a summary of concerns raised by KUPPET on various provisions of the Regulations-

1. Regulation 2: Definition of ‘Head of Institution’

Proposal: The definition of “Head of institution” under Regulation 2 should be amended to be in tandem with the definition of “head teacher” as contained in the Teachers’ Service Commission Act.

Rationale: According to the Basic Education Regulations, 2015, “head of institution” means *“a teacher, head teacher or principal appointed by the Teachers Service Commission to head in institution and exercising delegated authority of the Cabinet Secretary, Ministry of Education as the Accounting*

Officer of the institution.” Whereas according to the TSC Act, “head teacher” means “the lead educator or administrator in a primary school level educational institution appointed by the Commission as such and responsible for the implementation of the educational policy guidelines and professional practices.” The two definitions are therefore not in consonance and need to be uniform.

2. Regulation 8

Proposal: During the composition of the ad hoc committee, the representation of KUPPET should be included in regard to post-primary sector.

Rationale: This will safeguard the right of the teacher to electing a representative as provided in the Basic Education Act, 2013 section 56(1) (c).

3. Regulation 5 (2) (a)

Proposal: That the words “an authority delegated by the Cabinet Secretary” after the word “institution” be deleted.

Rationale: Section 59(n) and (o) of the Basic Education Act, 2013 vests the power to manage institutional resources including funds on the Boards of Management on behalf of the Cabinet Secretary. In addition, section 62 of the Basic Education Act, 2013 appoints head of institution as secretary to the Board of Management. A head of institution is confirmed as secretary and the accounting officer at inaugural meeting of the BoM or whenever a head teacher / principal is deployed to an institution of learning, by way of resolution.

4. Regulation 5 (3)

Proposal: That regulation 5(3) should be amended to read “*where any impropriety is established on the part of the head of institution, the Board of Management shall recommend to the Teachers Service Commission to revoke the designation of such head of institution as the accounting officer*”

Rationale: TSC and not the Cabinet Secretary has the role of appointing, transferring and disciplining head teachers as provided under section 24 and 34 of the TSC Act, 2012 and Article 237(2) of the Constitution of Kenya.

5. Regulation 5 (5)

Proposal: That the Regulation be amended by substituting the word “shall” with the word “may.”

6. Regulation 58 (2)

Proposal: The Regulation should clearly state if end of primary level education assessments will be factored in the admission to secondary education or if the national examination (KCPE) remains to be a determining factor in secondary level entry.

Rationale: The Regulation as worded will bring confusion if eligibility to a secondary school will be regardless of the scores in primary education. How will competence of learners be assessed? Section 84 (1) of the Basic Education Act, 2013 states that public examinations shall be conducted as provided for under Kenya National Examinations Council Act.

Further, the Regulations should also define for the purpose of operationalization the meaning of *summative evaluation* in the primary education as expressed in this regulation.

7. Regulation 81

Proposal: That other committees and their roles be instituted under Board of Management as provided in section 6 (2) of the Basic Education Act, 2013 to look into the following issues in the education institutions-

- a) Finance, procurement and general purposes
- b) Discipline, ethics and integrity
- c) Academic standards and quality education
- d) Human rights and students welfare
- e) Audit

Rationale: The regulation has not provided a clause where the reports of the above committee will be handed over and their duration. It is worth noting that security of the institutions is paramount and safety and security reports should be prepared and shared with the county directors of education and the stakeholders from time to time.

8. Academic calendar for basic education and training institutions

Proposal: KUPPET proposes the following as the calendar for educational institutions-

1st Term Learning and Vacation

- a) The first (1st) term learning shall be from first Monday of January to last Friday of March bringing to twelve (12) weeks of learning.
- b) The first term vacation shall be for four (4) weeks in April.

2nd Term Learning and Vacation

- a) The second term learning shall be from the first Monday of May to last Friday of July bringing to twelve (12) weeks of learning.
- b) The second term vacation shall be for four (4) weeks in August.

3rd Term Learning and Vacation

- a) The third term learning shall be from first Monday of September to last Friday of November bringing to twelve (12) weeks of learning.
- b) The third term vacation shall be for five (5) weeks in December.

Rationale: The Regulations do not include the academic calendar for educational institutions in Kenya. This opens a pathway where institutions can have different academic calendars and these will bring confusion in the education institutions.

9. Contravention of the Basic Education Regulations, 2015

Proposal: The Basic Education Regulations do not provide for punishment to anyone who contravenes its provisions. In this regard, KUPPET proposed the introduction of a new clause as follows-

“Any person, head of institution or Board of Management who shall contravene the provisions of these regulations shall have committed an

offence and shall have committed an offence and shall be prosecuted under section 92 of the basic education Act of 2013 or any other applicable law.”

10. Mandatory documents in every basic education institution

Proposal: That mandatory documents should be available at every basic education and training institution but have been omitted in the Basic Education Regulations 2015. These documents are but not limited to;

- a) The Constitution of Kenya, 2010;
- b) The Basic Education Act No. 14 of 2013;
- c) The Children Act Cap (4);
- d) Teachers Service Commission Act;
- e) The Code of Regulations for Teachers;
- f) The Kenya National Examinations Council Act, 2012;
- g) Sexual Offences Act;
- h) Labour Relations Act, Cap 233;
- i) Workman’s Compensation Act;
- j) School Safety Manual;
- k) NEMA Act;
- l) Public Health Act, 2010;
- m) Education Standards Quality Assurance Council Regulations; and
- n) Kenya Institute of Curriculum Development Act, 2013

In addition, it is also necessary that Basic Education and training institutions should have the following manuals and standards;

- a) Public Finance Management Act, 2012;
- b) Public Procurement and Disposal Act, 2005 and Regulations 2006;
- c) A handbook of financial management: instructions for Secondary Schools, Colleges and Polytechnics (MOEST), 2006;
- d) Public Procurement Manual for Schools and Colleges, 2009;
- e) Public Audit Act, 2003;
- f) Any other written rules and regulations approved by the Cabinet Secretary

11. Special needs education- Regulation 25 (a)

Proposal: That this Regulation be amended to read *“All institutions of basic education and training shall ensure the physical and social environment is disability friendly.”*

Further, proposal was made that that all clauses with special needs should be recast to read “special needs and disabilities”.

Rationale: This is to cater to the needs of learners with disabilities.

12. Regulation 25(d)

Proposal: That the instructional materials should be listed after Regulation 25(d) or an addendum of the materials to be provided. The instructional materials for learners with disability are-

1. Large print format
2. Braille format
3. Video – audit format
4. Tactile format
5. Simplified /abridged text version / format
6. Kenyan sign language illustrations
7. Pictogram formats
8. Assistive technology formats
9. Other materials necessary

Rationale: This is to cater to the needs of learners with disabilities.

13. EARC (Education Assessment and Research Centre)

Proposal: Section 46 of the Basic Education Act, 2013 has provided the setting up of EARC (Education Assessment and Research Centre) for the special needs but provision of resources has not been catered for. KUPPET therefore proposed that the Cabinet Secretary shall provide resources for the running and management of the resource centers here in referred to as EARCs and that learners should access them at no cost.

14. Regulation 28

Proposal: That this Regulation be amended to read *“All learners with special needs shall be evaluated and issued with appropriate certificates of achievements and competencies after successful completion of prescribed course of study through either adapted, adopted or specialists syllabuses in collaboration with Kenya National Examination Council.”*

Rationale: The Cabinet Secretary has not fully addressed section 45(2) of the Basic Education Act in the regulations. Some of the issues that need to be addressed are;

- a) Categories of pupils requiring special needs education and the methods appropriate for education.
- b) Prescribed guidelines for promoting education for learners with special needs.
- c) Mechanisms of monitoring and evaluation on the quality of infrastructure and learning facilities in regard to special needs education.

15. Specialized Committees of the County Education Board

Proposal: Section 25(2) of the Basic Education Act of 2013 has provided for various committees to be set up under the County Education Board. KUPPET proposed that the Basic Education regulations should define the roles of each committee and this should be part of the regulations to operationalize the Basic Education Act, 2013. The following are the proposed roles of the Committees of the County Education Board.

i. Special Needs Education Committee

The function of this committee shall be:

- a) To advise the County Education Board on all matters pertaining to Special Needs Education in the County.
- b) To coordinate the activities of other institutions, organizations or individuals involved in the provision of Special Needs Education in the county.

- c) To ensure that all institutions of basic education and training make reasonable physical and social environmental adjustments for the participation of all learners with Special Needs Education and disabilities in the county.
- d) Ensure that all learners have statements documenting their Special Needs Education status following a diagnosis by the intra disciplinary teams of the EARCs.
- e) To work closely with other stakeholders and organizations in promoting talent education and enhancement in the county.
- f) To coordinate all activities of educational assessment centers within the county.
- g) To carry out any other assignment which may be delegated by the County Education Board.

The persons serving in this committee and especially the chairperson shall preferably be persons with interests and experience in Special Needs Education.

ii. Early Childhood Care and Education Committee

The functions of this committee shall be;

- a) To coordinate the operations of all early childhood care and education centers in the county.
- b) Liaise with the county government on development of school infrastructure.
- c) To receive and maintain data of all children in the early childhood education centers in the county.
- d) In liaison with county government ensure safety of children attending early childhood education centers in the county.
- e) To monitor all programs and projects relating to early childhood education in the county.

- f) In consultation with the county government initiate proposals for Early Childhood Development Education Reforms
- g) To carry out any other assignment related to ECDE which may be delegated by the County Education Board.

The persons serving in this committee and especially the chairperson shall preferably be persons with interest and experience in matters relating to early childhood education and development.

iii. Vocational Institutions and Youth Polytechnics Committee

The functions of this committee shall be:

- a) To receive and maintain a register of all students in vocational institutions and youth polytechnics in the county.
- b) To receive and vet all applications relating to registration of vocational institutions and youth polytechnics in the county.
- c) To monitor and supervise all funding given to public vocational institutions and youth polytechnics in the county.
- d) Liaise with relevant bodies on staffing of vocational and youth polytechnic.
- e) Liaise with county government in implementing of vocational and youth training polytechnic policies, monitoring of vocational youth training programmes, in consultation with the county government initiate proposals for vocational and youth training programmes.
- f) Liaise with county government in the development of vocational and youth training infrastructure.
- g) Monitor implementation in all vocational training and youth polytechnics.
- h) To coordinate trade tests, assessments and other examinations offered by recognized institutions.
- i) To coordinate any other matters relating to vocational institutions and youth polytechnics in the county.

- j) To coordinate all industrial attachments of students graduating from vocational institutions and youth polytechnic in the county.

The persons serving in this committee and especially the chairperson shall preferably be persons with proven interest and experience in matters relating to Technical and vocational issues.

iv. Dispute Resolutions Committee

- a) To handle all matters relating to discipline of students, board of management employees, parents/guardians, board of management members referred to them by the Sub County Education Board.
- b) To recommend to the County Education Board appropriate action to be taken against person (s), board of management members and Sub-County Education Board members who undermine activities and programmes of others.
- c) Refer disputes involving staff to Teacher Service Commission.
- d) To arbitrate all disputes arising from schools which have been referred to them by the Sub County Education Board.
- e) To arbitrate any other dispute which may be referred to them by the County Education Board.

The persons serving in this committee and especially the chairperson shall preferably be persons with proven experience in public relations, administration and dispute resolutions.

v. Human Rights and Gender Committee

The functions of this committee shall be:

- a) To investigate and make reports to relevant authorities on all human rights violations in schools within the county.

- b) To receive reports and maintain a register on child labour, children rights violations, sexual harassment, defilement, abuse and FGM cultural practices.
- c) To monitor cases on gender violence.
- d) To monitor teenage pregnancies, early marriages, rape cases, sexual molestations and school drop outs.
- e) To keep track of all school going age children who are not school per sub-county.
- f) To establish gender parity index for various performance indicators of education.
- g) Report all human rights violation in schools to the law enforcement agencies.

The persons serving in this committee and especially the chairperson shall preferably be persons with proven experience and knowledge in human rights and gender issues.

vi. Standards and Quality Assurance Committee

Functions of this committee shall be:

- a) To work closely with ESQAC in ensuring that schools maintain set standards of education within the county.
- b) To monitor the overall performance of all institutions of basic education and training both public and private within the county in liaison with ESQAC.
- c) To ensure that all institutions of basic education buildings within the county meet required safety standards.
- d) To ensure that all schools vehicles and other private transport providers meet the required road and mechanical safety standards.
- e) To carry out any other assignment which may be delegated to them by the county education board.

The persons serving in this committee and especially the chairperson shall preferably be persons with proven interest and experience in matters relating to Educational Quality Assurance and Standards matters.

vii. Finance, Audit and Human Resource Committee

The function of this committee shall be,

- a) To monitor and coordinate all grants and other funds channeled to the county by the national government, county government and other donor agencies.
- b) To initiate auditing of funds in all schools and other institutions of basic education.
- c) To scrutinize all financial records including bank statements, bank slips of all secondary schools and other institutions of basic education.
- d) To receive from the Sub county Education Board proposals relating to levies and other charges requested by schools and other institutions of basic education.
- e) To scrutinize all audit reports of secondary schools and other institutions of basic education and recommend to the board the necessary actions that should be taken.
- f) To handle all matters relating to non-teaching staff of secondary and other institutions of basic education.
- g) To monitor all new projects initiated by NGOs, donor agencies and other well-wishers in the county.
- h) Any other matter which may be referred to them by the county Education Board.

The persons serving in this committee and especially the chairperson shall be preferably being persons with proven experience and knowledge in financial and audit matters.

viii. Basic Education Committee

The function of this committee shall be

- a) To coordinate registration of all public and private institutions of basic education in the county.
- b) To receive, scrutinize approve or reject applications of all persons or institutions wishing to register schools or other institutions of basic education.
- c) To receive from the sub County Education Board's recommendations relating to schools and institutions of basic education.
- d) To carryout of any other assignment which may be delegated by the County Education Board.
- e) To select and vet persons to be appointed as members to serve in the Board of Management.

16. Board of management in basic education institutions

Regulation 10 of the Basic Education Regulations has provided for the inaugural meeting convened and chaired by the secretary to the County Education Board or his representative within two weeks after appointment.

After the inaugural meeting, the Cabinet Secretary should provide direction about the business of the meeting, composition and appointment procedures of the members of the board. This is due to the fact that the new institutions are registered and members may not have prior experience of being members of Boards of Management.

KUPPET proposed that;

- a) The business of the inaugural meeting shall be;
 - i. Communication from the Secretary to the County Education Board
 - ii. Election of the chairperson for public schools
 - iii. Confirmation of the Secretary to the Board

- iv. Election of the Executive Committee
 - v. Nomination of bank signatories
 - vi. Co-opting of three members to the Board
- b) The cabinet secretary shall issue appointment letters of appointment to all members of the executive committee.

17. Definition of Terms

KUPPET proposed the following definitions-

Formative assessment or evaluation including diagnostic testing is a range of formal and informal assessment procedures employed by teachers during the learning process in order to modify teaching and learning activities to improve student attainment. It typically involves qualitative feedback (rather than scores) for both student and teacher that focuses on the details of content and performance.

Summative assessment (or summative evaluation) refers to the assessment of participants where the focus is on the outcome of a program. In contrast to formative assessment, this summarizes their development at a particular time.

2.2 Submissions from the Kenya Secondary Schools Heads Association (KSSHA)

The Kenya Secondary Heads Association noted the following omissions-

- (a) The Regulations are silent on the procedures and functions of the County Education Board;
- (b) Management and regulations on Parents Teachers Associations were lacking;
- (c) Regulations are silent on the parents' responsibility to pay school fees;
- (d) Regulations are silent on the auditing of institutional finances by the Ministry of Education (Audit Unit);

- (e) The Regulations have omitted the procedure for election of Chairperson and the Executive Committee of the Board of Management Signatories and co-option of members; and
- (f) The Regulations are silent on the payment of remuneration, fees allowances and expenses of the board of Management members as indicated in the Education Act Section 14, 23 and 63.

KSSHA made the following proposals for the amendment of the Regulations-

1. Amendment to the Third Schedule of the Education Act on the establishment and functions of Parents Associations to include the teachers hence it should be referred to as Parents Teachers Associations and not Parents Association.
2. Regulation 5(2) (a) be amended to read *“the head of the institution shall be the accounting officer of the institution answerable to the Board of Management, who have the delegated authority by the Cabinet Secretary.”*
3. Regulation 5(2) (c) be amended to read *“the head of the institution may initiate policy proposals for consideration by the Board of Management, County Education Board and Cabinet Secretary.”*
4. Regulation 5(3) be amended to read *“where any impropriety is established on the part of a head of an institution as per the TSC Act Cap no. 20 of 2012.”*
Further, the term impropriety should clearly be defined.
5. Regulation 5(4) be amended to replace the words “Cabinet Secretary” with the words “County Education Board”.
6. Regulation 6 be amended to replace the word “Chairmen” with the words “Chairperson”.
7. Regulation 7 (3) (d) be amended to include the County Commissioner, Sub-County Commissioner, Chief or any one of them in the area in which the institution is located.
8. Regulation 3 (f) be amended to read Parent Teachers Association of the institution

9. Regulation 3(g) to include: a representative of National Education Board, County Education Board or sub-county education board depending on the category of the school.
10. Regulation 8(1) be amended to include part (c) *The Composition of the Board of Management to be as specified in the Education Act.*
11. Regulation 10 be amended to include procedures of election of the chairperson, executive members, signatories and co-option of members of Board of Managements. Further, provision be made for procedures for convening of Board meetings, quorum for meetings and attendance by ex-official members.
12. Regulation 16 (d) be amended to replace the words the “County Government” with the “County Executive Member in charge of education”.
13. Regulation 32 be amended to include the following-
 - i. radicalization and acts of terrorism;
 - ii. immoral conducts e.g. homosexuality and lesbianism;
 - iii. devil worship and cultism; and
 - iv. sexual harassment.
14. Regulation 33 be amended to include a new sub-regulation (c) as follows-
(c) Destruction of school and public property
15. Regulation 34(1) to replace the words “County Director of Education” with the words “Board of Management”
16. Regulation 35(1) be amended to read-
“Where an institution is closed as in section 34(1), the board of management shall meet to ratify such closure and declare the students held back from attending school from a period not exceeding two weeks.”
17. Regulation 36 (3) be amended to read-
“The loss assessed under paragraph (2) shall be born by the person or group of persons found to bear the highest responsibility for the mass indiscipline.”
18. Regulation 45 be amended to include the time period within which the Cabinet Secretary should respond i.e. within thirty days.

19. Regulation 55 be reviewed and delete parents associations
20. Regulation 56 be amended to include-
 - (a) Academics
 - (b) Character
 - (c) Co-curricular activities and performing arts
21. Regulation 58(1) (b) be amended to delete the words “academic year” and replace with the words “academic term”.
22. Regulation 58(2) be amended to read-

“All learners who have undertaken a full course of primary education shall be eligible for admission to a secondary school provided they attain a minimum score to be determined and reviewed by the cabinet secretary from time to time.”
23. Regulation 59 be amended to read-

“A learner progressing from a primary school to a public secondary school having gone through the Ministry’s Selection Process”
24. Regulation 61 be amended to include a new sub –regulation as follows-

“2) the parent or guardian shall make full disclosure on the child’s medical history and records.”
25. Regulation 63 be amended to replace the words “hard and soft copy” with the words “physical and electronic form”.
26. Regulation 63(g) be amended to include staff so as to read- *“daily attendance registers for learners and staff.”*
27. That “Parents Association” be deleted and replaced with the words “Parents Teachers Association throughout the Regulations.”
28. Regulation 67(3) be amended to read-

“No institution shall prescribe a specific supplier of school uniforms or any materials for the parent or guardian without due prequalification process.”
29. Regulation 81 be amended to include a new subsection 2 as follows-

“when such school business is on co-curricular activities then such responsibility shall be vested on the Cabinet Secretary.”

30. Regulation 84(1) be reviewed to consider the following-

- Regional diversity
- Level and age of learners
- School culture
- Status of the school i.e. boarding or day

2.3 Submissions from the Kenya National Union of Teachers (KNUT)

The KNUT informed the Committee that the Ministry during the commencement of the drafting of the subject Regulations invited the Union on four (4) occasions. The first meeting was held in the Cabinet Secretary’s Board room in Jogoo House where the Union was informed that the process of drafting the Regulations had been started to fully operationalize the Act and were therefore to be further invited as one of the stakeholders in subsequent meetings. The Union expressed in that meeting the need to involve the primary users and implementers of the Regulations as it was the case in the enactment of the Basic Education Act, 2013 and the Teachers Service Commission, 2012 where consultations and fora were held at regional offices involving heads of institutions, teachers and parents.

Subsequent meetings were convened by the Ministry at the Kenya Institute of Curriculum Development in Nairobi. KNUT raised the need to regionalize and expand the participation of other stakeholders in these meetings. In the last meeting at KICD, it was resolved that a sub-committee be formed involving the Unions represented and Teachers Service Commission and other relevant stakeholders to facilitate further consultations.

KEPSHA and KESSHA were not invited to any of the meetings hence their critical input was lacking. Further, the Committee was never formed and no further consultations took place. Despite this, the Regulations were published. KNUT noted that without proper

consultations and public participation, the Regulations are unconstitutional and against the Parent Act and should therefore be rejected fully.\

Below are the proposed amendments to the Regulations by KNUT-

1. Regulation 2

Proposal: That the definition of “head of institution” be reviewed

Rationale: The Head of Institution as defined in the Regulations is in contravention of the definition under the Teachers Service Commission Act Section 2 part 1 as well as the Basic Education Act, Section 2 part 1 thereof. An institutional head should only be answerable to the employer, which is Teachers’ Service Commission and not as defined as exercising delegated authority of the Cabinet Secretary, Ministry of Education as the Accounting Officer for the institution. The head of an institution under the Basic Education Act, Section 62 is the Secretary to the Board of Management, which is an agent, body, organ of the Cabinet Secretary responsible for Basic education as provided for under Section 53 (2) of the Basic Education Act.

2. Regulation 5 (5)

Proposal: That the word “shall” be deleted.

Rationale: The use of the word “shall” to sanction revocation of a head of institution upon establishment of impropriety without appropriate disciplinary procedures not being mentioned or considered as provided by both the Teachers Service Commission Act, and the Employment Act, makes this provision of the regulations unconstitutional and contravenes the parent Acts which should prevail.

3. Regulation 7 (3)

Proposal: That the Membership of the Ad hoc committee constituted by the County Board of Management be reviewed to establish a lean and effective ad hoc committee.

Rationale: The Membership of the Committee is bloated; for instance, the requirement to have the area chief as a member when there is already area member

of county assembly and parliament is not necessary. This clause should be amended accordingly to

4. **Regulation 16**

Proposal: That the composition of the committee to manage co-curricular activities be reviewed to establish a lean committee.

Rationale: Composition of the committee to manage co-curricular activities is bloated. For example under Regulation 16 (d) and (e) the county government and the heads of respective basic education institutions within the county has not provided specifically the number of such representatives to sit in the committee. There is a possible abuse of power to have large numbers to sabotage or mismanage the operations of the committee. The number of representatives needs to be specified.

5. **Regulation 21 (1) and (2)**

KNUT noted that the sections are contradictory. On the one hand, sub-section 1 provides that the BoM shall reserve the right to instantly dismiss. Sub-section 2 states “the BoM shall not decide on a proposal to...” until the person has been given an opportunity to appear in person before the Board and has presented his defense.

Proposal: That the provision of the Employment Act, 2007 on terms and conditions of employment as well as disciplinary and termination of BoM employees be reproduced to guide the BOM on such instances.

Sub-regulation 3: a member of a non-teaching staff entrusted as an agent of the Cabinet Secretary should be under similar terms of employment as the rest of the BoM staff not designated to perform such certain functions. Directions and supervision of such employees should be left as a reserve to the BoM and not the Cabinet Secretary.

6. **Regulation 30**

KNUT noted that the requirement to subject school rules to public participation is highly unlikely to be enforceable. School rules are deemed to be internal rules and

regulations which ordinarily and as a matter of law supposed to comply with all relevant Acts.

Where the institution is a private institution, there are rules they would wish to apply for instance religious and the respective doctrinal believes might not easily be subjected to public participation. The regulation should only stipulate that where it is possible to involve the public be such rules should not contravene the Act and any other written law.

7. Regulation 36 (1) (b) and (c)

KNUT noted that the County Education Board should not be mandated to determine the conditions under which all or any of the students are to be re-admitted to the same or any institution. This mandate should be left to the School Board of Management. Similarly the CEB cannot order placement of a child into a correctional facility. This is only a decision that a parent or guardian can make. This regulation should be read with Regulation 39 where the School Board of Management is the one to undertake disciplinary process on the learner.

8. Regulation 41

The County Director of Education should not be involved in transfers of students from one institution to another. Once the BoM has decided to expel a student from an institution and an appeal is preferred and if such appeal is not favorable, then it can only be the parent or guardian to decide the next step. The decision, under whichever conditions should not be by the County Director of Education.

9. Regulation 49

The requirement of approval by the CS of any basic education institution is giving the powers to the CS which are already donated to the Institute of Curriculum Development under an Act of parliament.

10. Regulation 55: The reference to the Parents Teachers Association and Parents Association should be amended to read Parents Association as provided for in section 54 of the Basic Education Act, 2013.

11. **Regulation 56** provides that continuous assessment of learners is only in character, co-curricular activities and performing arts. Assessment through academic examinations has been left out. This is a serious departure from the Act. There should be added a sub-section (c) to include term school based examinations.

12. **Regulation 62 (c)**

Proposal: That the Regulation be deleted.

Rationale: There are parents or guardians who do not own cell phones. The regulations should be enforceable and not just on paper.

13. **Regulation 66** the Board of Management should be making reports to TSC on matters related to staffing levels at certain intervals. KNUT proposed that the reports should be issued every end of term.

14. **Regulation 67(2)**

Proposal: That the words “*without due prequalification*” be added after the last sentence to ensure that all uniform suppliers are properly prequalified.

Rationale: The mischief behind designing uniform suppliers is to ensure that proper uniform are worn by students.

15. **Regulation 81:** Matters of security of schools and institutions should be left to the BOM but the head of the institution should have mandate on the day to day running. KNUT proposed that the regulations should include a clause that the National Government should employ and deploy security personnel to institutions where possible.

16. **Regulation 84:** the timelines within which students report to school, i.e. not later than 7.15 a.m. is not applicable particularly in urban areas like Nairobi where parents have to drop their children in school as early as 6.00 a.m. in order to beat traffic to their work stations. KNUT proposed that this should be left to the institution to determine.

KEPSHA raised concern on the categorization of schools and supported the sentiments of the other institutions on the Regulations.

CHAPTER THREE SUBMISSIONS FROM THE CABINET SECRETARY, MINISTRY OF EDUCATION, SCIENCE AND TECHNOLOGY

Following its meeting with stakeholders, the Committee resolved to invite the Cabinet Secretary, Ministry of Education, Science and Technology to a consultative meeting to discuss the issues raised on the Regulations. The Ministry, however, did not attend the meeting, but sent a written response dated 23rd June, 2015.

1. Public Participation

The Ministry stated that four (4) meetings for stakeholders during the development of the regulations were held as follows:

- 1st and 2nd meetings were held at the Ministry Headquarters in the 10th Floor and 2nd Floor Conference Rooms on 15th July and 9th October, 2014 respectively.
- 3rd and 4th meetings were held at the Kenya Institute of Curriculum Development (KICD) on 29th August and 14th October, 2014 respectively.

The following stakeholders were involved:

1. County Directors of Education (CDEs)
2. Teachers Service Commissions (TSC)
3. Kenya Union of Post-Primary Education Teachers (KUPPET)
4. Kenya National Union of Teachers (KNUT)
5. Kenya National Parents Association (KNPA)
6. Kenya National Pre-Primary Teachers Association (KNPTA)
7. Kenya National Examinations Council (KNEC)
8. Elimu Yetu Coalition
9. National Education Board (NEB)
10. Kenya Institute of Special Education (KISE)
11. Kenya Institute of Curriculum Development (KICD)

12. Kenya Education Manage Institute (KEMI)

13. Technical, Industrial, Vocational and Entrepreneurship Training
(TIVET)

2. Definition of “Head of Institution”

The Teachers Service Commission (TSC) Act (No. 2) of 2012 defines “head teacher” of “principal” of a learning institution as a lead educator or administrator in primary or post – Primary level educational institution, appointed by the TSC and responsible for the implementation of educational policy guidelines and professional practices.

The definition of a head of institution under Regulation 2 does not contradict the TSC definition but rather is more encompassing as it caters for the management of resources provided by the cabinet secretary. The cabinet secretary gives agency to heads of institutions to be accountable for the financial resources disbursed to them for infrastructure and instructional materials for learners.

3. Revocation of the designation of a head of institution

The regulations do state that the Cabinet Secretary will make reference to TSC once impropriety is established, recommending revocation of agency of the specific Head Teacher / Principal. The Cabinet Secretary is therefore empowered by law to withdraw agency from an individual who misappropriates school funds. Article 237(2) 2 bestows the role of disciplining teachers to TSC, hence the need to refer the case of TSC for action and provision of a replacement.

4. Academic calendar

The Cabinet Secretary appreciated the necessity of an academic calendar. He noted that during weekends, boarding schools are at liberty and are expected to have their own programmes. Regulation 84(3) states in part that “...all

institutions with boarding facilities shall operate 24/7 hour basis.” Official operating hours were included as part of the Regulations after concerns were raised that learners were being forced to wake up early to go to school or report late home risking their health and security. It was also established that learners were being engaged in extra tuition creating in extra burden on parents through extra levies, and overstretching the capacity of young minds.

5. Powers of the Kenya Institute of Curriculum Development

The regulations are clear and according to the Fourth Schedule of the Constitution of Kenya, 2010 on the distribution of functions, the national government and the Cabinet Secretary is in charge of the education policies, standards, curricular, examinations and the granting of charters to universities.

6. Regulation 56 of the Basic Education Regulations may not have explicitly catered for academics; however this aspect is taken care of under continuous assessment of learners.
7. The omission of reporting intervals under Regulation 16 is noted. Reporting will be corrected to read quarterly.
8. In respect to consideration of other factors such as regional diversity, level and age of learners, school culture and status of the school, the Regulations put across general rules. Any other variations to these can be developed by the Ministry from time to time and implemented.

9. Parents Association

The Third Schedule of the Basic Education Act, states that Parents Association membership consists of all parents with pupils in a given school and has a representative of the teachers from the perspective school.

CHAPTER FOUR COMMITTEE OBSERVATIONS

The Committee observed the following:

1. Section 5 of the Statutory instruments Act, 2013 provides that before the making of a statutory instrument particularly where the proposed statutory instrument is likely to have a direct, or substantial indirect effect on business or restrict competition, the regulation making authority shall make appropriate consultations with persons who are likely to be affected by the proposed instrument. This section further provides that the consultation shall involve notification, either directly or by advertisement of bodies or organizations representative of persons who are likely to be affected by the proposed instrument; and invite submissions by a specified date or hold public hearings on the proposed instrument. Further, Article 10(2) of the Constitution of Kenya provides for public participation in the making or implementation of public policy decisions.

In light of these provisions, the Committee observed that the consultations carried out by the Ministry of Education, Science and Technology during the development of the Regulations were inconsistent with the provisions outlined above and were unsatisfactory;

2. The requirement under Regulation 30 to subject school rules to public participation is impractical. School rules are deemed to be internal rules and regulations which ordinarily and as a matter of law supposed to comply with all relevant Acts.
3. Regulation 84 provides for the official operating hours for all public and private institutions both day and boarding facilities. The timings, however, may not be applicable across the board e.g. in urban areas. The Committee was of the view that official operating hours should be left to the schools to determine taking into consideration the circumstances and dynamics unique to their respective locations.

4. The Committee noted that the proposals made by the stakeholders were mainly proposed amendments to the Regulations, which would be better dealt with through further consultations with the Ministry of Education, Science and Technology with a view to amend the provisions of the Basic Education Act No. 14 of 2013 to incorporate their proposals.

CHAPTER FIVE

COMMITTEE RECOMMENDATIONS

In light of the observations made, the Committee recommends the following-

1. That regulation 30 be annulled;
2. That Regulation 84 be annulled; and
3. That the Ministry of Education, Science and Technology should consult further with the stakeholders in the education sector with a view to amend the provisions of the Basic Education Act No. 14 of 2013 to incorporate their proposals.

APPENDICES

Legislative Supplement No. 21)

LEGAL NOTICE NO. 39

THE BASIC EDUCATION ACT

(No. 14 of 2013)

IN EXERCISE of the powers conferred by section 95 of the Basic Education Act, the Cabinet Secretary for Education, Science and Technology makes the following Regulations:—

THE BASIC EDUCATION REGULATIONS, 2015

PART I—PRELIMINARY

1. These Regulations may be cited as the Basic Education Regulations, 2015. Citation.
2. In these Regulations, unless the context otherwise requires- Interpretation.
 - "Board" has the meaning assigned to it under the Act;
 - "class mode" refers to the optimum number of learners in a classroom;
 - "Commission" means the Teachers' Service Commission;
 - "Director" means the County Director of Education;
 - "head of institution" means a teacher, head teacher, or principal appointed by the Teachers' Service Commission to head an institution and exercising delegated authority of the Cabinet Secretary, Ministry of Education as the Accounting Officer for the institution;
 - "institution" means an institution of basic education and training;
 - "institution of basic education and training" includes a pre-primary school, primary or a secondary school, an adult education institution and a middle-level college;
 - "KCSE" means the Kenya Certificate of Secondary Education;
 - "middle level college" means an institution offering pre-service and in-service teacher training courses that support basic education;
 - "Ministry" means the Ministry responsible for basic education;
 - "non-teaching staff" means all employees of the Boards of Governors who are not engaged in teaching or research;
 - "zone" means an education administrative area consisting of a cluster of schools identified by the County Education Board with the approval of the National Education Board.

16 APR 2015

PART II- MANAGEMENT OF BASIC EDUCATION INSTITUTIONS

A-Registration of Institutions

3. No person, body or organization shall establish or admit learners to a private or public institution without first obtaining written authority from the Cabinet Secretary.

Registration.

4. All institutions referred to in regulation 3 shall be registered in a manner and form prescribed through guidelines issued by the Cabinet Secretary.

Procedure for registration.

5. (1) The day to day management of a public institution of basic education and training shall be the responsibility of the head of the institution, who shall be appointed by the Commission.

Head of Institution.

(2) The head of institution—

- (a) shall be the accounting officer of the institution, an authority delegated by the Cabinet Secretary;
- (b) shall be the team leader for the implementation of the Ministry's policies and programs in the institution;
- (c) may initiate policy proposals for consideration by the County Education Board and the Cabinet Secretary.

(3) Where any impropriety is established on the part of a head of an institution, the Cabinet Secretary shall forthwith revoke the designation of such head of institution as the accounting officer and request the Teachers Service Commission for a replacement.

(4) Where the institution referred to paragraph (4) is a private institution, the Cabinet Secretary shall request the proprietor thereof to appoint a replacement.

(5) In paragraphs (3) and (4) above the Teachers Service Commission or the proprietor, as the case may be, shall institute disciplinary action against the concerned head of institution.

B-Boards of Management

6. The minimum qualifications of the Chairmen and members of Boards of Management shall be—

Qualifications for members to the Board of Management.

- (a) in the case of—
 - (i) a pre-primary or primary school; and
 - (ii) an adult education and continuing education centre, a diploma and a KCSE certificate respectively; and
- (b) in the case of a Secondary School or a middle level college, a degree from a university recognized in Kenya, and a KCSE Certificate respectively.

7. (1) The head of an institution shall, whenever a vacancy occurs in the Board of management of the institution for which he or she is

Application for membership.

responsible, notify the County Education Board accordingly through the sub-county Education Board office and request for the filling of the vacancy.

(2) Upon receipt of a request under paragraph (1), the County Education Board shall in writing request the nominating entities to forward names of suitably qualified persons to be appointed as members of the Board of Management.

(3) The County Education Board shall constitute an ad hoc committee to vet the suitability of the proposed nominees, which shall consist of—

- (a) a representative of the County Director of Education who shall be the Chairperson;
- (b) the member of County Assembly responsible for the area where the institution is located;
- (c) the Member of Parliament for the area in which the institution is located;
- (d) the Chief of the area in which the institution is located;
- (e) the sponsor, if any, of the institution;
- (f) a representative of the Parents Association, of the institution;
- (g) a representative of County Education Board, and
- (h) the head of institution, who shall be the committee Secretary.

8. (1) The committee appointed under regulation 7(3) shall ensure that—

Ad-hoc vetting panel.

- (a) the persons nominated to the Board of Management of any institution meet the requirements of Article 10 and Chapter Six of the Constitution of Kenya, 2010; and
- (b) the composition of the Board Members adheres to the two third gender rule.

(2) A Board of Management appointed under these regulations shall remain in office for a term of three years, which shall be renewable for one further term.

9. (1) The Cabinet Secretary may, on the recommendation of the County Education Board dissolve the Board of Management of an institution where—

Dissolution of the Board of Management.

(a) such Board—

- (i) is found guilty of gross misconduct;
- (ii) is deemed to be incapable of discharging its mandate as provided for in the Act; or
- (b) the institution changes its mandate or ceases to operate.

(2) Where a Board of Management is dissolved under paragraph (1), the County Education Board shall appoint an interim committee of

five members to assume the responsibility of management of the institution.

10. A newly appointed Board of Management shall hold its inaugural meeting, convened and chaired by the secretary to the County Education Board or his representative within two weeks after appointment.

Board of Management
Inaugural meeting

11. (1) The County Director of Education shall promote both recreational and competitive sports, games for physical development, performing and creative arts, talent shows and congresses in institutions of basic education and training by ensuring that—

Promotion of co-curricular activities

- (a) all students and pupils are accorded the opportunity to participate in activities from the institutional to the national level;
- (b) every institution has or can access adequate facilities for co-curricular activities; and
- (c) every institution shall put in place measures to promote co-curricular activities and ensure that all learners shall have access to suitable affordable sports kits.

(2) The calendar for all co-curricular activities shall be drawn up by the Cabinet Secretary in consultation with the relevant national and regional bodies and associations and shall be circulated to all institutions three months before the end of each school year.

12. No institution shall cause any parent or guardian to contribute any funds for co-curricular activities without written approval from the Cabinet Secretary on the advice of the respective County Director of Education, and all payments made hereunder shall be so authorized at all levels.

Contribution for activities.

13. All private institutions of basic education and training shall facilitate the participation of their learners in co-curricular activities at all levels.

Institutions to facilitate training

14. (1) Where funds from the government for a particular co-curricular activity are found to be inadequate the concerned institutions shall in writing notify the County Director of Education of the deficit three months prior to the commencement of the activity.

Insufficient funds for activities.

(2) Upon receipt of the notice, the County Director of Education in liaison with the County Education Board shall consult the Cabinet Secretary on how to meet the deficit.

15. Any person, head of institution or any member of the Board of Management who sends away a learner due to non-payment of activity fees by the parent or guardian without written authority from the County Director of Education commits an offence under the Act.

Offence

16. Every County Director of Education shall establish a committee to manage and coordinate co-curricular activities, which shall comprise one representative of the following respectively—

Committee

- (a) the County Director of Education, who shall be the Chairperson;

- (b) the Education Standards Quality Assurance Council, who shall serve as the Secretary;
- (c) the County Director of the Teachers Service Commission;
- (d) the county government;
- (e) the heads of the respective basic education institutions within the county; and
- (f) the private schools association within the county.

17. Every Board of Management shall, pursuant to section 59 (p) of the Act, recruit, employ, remunerate, promote, demote or terminate the services of any of its employees.

Appointment of non-teaching staff.

18. Persons belonging to a professional cadre and employed by the Board of Management shall be employed on such terms and conditions of service similar to those recommended for equivalent posts in the Civil Service and as per the applicable scheme of service.

Terms and conditions of employment for non-teaching staff.

19. The Board of management may appoint suitable semi-professional and subordinate staff, on such terms and conditions as shall be determined by the Board.

Employment of semi-professional by the Board.

20. Where a claim or grievance arises from an employee of the Board of management, the Board shall deal with the claim or grievance exhaustively in accordance with the Employment Act, 2007.

Board to deal with claims and grievances.
No. 11 of 2007.

21. (1) The Board of Management shall reserve the right to dismiss any of its employees instantly and without notice or pay in lieu of notice for reasons of gross misconduct as provided in the Employment Act, 2007.

Dismissal and termination of employment.
No. 11 of 2007.

(2) The Board shall not decide on a proposal to—

- (a) dismiss from employment any person employed by the Board;
- (b) terminate a contract between the Board of Management and its employees;
- (c) request the Cabinet Secretary to terminate the services of a person seconded to the Board of management,

on grounds of misconduct or grave professional default, until the person concerned has been given an opportunity to appear in person before the Board and has presented his defence.

(3) Subject to the provisions of paragraph (1) where a member of non-teaching staff is entrusted as an agent of the Cabinet Secretary to perform certain functions and such officer fails or neglects to perform the duties so assigned and sufficient grounds exist to discipline, terminate or dismiss the officer from the service, the Cabinet Secretary shall direct the cause of action to be taken against that officer and the Cabinet Secretary's decision shall be final.

C-Learners with Special Education Needs

22. Whenever it is necessary or appropriate to do so, a learner shall be assessed for placement and continuous support in an institution

Assessment of learners with special needs.

of basic education and training at the County Education Assessment and Research Centre set up at County level under section 46 of the Act.

23. Assessment under regulation 22 shall be carried out with the consent of the learner's parent or guardian at the Centres referred to in that regulation by qualified personnel, including, but not limited to medical staff, educationists, special needs experts, at the request of such parent or guardian or on the initiative of the institution.

Qualified persons
to assess.

24. Learners with special needs who have been assessed under regulation 22 shall be placed in any of the following facilities—

Types of
institutions.

- (a) regular institutions of basic education and training;
- (b) special needs institutions of basic education and training;
- (c) regular institutions of basic education and training with special needs unit;
- (d) talent academies for gifted and talented learners;
- (e) vocational institution; and
- (f) hospital schools and home-based schooling.

25. The Boards of Management for all the institutions specified in regulation 24 shall ensure *inter alia* that—

Facilities
suitable

- (a) the institution provides reasonable accommodation to all learners;
- (b) the pace of instruction is commensurate with learners' physical, mental or intellectual abilities;
- (c) catch-up classes or waivers are facilitated in specific subject areas, and
- (d) all learners are provided with adequate appropriate instructional materials.

26. The Kenya Institute of Curriculum Development shall provide differentiated curricula appropriate for the needs of learners with special needs.

Curriculum.

27. All learners with special needs shall be entitled to auxiliary services or assistive devices placed in their respective institutions.

Auxiliary services

28. All learners with special needs shall be evaluated and issued with appropriate certificates of achievement in the prescribed course undertaken.

Evaluation of
learners.

29. Notwithstanding anything under these regulations learners of school going age residing in children's homes, borstal institutions or other corrective facilities shall be provided with basic education and training pursuant to Article 53, 54, 55 and 56 of the Constitution.

Borstal institutions
etc.

PART III—SCHOOL RULES, DISCIPLINE PROCEDURES FOR STUDENTS AND EXCLUSION

30. Every institution of basic education shall develop school rules which shall be subjected to public participation and which shall not be inconsistent with the Act, or any other relevant written law.

School rules to be
subjected to
public participation

31. No institution shall implement the rules referred to in regulation 30 until they have been approved by the Board of Management of the institution.

School rules to be approved by the Board of Management.

32. A learner shall be deemed to be individually disciplined if involved in—

Individual liability for discipline.

- (a) physical fights;
- (b) bullying of other learners;
- (c) stealing;
- (d) playing truancy;
- (e) cheating in examinations;
- (f) abusing teachers or other persons in authority;
- (g) defiance of lawful instructions;
- (h) drug trafficking or substance abuse; or
- (i) any other conduct categorized as discipline by the Board of Management.

33. Learners shall be deemed to have participated in mass discipline in the institution if they jointly take part in—

Mass discipline.

- (a) unlawful demonstration;
- (b) boycott of classes or meals;
- (c) the destruction of school property; or
- (d) invasion of other institutions, shopping centres or homesteads.

34. (1) If the head of the institution notices any of the activities described in regulation 33 among the students, which in his or her opinion may result in the disruption of general activities in the institution, he or she shall close the institution and notify the County Director of Education accordingly within twenty four hours after such closure.

Notice to close institution in case of impending strike.

(2) The notice under paragraph (1) shall bear the signature of the head of the institution.

(3) The notice given under paragraph (1) shall only be deemed to be valid if it is signed by the head of the institution.

35. (1) In cases of mass discipline, the Board of Management of an institution may declare the institution closed and students held back from attending school for a period not exceeding two weeks.

Closure in case of mass discipline.

(2) The Board of Management shall submit a report to the County Education Board within two days after the closure of an institution under paragraph (1).

36. (1) The County Education Board may after considering the report of the Board of Management under regulation 35, and after

Action of the Board on receiving a report.

holding such inquiry as it may deem necessary to determine the cause of the mass indiscipline—

- (a) confirm or terminate the closure of the institution;
- (b) determine the condition under which all or any of the students are to be re-admitted to the same or any other institution; or
- (c) order placement to a correctional facility.

(2) ~~In cases of damage or destruction of property, the~~ management of the institution shall invite a registered loss assessor following the relevant law to determine the value of the loss.

(3) The loss assessed under paragraph (2) shall be borne by the person found to bear the highest responsibility for the mass indiscipline.

37. Every institution shall establish and keep a register of indisciplined learners indicating the name, class, category of indiscipline, date and warning or any other corrective measures taken by the institution. Register to be

38. If the head of the institution is of the opinion that— nsion 1

- (a) the acts of indiscipline have persisted in spite of the warnings or corrective measures taken under these regulations; and
- (b) if the act of indiscipline is likely to threaten the safety of the other learners in the institution,

the head of the institution shall issue the learner, with a suspension letter addressed to the parent or guardian indicating the nature of the indiscipline and specifying the date the learner, accompanied by the parent or guardian is required to appear before the Board of Management of the institution.

39. (1) The particulars of the complaint preferred against the learner shall be read out to the parent or guardian and the learner at the meeting with the Board of Management under regulation 38, and the learner shall be asked to defend himself or herself. Procedure for handling disciplinary

(2) Where the parent or guardian fails to appear, the business of the Board shall be adjourned, and the matter shall be deferred and a new date set and communicated for the parties to appear.

(3) Where the parent or guardian fails to attend on the rescheduled date, the case shall be heard and determined such absence notwithstanding.

(4) In all disciplinary proceedings affecting a learner the attendance of the Sub-county Education Officer shall be mandatory.

(5) The recommendations of the Board of Management shall within two days be communicated to the County Director of Education.

40. Where the County Director of Education receives the recommendation of the Board of Management then he or she shall seek the advice of the County Education Board as to whether to— Decision of indiscipli

- (a) order for conditional or unconditional re-admission of the learner;
- (b) transfer the learner to an alternative institution; or
- (c) transfer the learner to a corrective center in the context of education.

41. Any person aggrieved by a decision under regulation 40 may appeal to the Education Appeals Tribunal. Appeals to the Tribunal.

42. No school shall withdraw the registration of a learner as a candidate in a national examination as a form of punishment. No withdrawal of learner's candidature.

43. A student shall only be transferred by the County Director of Education on the following grounds— Transfer of learner.

- (a) transfer on request in writing by the parent or guardian;
- (b) on medical grounds; or
- (c) as a result of insecurity or natural calamity.

PART IV—FREE AND COMPULSORY EDUCATION

44. No public school or institution shall issue alternative fees structures other than those approved by the Cabinet Secretary. Fees.

45. No person or Board of Management in a public institution of basic education and training shall alter or increase fees without written authority from the Cabinet Secretary. No fees increment without the authority of the Cabinet Secretary.

46. The members of the Board of Management of an institution which contravenes regulation 44 or 45 shall jointly and severally be guilty of an offence under the Act. Offence.

47. (1) The minimum age for admission into a primary school shall be six years. Minimum entry.

(2) Notwithstanding paragraph (1), no person shall deny any learner of school-going age admission in a primary school for lack of proof of age.

48. A learner transiting from a pre-primary school to a public primary school of a parent's or guardian's choice shall not be subjected to— Transit of a learner.

- (a) entry examination except as provided for in section 34(4) of the Act;
- (b) any interview; or
- (c) admission fee.

49. All persons deployed to teach in basic education institutions of learning and training shall be required to have undertaken a training program approved or recognized by the Cabinet Secretary and registered by Teachers Service Commission. Qualification of teachers.

50. (1) A person, body, organ or institution responsible for the management of a pre-primary, primary or secondary school shall have provision for the following— Mandatory provision in institutions.

- (a) a first aid kit for each class and training on the use thereof for the whole school community;
- (b) adequate safe and clean water;
- (c) adequate, safe, clean and appropriate sanitation facilities which are age and gender appropriate;
- (d) disability-friendly facilities and environment;
- (e) safe and appropriate playing grounds and equipment;
- (f) spacious and conducive learning rooms; and
- (g) appropriate furniture and utilities.

(2) All boarding institutions shall have provisions for—

- (a) a qualified nurse;
- (b) a watchman; and
- (c) other suitable adult supervision within the boarding facilities.

51. The Kenya Institute of Curriculum Development shall develop— Curriculum Development

- (a) a national basic education curricular in line with the Kenya Institute of Curriculum Development Act, 2013; and No. 4 of 2
- (b) curricula for learners with special needs.

52. The Kenya Institute of Curriculum Development may accredit any other agency involved in curriculum development with the approval of the Cabinet Secretary in line with the Kenya Institute of Curriculum Development Act, 2013. Accreditation other agencies
No. 4 of 2

53. The Cabinet Secretary shall retain the policy-making and oversight role in the preparation and approval of curriculum and vetting of all educational materials to be used in institutions. Policy making

54.(1) The Board of Management of a public institution or the manager of a private institution, as the case may be, shall ensure that the curriculum and the instructional materials in use therein have been developed or approved by the Kenya Institute of Curriculum Development. Curriculum approval: Kenya Institute of Curriculum Development

(2) Any person who contravenes the provisions of paragraph (1) commits an offence and shall be liable to prosecution under the provisions of the Kenya Institute of Curriculum Development Act, 2013, and any other written law. No. 4 of 2

55. Notwithstanding regulation 54 an institution may in consultation with its Parents Teachers Association or Parents Association, recommend supplementary instructional materials for use by the learners. Supplementary materials

56. There shall be continuous assessment of the learners' progress in the following assessment areas— Conduct

- (a) character; and
- (b) co-curricular activities and performing arts.

57. (1) The Cabinet Secretary shall issue guidelines on course books to be used in public primary and secondary schools from time to time.

Guidelines on course books.

(2) All schools shall establish and maintain a safe and secure room for storage of instructional materials.

~~(3) Any person found in possession of instructional materials bearing the official stamp of any institution without due authority from the management of the institution commits an offence.~~

58. (1) A learner admitted into an institution of basic education and training shall be entitled to progress to the next level, unhindered except—

Admission of a learner.

- (a) on the recommendation of a qualified medical practitioner; or
- (b) due to non-attendance of the relevant programme for one academic year.

(2) All learners who have undertaken a full course of primary education shall be eligible for admission to a secondary school regardless of their scores in the summative evaluation of the primary education.

(3) No school or any institution of basic education shall compel a parent or guardian to transfer a learner to a different institution without written approval of the County Director of Education.

59. A learner progressing from a primary school to a public secondary school of his or her choice shall not be subjected to any interviews, pre-qualification examinations or be required to make any payments before admission.

Progression of learner.

60. The County Director of Education in consultation with the County Education Board shall institute affirmative action to enable learners from minority or marginalized groups, or groups with special needs or those living in especially difficult circumstances to be admitted to secondary schools.

Learners living in difficult circumstances.

61. Every institution shall maintain the following data on every learner—

Bio-data of learners.

- (a) the name and date of birth;
- (b) the name and contact information of the learner's parent or guardian; and
- (c) medical history and other special needs.

62. Every institution shall maintain the following information on the parent or guardians of the learners—

Information on parents.

- (a) full name, nationality and place of residence;

- (b) occupation; and
- (c) two telephone contacts.

63. Every institution shall establish and maintain the following registers and records in both hard and soft copies—

Reg
rec

- (a) the registration certificate of the institution;
- (b) the institutions' books of accounts;
- (c) registers of the institutions' movable and immovable assets;
- (d) admissions registers, indicating the date and admission number of the learners;
- (e) parents register;
- (f) visitors books;
- (g) daily attendance registers for learners;
- (h) learners progress reports;
- (i) register of learners' transfers, drop-out and completion;
- (j) the school title deed or land allotment letter or a copy thereof if the title is held by the sponsor, proprietor or trustee;
- (k) register of disciplinary action taken against learners;
- (l) an inventory of all instructional materials, stationery equipment and assistive devices available and their state of repair or use;
- (m) syllabi;
- (n) an approved list of text books and other instructional material; and
- (o) any other records recommended by the Education Standards Quality Assurance Council.

64. Every institution of basic education and training shall have provisions for the following—

- (a) outdoor playing facilities and equipment, both for outdoors and indoors with provisions for persons with disabilities;
- (b) administrative offices;
- (c) sanitary facilities, including bathrooms for both learners and other persons, segregated by gender and age;
- (d) kitchen and dining room;
- (e) standard classrooms measuring 7m x 8m for 50 learners for primary school or 45 learners for secondary schools or standard classrooms measuring 7m x 6m for 25 learners for pre-primary learners;
- (f) store rooms; and

(g) a science room or other rooms for specialized subjects.

65. (1) All institutions shall provide—

Guidance programs.

- (a) guidance services to all learners, distinct from counseling services;
- (b) counselling services as an essential corrective measure; and
- (c) spiritual development services focusing on moral values and character formation of the learners.

(2) Any person offering professional counselling services to institutions shall be duly qualified and registered as a counselor under the appropriate law, and approved by the Cabinet Secretary.

66. It shall be the responsibility of the Board of Management to make a report to the Teachers Service Commission and the County Education Board on matters related to staffing levels.

Report on shortfall of teaching staff.

67. (1) Every Board of Management of a public institution or manager of a private institution shall, in consultation with the respective Parents Association, develop a common dress code for learner, which shall have unique features for identification and branding.

Uniform.

(2) In the case of a sponsored school the concerned Board of Management shall develop the dress code in consultation with the Parents' Association and the sponsor.

(3) No institution shall prescribe a specific supplier of school uniforms or any other materials for the parent or guardian.

PART V—ALTERNATIVE PROVISIONS OF BASIC EDUCATION, TRAINING AND CONTINUING ADULT EDUCATION

68. Institutions of Alternative Basic Education, Training and Continuing Adult Education may utilize facilities of the existing institutions of basic education or other public and private institutions or premises on request.

Institutions of alternative basic and continuing adult education.

69. Learners under the age of eighteen in institutions to which this Part applies shall be eligible for capitation grants under the free and compulsory education programme.

Grants.

70. Only curricula approved by the Kenya Institute of Curriculum Development shall be offered by all institutions of Alternative Basic, Adult and Continuing Education.

Curriculum of institutions of alternative basic and continuing adult education.

71. Learners above the age of eighteen years shall only be admitted into the institutions of alternative basic, adult and continuing education.

Learners above the age of eighteen years.

72. While admitting learners to institutions of alternative basic, adult and continuing education, the institution shall use the learner's prior ability, knowledge and competencies in determining placement at an appropriate level of education.

Placement at an appropriate level of education.

73. Institutions of alternative basic, adult and continuing education shall conduct their programs through accelerated and self-directed learning to cover the prescribed curriculum.

Conduct of pi

74. Public institutions of alternative basic, adult and continuing education may charge such levies as may be approved by the Cabinet Secretary in consultation with the County Education Board.

Levies to be charged.

75. Institutions of alternative basic adult and continuing education shall be provided with grants for infrastructure improvement by the national government through the relevant Ministries.

Infrastructure

76. A middle level institution of basic education shall include an institution offering pre-service and in-service teacher training courses that support basic education.

Middle level institution.

77. No institution registered as a public middle level institution of basic education and training shall be transferred or converted to any other use other than that for which it was registered or established, except with the approval of the Cabinet Secretary.

Registered middle level institution

78. (1) All private middle level institutions of basic education and training shall only offer courses or programs whose curriculum is developed or approved by the Kenya Institute of Curriculum Development or by any agencies recognized by the Cabinet Secretary.

Curriculum in middle level institution.

(2) Certification of the courses referred to under paragraph (1) or programs shall be the responsibility of Kenya National Examinations Council or any other body recognized by the Cabinet Secretary.

PART VII—CATEGORIZATION OF INSTITUTIONS OF BASIC EDUCATION AND TRAINING

79. The institutions categorized as provided for under section 43 (1) of the Act shall be registered with reference to—

Classification of institutions.

- (a) the gender of learners admitted;
- (b) the catchment area of the school as either national, extra-county, county or sub-county;
- (c) boarding or day school;
- (d) low cost boarding school (in case of primary school); and
- (e) special needs education institutions.

80. No person or Board of Management shall change the status of a registered institution without re-registration.

Re-registration.

81. Matters of safety, security and hygiene in institutions of basic education and training shall be the responsibility of the Board of Management provided for under the Act.

Environment, committee of the board of management.

82. The Board of Management of an institution shall put in place reasonable measures regarding the hygiene, security and safety of learners while in and outside the institution while travelling on the institution's business.

Security measures

83. The Board of Management of an institution shall ensure that—

Board of Management to ensure security

- (a) all institution compound is clearly demarcated and fenced with a secure gate;
- (b) the classrooms, dormitories, offices, kitchens, toilets and other physical structures are clean, well maintained, safe and properly utilized;
- (c) the school environment is such as to nurture positive health and is conducive to learning and social development without compromising diversity or disability;
- (d) the environment is drug free;
- (e) all learners, particularly at lower levels, are conversant with road safety rules and other survival skills;
- (f) that regular fire disaster response drills are conducted in preparedness for fires and other disasters by all stakeholders;
- (g) all doors should open to the outside and windows should have no grills;
- (h) lightning arresters are installed in lightning-prone areas;
- (i) fire extinguishers and alarms are available and functional;
- (j) all institutional vehicles are in sound mechanical condition; and
- (k) in institutions with boarding facilities, the space between the beds shall be at least 1.2 metres while the corridors or pathways shall be at least 2 metres wide.

PART VIII—OFFICIAL SCHOOL HOURS

84. (1) The official operating hours for all day public or private institutions shall be Monday to Friday—

Official school hours.

- (a) 8.00 a.m. to 3.30 p.m. for class hours; and
- (b) 3.30 p.m. to 4.45 p.m. for co-curriculum activities.
- (2) No day institution of basic education and training shall require learners to report earlier than 7.15 a.m.
- (3) Notwithstanding paragraph 84 (1), all institutions with boarding facilities shall operate 24/7 hour basis as follows—
 - (a) 8.00 a.m. to 3.30 p.m. for class hours Monday to Friday;
 - (b) 3.30 p.m. to 4.45 p.m. for co-curriculum activities Monday to Friday;
 - (c) 5.00 p.m. to 7.30 p.m. for self-directed activities Monday to Friday;
 - (d) 7.30 p.m. to 9.30 p.m. preps Monday to Friday;
 - (e) 9.30 p.m. to 6.00 a.m. bedtime Monday to Friday; and
 - (f) 6.00 a.m. to 8.00 a.m. supervised routine activities.
- (4) No boarding institution shall send away an unaccompanied learner later than 9.00 a.m.
- (5) The latest reporting time for learners to a boarding institution shall be 5.00 p.m.

85. The following Regulations are revoked—	Revocation—
(a) The Education (Education Standards) Regulations, 1968;	LN 106/1968
(b) The Education (Board of Governors) Order, 1969;	LN 17/1969
(c) The Education (Board of Governors) (Administration) Regulations, 1969;	LN 18/1969
(d) The Education (Registration of Unaided Schools) Regulations, 1969;	LN 201/1969
(e) The Education (School Discipline) Regulations, 1972;	LN 40/1972
(f) The District Education Boards Regulations, 1973;	LN 207/1973
(g) The Education (School Committees) Regulations, 1978; and	LN 190/1978
(h) The Education (Board of Governors) (Non-Teaching Staff) Regulations, 1993.	LN 262/1993

Made on the 4th April, 2015.

JACOB T. KAIMENYI,
Cabinet Secretary for Education, Science and Technology.

LEGAL NOTICE NO. 40

THE MINING ACT (Cap. 306)

IN EXERCISE of the powers conferred by section 92 (1) (xviii) of the Mining Act, the Cabinet Secretary for Mining makes the following Regulations:—

THE MINING (PRESCRIPTION OF ROYALTY RATES FOR DIATOMITE) REGULATIONS, 2015

1. These Regulations may be cited as the Mining (Prescription of Royalty Rates for Diatomite) Regulations, 2015.

2. The royalty rates payable for diatomite shall with effect from the 1st July, 2013, be as follows—

- (a) from 1st July, 2013 to 30th June, 2015—2% of gross sales value;
- (b) from 1st July, 2015 to 30th June, 2017—3% of gross sales value;
- (c) from 1st July, 2017 to 30th June, 2019—4% of gross sales value;
- (d) from 1st July, 2019 and thereafter—5% of gross sales value.

3. Legal Notice No. 187 of 2013, shall not apply to the diatomite products.

Dated the 24th February, 2015.

NAJIB BALALA,
Cabinet Secretary for Mining.

**MINUTES OF THE 8TH SITTING OF THE SENATE SESSIONAL COMMITTEE ON
DELEGATED LEGISLATION HELD ON THURSDAY, 7TH MAY, 2015 AT 9.00 A.M. IN
THE 2ND FLOOR BOARDROOM, KICC**

PRESENT

- | | |
|-----------------------------|--------------------|
| 1. Sen. Stephen Sang | - Chairperson |
| 2. Sen. Judith Sijeny | - Vice-Chairperson |
| 3. Sen. Daniel Karaba | |
| 4. Sen. Godliver Omondi | |
| 5. Sen. (Dr.) Boni Khalwale | |
| 6. Sen. Boy Juma Boy | |

ABSENT WITH APOLOGY

1. Sen. Joy Gwendu
2. Sen. Liza Chelule
3. Sen. Emma Mbura

IN ATTENDANCE

1. Ms. Josephine Kusinyi
2. Ms. Beatrice Kapei
3. Ms. Carol Kirorei

SENATE

- | |
|-------------------|
| - Legal Counsel |
| - Legal Counsel |
| - Committee Clerk |

MIN. NO. 73/2015

- PRELIMINARIES

The Chairperson called the meeting to order at 9.20 a.m. followed by a word of prayer.

MIN. NO. 74/2015

- ADOPTION OF THE AGENDA

The agenda of the sitting was adopted as presented having been proposed by Sen. Khalwale and seconded by Sen. Godliver

MIN. NO. 75/2015

- CONFIRMATION OF PREVIOUS MINUTES

- i. The minutes of the 7th sitting were confirmed as a true record of the proceedings after being proposed by Sen. Godliver and seconded by Sen. Khalwale.

MIN. NO. 76/2015

- MATTERS ARISING

2. Regulation 5(4) is unconstitutional as it attempts to take away the constitutional functions of the Teachers Service Commission (TSC) under Art. 237 of the Constitution.
3. The minimum requirement under Regulation 6 of a university degree for members of a Board of Management of a secondary school or middle level college may not be feasible in some areas of the country.
4. What was the rationale of reducing the term of members of a Board of Management to a term of three years renewable for one further term under Regulation 8(2)?
5. Fees under Regulation 44 should be restructured as per the classification given under Regulation 79.
6. The Ministry should inspect learning institutions regularly to ensure compliance with Regulation 83.

MIN. NO. 78/2015

-ANY OTHER BUSINESS

i. Foreign Visits

The Committee resolved to undertake benchmarking visits to the following countries:

- a) Trinidad and Tobago;
- b) New Zealand;
- c) Botswana; and
- d) Ghana.

MIN. NO. 79/2015

-DATE OF NEXT MEETING

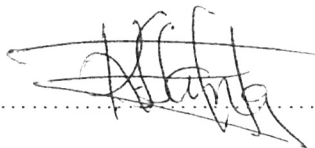
The next meeting would be on Tuesday, 12th May, 2015.

MIN. NO. 80/2015

-ADJOURNMENT

The meeting was adjourned at 10.30 a.m.

SIGNED:

A handwritten signature in black ink, appearing to be 'H. H. H.', written over a horizontal dotted line.

(CHAIRPERSON)

DATE:

26/05/15

**MINUTES OF THE 10TH SITTING OF THE SENATE SESSIONAL COMMITTEE ON
DELEGATED LEGISLATION HELD ON THURSDAY, 14TH MAY, 2015 AT 9.00 A.M.
IN THE BIG BOARDROOM, 4TH FLOOR BOARDROOM, KICC**

PRESENT

- | | |
|-----------------------------|--------------------|
| 1. Sen. Stephen Sang | - Chairperson |
| 2. Sen. Judith Sijeny | - Vice-Chairperson |
| 3. Sen. (Dr.) Boni Khalwale | |
| 4. Sen. Joy Gwendu | |
| 5. Sen. Liza Chelule | |

ABSENT WITH APOLOGY

1. Sen. Emma Mbura
2. Sen. Daniel Karaba
3. Sen. Godliver Omondi
4. Sen. Boy Juma Boy

IN ATTENDANCE

- | | |
|------------------------|------------------------------|
| 1. Mr. Mudzo Nzili | - National Chairman, KNUT |
| 2. Mr. Albanus Mutisya | - National Treasurer, KNUT |
| 3. Mr. Omboko Milemba | - Chairman, KUPPET |
| 4. Mr. Obwocha Edward | - Secretary, KUPPET |
| 5. Mr. Stephen Kimotho | - KUPPET |
| 6. Mr. Francis Warui | - KEPSHA |
| 7. Mr. Charles Kado | - KEPSHA |
| 8. Mr. John Awiti | - National Chairman, KSSHA |
| 9. Mr. Nicodemus Bore | - CEO, KSSHA |
| 10. Ms. Grace Watuku | - National Secretary, KSSHA |
| 11. Ms. Rosemary Saina | - National Treasurer, KSSHA |
| 12. Mr. Indimuli Kahi | - National Vice-Chair, KSSHA |
| 13. Mr. Paul Kibet | - KSSHA |

IN ATTENDANCE

- | | |
|----------------------|------------------------------------|
| 1. Ms. Carol Kirorei | SENATE
- Committee Clerk |
|----------------------|------------------------------------|

- | | |
|-----------------------|---------------------------|
| 2. Ms. Lucy Radoli | - Legal Counsel |
| 3. Mr. Francis Mutulu | - Media Relations Officer |
| 4. Ms. Said Osman | - Research Officer |
| 5. Mr. Charles Musera | - Serjeant-At-Arms |

MIN. NO. 87/2015

- PRELIMINARIES

The Chairperson called the meeting to order at 9.33 a.m. followed by a word of prayer. He welcomed officials from Kenya National Union of Teachers (KNUT), Kenya Union of Post Primary Education (KUPPET), Kenya Secondary Schools Heads Association (KSSHA) and Kenya Primary Schools Heads Association (KEPSHA). He then led in a self-introductory session.

The Chairperson informed those present that the purpose of the meeting was to receive the views of the various institutions on the Basic Education Regulations, 2015. He informed the meeting that the Cabinet Secretary is given mandate to make Regulations subject to laid down procedures. The Regulations are then published and transmitted to the responsible Clerk of Parliament, and referred to the Committee on Delegated Legislation. The Committee then scrutinizes the Regulations, to ensure that they conform to the provisions of the Statutory Instruments Act, 2013. The Committee may annul or accede to the Regulations or parts thereof. He noted that following the public discourse on the Regulations, the Committee resolved to invite the stakeholders in the education sector and engage them in order to receive their concerns on them. He added that the new Constitutional dispensation requires public participation and stakeholder consultations, and that the Committee was keen to establish whether this took place in the development of the Regulations.

MIN. NO. 88/2015

- ADOPTION OF THE AGENDA

The agenda of the sitting was adopted as presented having been proposed by Sen. Chelule and seconded by Sen. Khalwale.

MIN. NO. 89/2015

**- MEETING WITH KNUT, KUPPET, KEPSHA AND
KSSHA**

Submissions from KUPPET

Mr. Omboko Milemba highlighted the concerns of KUPPET as follows:

1. Stakeholder consultation was not satisfactorily carried out in the development of the Regulations. At the last meeting with the Ministry, the Ministry agreed to look into contentious issues raised by the various stakeholders, but went ahead to publish the Regulations without addressing the issues.
2. Regulation 2 defines the “head of institution” as a teacher, head teacher or principle appointed by the TSC to head an institution and exercising delegated authority of the Cabinet Secretary, Ministry of Education. This contradicts the TSC Act definition.
3. Regulation 8 purports to do away with unions and brings in a new player the Parents Association while leaving out the Parents Teachers Association which is an active player in schools.
4. Regulation 5(2)(a) should be amended to delete the words ‘an authority delegated by the Cabinet Secretary’ after the word “institution”.
5. Regulation 5(3) requires that where impropriety is established on the part of a head of an institution, the Cabinet Secretary shall revoke the designation and ask the TSC for a replacement; whereas the TSC has the role of appointing, transferring and disciplining head teachers as per Art 237(2) of the Constitution and section 24 and 34 of the TSC Act.
6. Regulation 5(5) be amended to substitute the word “shall” with the word “may”

7. Regulation 58(2) should state clearly if KCPE remains to be a determining factor in secondary level entry. The Regulation at present only refers to “summative evaluation”.
8. Regulation 81 should provide for reporting on matters of safety, security and hygiene in institutions.
9. The Regulations do not include the academic calendar for educational institutions, thus providing a pathway for institutions to have different academic calendars which would result in confusion.
10. The Regulations do not provide for punishment for any person who contravenes its provisions. In this regard, KUPPET proposed that a provision be included that anyone who commits an offence shall be prosecuted under section 92 of the Basic Education Act, 2013 or any other applicable law.
11. Regulation 25(a) fail to indicate the meaning of reasonable accommodation, whereas learners with special needs must be given special attention. They propose that all institutions ensure that physical and social environment is disability friendly.
12. Regulation 25(2) provides for various committees to be set up under the County Education Board. The Regulations should define the roles of the committees. Further, the Committees contained in the Act are not included in the Regulations, therefore, failing to implement the provisions of the Act.

Mr. Omboko urged the Committee to annul the Regulations in totality to have the process of development of the Regulations restarted.

Submissions from KNUT

Mr. Mudzo Nzili from KNUT reiterated the concerns raised by KUPPET; that there was unsatisfactory stakeholder input and there are inconsistencies between the Regulations, the TSC

Act, the Basic Education Act and the Constitution creating conflict. He urged the Committee to annul the Regulations and have them submitted to the correct procedures involving stakeholder input. He informed the meeting that KNUT would submit written memoranda with a detailed position of the institution. The following issues were however highlighted:

1. Regulation 53 takes over the powers of the Kenya Institute of Curriculum Development.
2. Regulation 56 should include school based examinations rather than only character development and performing arts.
3. Regulation 62 (c) requires two telephone contacts of each parent; however some parents may not have phones or may have only one line.
4. Regulation 66 should include intervals for reporting e.g. quarterly or biannually.
5. Regulation 81 has shortfalls in terms of security.
6. The Regulations state that a student should not report earlier than 7:15a.m. in a day institution. This would lock out students reporting earlier and would pose security risks.

Submissions from KSSHA

Mr. John Awiti informed the meeting that KSSHA was never involved at any stage during the development of the Regulations. He highlighted the following concerns:

1. The Regulations are silent on:
 - the procedures and functions of the County Education Board;
 - management and regulation of Parents Teachers Associations;
 - parents responsibility to pay school fees;
 - the auditing of institutional finances by the Ministry of Education;
 - the procedure for election of the Chairperson and Executive Committee of the Board of Management, signatories and co-option of members;

- the payment of remuneration, fees allowances and expenses of the Board of Management members as indicated in sections 14, 23 and 63 of the Basic Education Act.
2. Regulation 5(2)(a) be amended to read: “the head of the institution shall be the accounting officer of the institution answerable to the Board of Management, who have the delegated authority by the Cabinet Secretary.”
 3. Regulation 5(2)(c) be amended to read “the head of the institution may initiate policy proposals for consideration by the Board of Management, County Education Board and Cabinet Secretary.”
 4. Regulation 5(3) be amended to read “Where any impropriety is established on the part of a head of an institution as per the TSC Act.” Further, the term “impropriety” should be defined.
 5. Regulation 5(4) be amended to replace the words “Cabinet Secretary” with “County Education Board”.
 6. Regulation 6 be amended to replace the word “Chairmen” with the word “Chairperson”
 7. Replace Parents Association with Parents Teachers Association throughout the Regulations as the parent Act provides for the latter.
 8. Regulation 32 to include radicalization and acts of terrorism; immoral conducts e.g. homosexuality and lesbianism; devil worship and cultism; and sexual harassment.
 9. Regulation 33 should include destruction of school and public property.
 10. Regulation 56 be amended to include academics, character and co-curricular activities and performing arts.

11. Regulation 58(1)(b) be amended to replace the words “academic year” with the words “academic term”.
12. Regulation 58(2) be amended to read: “All learners who have undertaken a full course of primary education shall be eligible for admission to a secondary school *provided they attain a minimum score to be determined and reviewed by the Cabinet Secretary from time to time.*”
13. Regulation 61(2) be added providing that the parent or guardian shall make full disclosure on the child’s medical history and records.
14. Regulation 67(3) be amended to read “No institution shall prescribe a specific supplier of school uniforms or any materials for the parent or guardian *without due prequalification process.*”
15. Regulation 81 be amended to include sub section (2) to read “when such school business is on co-curricular activities then such responsibility shall be vested in the Cabinet Secretary.”
16. Regulation 84(1) be reviewed to consider regional diversity, level and age of learners, school culture and status of the school i.e. boarding or day.
17. The Regulations do not provide a schedule for weekends and boarding schools.

Mr. Awiti concluded by stating that there was need for thorough comprehensive Regulations developed with adequate input of stakeholders.

Submissions from KEPSHA

KEPSHA raised concern on the categorization of school and supported the sentiments of the other institutions on the Regulations.

The Chairperson thanked the institutions for attending the meeting and giving their views on the Regulations. He informed the meeting that the *Committee would invite the Cabinet Secretary and the Teachers' Service Commission (TSC) and engage them on the Regulations and the concerns raised*. He added that the Committee would make a decision on after the meeting.

He reiterated the Constitutional provisions on public participation and the importance of identification of stakeholders to avoid leaving out important institutions and their views.

MIN. NO. 90/2015

-DATE OF NEXT MEETING

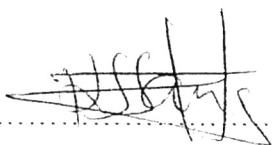
The next meeting would be on Wednesday, 20th May, 2015.

MIN. NO. 91/2015

-ADJOURNMENT

There being no other business, the meeting was adjourned at 1.15 p.m.

SIGNED:



(CHAIRPERSON)

DATE:

26/5/15

**MINUTES OF THE 11TH SITTING OF THE SENATE SESSIONAL COMMITTEE ON
DELEGATED LEGISLATION HELD ON WEDNESDAY, 20TH MAY, 2015 AT 10.00
A.M. IN THE BIG BOARDROOM, 4TH FLOOR BOARDROOM, KICC**

PRESENT

- | | |
|-----------------------|--------------------|
| 1. Sen. Stephen Sang | - Chairperson |
| 2. Sen. Judith Sijeny | - Vice-Chairperson |
| 3. Sen. Daniel Karaba | |
| 4. Sen. Boy Juma Boy | |
| 5. Sen. Liza Chelule | |

ABSENT WITH APOLOGY

1. Sen. (Dr.) Boni Khalwale
2. Sen. Joy Gwendu
3. Sen. Emma Mbura
4. Sen. Godliver Omondi

IN ATTENDANCE

1. Ms. Carol Kirorei
2. Ms. Beatrice Kapei
3. Mr. Francis Mutulu
4. Mr. Said Osman

SENATE

- | |
|---------------------------|
| - Committee Clerk |
| - Legal Counsel |
| - Media Relations Officer |
| - Research Officer |

MIN. NO. 92/2015

- PRELIMINARIES

The Chairperson called the meeting to order at 10.25 a.m. followed by a word of prayer.

MIN. NO. 93/2015

- ADOPTION OF THE AGENDA

The agenda of the sitting was adopted as presented having been proposed by Sen. Chelule and seconded by Sen. Karaba.

MIN. NO. 94/2015

**- CONSIDERATION OF THE TOBACCO CONTROL
REGULATIONS, 2015**

Ms. Kapei briefed Members on the Tobacco Control Regulations, 2015 as follows:

1. The Regulations are made pursuant to Section 53(1)(a),(b),(c), and (2)(a) and (b) of the Tobacco Control Act. The key purpose of the regulations is to give effect to the Tobacco Control Act. They specifically address the control of tobacco, production, manufacture, sale, labelling, advertising, promotion and sponsorship.
2. Part II regulates the following issues-
 - (a) The use of both health messages and pictorial warnings;
 - (b) Stipulates that health messages to be on both wrapper and packet;
 - (c) Requires health messages, pictures or pictorials not to be damaged or concealed;
 - (d) Requirement of rotation of specified health warnings and messages in accordance with Section 21(3) of the Act;
 - (e) Provides for a standard format of health warnings and messages;
 - (f) Prohibition on certain product description e.g. any name, brand name, text or pictorial that may suggest that the tobacco is less harmful to health than other tobacco products;
 - (g) Requirements on industry to have product identification code markings. This will help determine the country of origin or manufacturer of the product;
 - (h) Cabinet Secretary for Health is the technical repository for pictorial health warnings; and
 - (i) Requirement to display clear signs prohibiting the sale of tobacco products
3. Part III deals with information that is to be given by tobacco industry to the Cabinet Secretary for Health. This includes a list of all ingredients that the tobacco product contains including quantities per unit of tobacco product, industry disclosure e.g. production, sales and revenue earned. The part also provides for an offence for giving false information under the part.
4. Part IV sets out regulations with regard to protection of the public from second hand smoke e.g. it prohibits smoking in private vehicles where children are on board, and requires the display a notice in a prohibited smoking area.
5. Part V seeks to domesticate Article 5.3 of the World Health Organization Framework convention on Tobacco Control. Regulation 22 provides for the limits of interactions.

6. Regulation 37 states the Solatium contribution payable to the fund by the tobacco industry shall be 2% of the value of tobacco products manufactured or imported in that financial year.
7. The Board shall under regulation 41 convene annual public hearings at the national and county level to receive reports, public views and comments from interested persons.
8. Regulation 42 provides that the access to information on implementation of the Act shall be accessible to the public.
9. Regulation 45(2) provides that any persons who contravenes the regulations commits an offence and is liable, on conviction to a fine not exceeding five hundred thousand (Ksh500,000/) or to imprisonment for a term not exceeding three years.

The meeting was informed that the Committee would meet stakeholders in the tobacco industry including British American Tobacco and Mastermind Tobacco Ltd. on Thursday, 21st May, 2015.

MIN. NO. 95/2015

-DATE OF NEXT MEETING

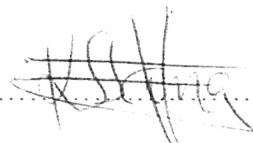
The next meeting would be on Thursday, 21st May, 2015.

MIN. NO. 96/2015

-ADJOURNMENT

There being no other business, the meeting was adjourned at 11.10 a.m.

SIGNED:



(CHAIRPERSON)

DATE:

26/5/15

**MINUTES OF THE 21ST SITTING OF THE SENATE SESSIONAL COMMITTEE
ON DELEGATED LEGISLATION HELD ON THURSDAY, 1ST OCTOBER, 2015
AT 9.45 A.M. IN THE 2ND FLOOR BOARDROOM, KICC**

PRESENT

- | | |
|-------------------------|-------------------|
| 1. Sen. Daniel Karaba | - Ag. Chairperson |
| 2. Sen. Godliver Omondi | |
| 3. Sen. Boy Juma Boy | |

ABSENT WITH APOLOGY

- | | |
|-----------------------------|--------------------|
| 1. Sen. Stephen Sang | - Chairperson |
| 2. Sen. Judith Sijeny | - Vice-Chairperson |
| 3. Sen. Emma Mbura | |
| 4. Sen. Liza Chelule | |
| 5. Sen. (Dr.) Boni Khalwale | |
| 6. Sen. Joy Gwendu | |

IN ATTENDANCE

SENATE

- | | |
|---------------------------|--------------------|
| 1. Ms. Caroline Cheruiyot | - Legal Counsel |
| 2. Ms. Grace Wahu | - Research Officer |
| 3. Ms. Carol Kirorei | - Committee Clerk |

MIN. NO. 151/2015

- PRELIMINARIES

The Chairperson called the meeting to order at 9.45 a.m. followed by a word of prayer.

MIN. NO. 152/2015

- ADOPTION OF THE AGENDA

The agenda of the sitting was adopted as presented having been proposed by Sen. Godliver Omondi and seconded by Sen. Boy Juma Boy.

MIN. NO. 153/2015

**-CONSIDERATION OF THE REPORT ON THE
BASIC EDUCATION REGULATIONS, 2015**

Members were given a brief of the status of the Basic Education Regulations as follows-

1. That since the Committee met with stakeholders including KNUT, KUPPET, KEPSHA and KSSHA on 14th May, 2015 the Ministry of Education, Science and Technology held a meeting with the stakeholders to discuss the Regulations;
2. That the Cabinet Secretary, Ministry of Education, Science and Technology had responded to issues raised by the Committee via a letter dated 23rd June 2015; and
3. That the current status of the Regulations, following the above mentioned meeting between the Ministry and the stakeholders was unknown.

The Committee noted that the consideration of the Basic Education Regulations, 2015 needed to be finalized and the Report tabled in the House.

The Committee therefore resolved that a letter be sent to stakeholders enquiring on the status of the Regulations following the meeting with the Ministry and their current position on the same.

MIN. NO. 154/2015

-DATE OF NEXT MEETING

The next meeting would be held on notice.

MIN. NO. 155/2015

-ADJOURNMENT

The meeting was adjourned at 10.00 a.m.

SIGNED:



.....
(CHAIRPERSON)

DATE:

18/11/2015
.....

MINUTES OF THE 28TH SITTING OF THE SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION HELD ON WEDNESDAY, 18TH NOVEMBER, 2015 AT 12.00 NOON IN THE 2ND FLOOR BOARDROOM, KICC

PRESENT

1. Sen. Judith Sijeny - Vice-Chairperson
2. Sen. Godliver Omondi
3. Sen. Boy Juma Boy
4. Sen. Liza Chelule
5. Sen. Daniel Karaba

ABSENT WITH APOLOGY

1. Sen. Stephen Sang - Chairperson
2. Sen. Emma Mbura
3. Sen. (Dr.) Boni Khalwale
4. Sen. Joy Gwendu

IN ATTENDANCE

SENATE

1. Ms. Josephine Kusinyi - Legal Counsel
2. Ms. Carol Kirorei - Committee Clerk

MIN. NO. 189/2015 - PRELIMINARIES

The Vice-Chairperson called the meeting to order at 12.05 p.m. followed by a word of prayer.

MIN. NO. 190/2015 - ADOPTION OF THE AGENDA

The agenda of the sitting was adopted as presented having been proposed by Sen. Daniel Karaba and seconded by Sen. Judith Sijeny.

MIN. NO. 191/2015 - CONFIRMATION OF PREVIOUS MINUTES

- i. The minutes of the 21st sitting were confirmed as a true record of the proceedings after being proposed by Sen. Godliver Omondi and seconded by Sen. Boy Juma Boy.
- ii. The minutes of the 26th sitting were confirmed as a true record of the proceedings after being proposed by Sen. Daniel Karaba and seconded by Sen. Judith Sijeny.
- iii. The minutes of the 27th sitting were confirmed as a true record of the proceedings after being proposed by Sen. Judith Sijeny and seconded by Sen. Daniel Karaba.

**MIN. NO. 192/2015 - MATTERS ARISING FROM PREVIOUS
MINUTES**

i. Under Min. No. 181/2015

It was noted that annulment of Regulation 9 of the PFM (State Officers and Public Officers Car Loan Scheme Fund, Regulations, 2015 would result in the annulment of several other Regulations where the Board appears. In light of Section 16 of the Statutory Instruments Act which requires the committee to confer with the regulation making authority before tabling its report, *the Committee resolved to communicate to the National Treasury requesting for the rationale for the establishment of the Board to enable the Committee make an informed decision.*

**MIN. NO. 193/2015 - CONSIDERATION AND ADOPTION OF THE
REPORT ON THE BASIC EDUCATION
REGULATIONS, 2015**

Members were taken through the Report on the Basic Education Regulations, 2015. The following was noted-

1. The issues raised by stakeholders on the Regulations were mainly proposed amendments to the Regulations, while the Committee does not have the mandate to amend Regulations. Further, annulment of the provisions would result in a loss of content of the Regulations.
2. Following deliberations, Members resolved to annul Regulation 30 and Regulation 84.

3. The Committee further recommended that the Ministry of Education, Science and Technology should consult further with the stakeholders in the education sector with a view to amend the provisions of the Basic Education Act No. 14 of 2013 to incorporate their proposals.

Members adopted the Report as presented with the addition of the annulments of Regulation 30 and Regulation 84 in Chapter Five.

MIN. NO. 194/2015

-ANY OTHER BUSINESS

i. Foreign Visits

Members queried on the status of proposed foreign visits. The meeting was informed that feedback was yet to be received from the Ministry of Foreign Affairs and International Trade.

ii. Communication Authority of Kenya Regulations on Cyber crime

Members sought to know whether they were transmitted to the Senate and committed to the Committee. The meeting was informed that the Regulations had not been transmitted yet. The secretariat was tasked to track whether the Regulations were transmitted to the Clerk of the Senate.

iii. Meeting with Counties

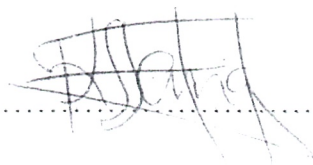
Members were reminded of the meeting with the counterpart committees of the County Assemblies of Bungoma, Kilifi, Siaya, Embu, Meru and Tharaka Nithi scheduled to be held on Thursday, November 19, 2015 at the Mini Chamber, County Hall from 9.30 a.m.

MIN. NO. 195/2015

-ADJOURNMENT

The meeting was adjourned at 12.40 p.m.

SIGNED:



.....
(CHAIRPERSON)

DATE:

24/11/15

Paper Laid
26/04/2016
Samuel

REPUBLIC OF KENYA



PARLIAMENT

THE SENATE

ELEVENTH PARLIAMENT

THE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION

A REPORT ON THE PUBLIC FINANCE MANAGEMENT (STATE OFFICERS
AND PUBLIC OFFICERS MOTOR CAR LOAN SCHEME FUND)
REGULATIONS, 2015

Clerk's Chambers,
First Floor,
Parliament Buildings,
NAIROBI.

APRIL, 2016

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Appendices

Explanatory Memorandum

The Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015

Minutes

ABBREVIATIONS

IRA Insurance Regulatory Authority

PFM Public Finance Management

PSC Public Service Commission

SEN. Senator

PREFACE

Establishment of the Committee on Delegated Legislation

The Sessional Committee on Delegated Legislation is established pursuant to the Senate Standing Order 214 which states:

- 1) There shall be a select Committee to be known as the Committee on Delegated Legislation.
- 2) Whenever a statutory instrument is submitted to the Senate pursuant to the Constitution, any law or these Standing Orders, the statutory instrument shall, unless a contrary intention appears in the relevant legislation, be laid before the Senate by the Chair of the Senate Committee on Delegated Legislation and thereafter stand referred to the Committee.
- 3) The Committee shall consider in respect of any statutory instrument whether the statutory instrument-
 - a) is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written law;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
 - d) directly or indirectly bars the jurisdiction of the courts;
 - e) gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;
 - f) involves expenditure from the Consolidated Fund or other public revenues;
 - g) is defective in its drafting or for any reason, the form or purport of the statutory instrument calls for any elucidation;
 - h) appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;

- i) appears to have had unjustifiable delay in its publication or laying before Parliament;
- j) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions;
- k) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- l) inappropriately delegates legislative powers;
- m) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- n) appears for any reason to infringe on the rule of law;
- o) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
- p) accords to any other reason that the Committee considers fit to examine.

(4) If the Committee-

- a) resolves that the statutory instrument, be acceded to, the Clerk shall convey that resolution to the relevant state department or the authority that published the statutory instrument;
- b) does not accede to the statutory instrument, or part of a statutory instrument, the Committee may recommend to the Senate that the Senate resolves that all or any part of the statutory instrument, as the case may be, be annulled.

(5) If the Senate-

- a) fails to agree to the recommendation of the Committee under paragraph (4)(b), the statutory instrument shall be deemed to have been approved by Parliament;
- b) resolves to annul a statutory instrument, or part of a statutory instrument, the resolution shall, within seven days of the passage of the resolution, be referred to the National Assembly for concurrence.

Membership of the Committee on Delegated Legislation

The Membership of the Committee is as follows:

- | | | |
|--------------------------|---|------------------|
| 1. Sen. Stephen Sang | - | Chairperson |
| 2. Sen. Judith Sijeny | - | Vice-Chairperson |
| 3. Sen. David Musila | - | Member |
| 4. Sen. Daniel Karaba | - | Member |
| 5. Sen. Stewart Madzayo | - | Member |
| 6. Sen. Godliver Omondi | - | Member |
| 7. Sen. Joy Gwendo | - | Member |
| 8. Sen. Emma Mbura | - | Member |
| 9. Sen. Hosea Onchwang'i | - | Member |

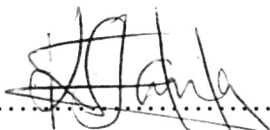
Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in the execution of its mandate.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Section 17 of the Statutory Instruments Act, 2014 and Standing Order 214, to present the Report of the Sessional Committee on Delegated Legislation on the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015.

Signed.....



Date.....

15th April 2016

SEN. STEPHEN SANG,

CHAIRPERSON

SESSIONAL COMMITTEE ON DELEGATED LEGISLATION.

EXECUTIVE SUMMARY

The Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015 were published in the Kenya Gazette vide Legal Notice No. 195 of 2015 dated 25th September, 2015. The Regulations were tabled in the Senate on 14th October, 2015 pursuant to section 11 (3) of the Statutory Instruments Act, 2013 and Senate Standing Order 214 (2); and subsequently stood referred to the Sessional Committee on Delegated Legislation for scrutiny.

The Committee scrutinized the Regulations at its 23rd Sitting held on 15th October, 2015, 26th Sitting held on 11th November, 2015, 28th Sitting held on 18th November, 2015 and 2nd Sitting held on 9th March, 2016. The Committee noted that the Regulations had been transmitted without a copy of the Explanatory Memorandum in accordance with Section 11 of the Statutory Instruments Act, 2013. The Committee requested the National Treasury to submit a copy of the Explanatory Memorandum which it subsequently submitted via a letter dated 9th November, 2015.

Chapter one of this report, gives a summary of the purpose and legal basis of the Regulations. The Regulations aim to provide a car loan facility to state officers and public officers. This chapter also outlines the National Treasury's submission on stakeholder consultations as outlined in the Explanatory Memorandum. The National Treasury indicated that extensive consultations were done prior to the publication of the Regulations with key stakeholders such as the Public Service Commission, Teachers

Service Commission, Judicial Service Commission, the Directorate of Public Service Management and Accounting Officers of the National Government.

Chapter two gives an account of the Committee scrutiny of the Regulations as well as its observations. The Committee noted that Regulation 9 establishes an Advisory Board, the secretariat and the financial institution which are superfluous levels of management and possible sources of bureaucracy; that would occasion additional expenditure in the management of the Fund and tie down funds which could otherwise be available to the Scheme in administration costs. Members further noted that the Fund could be administered by existing administrative mechanisms within the PSC. The Committee invoked Section 16 of the Statutory Instruments Act and requested the National Treasury to provide its rationale for the establishment of the Advisory Board.

Chapter three outlines the Committee Recommendations. The Committee considered and concurred with the rationale given by the National Treasury for the establishment of the Advisory Board. The Committee accedes to the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015.

CHAPTER ONE INTRODUCTION

1.1 The Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015

The Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015 were published in the Kenya Gazette vide Legal Notice No. 195 of 2015 dated 25th September, 2015. The purpose of the Regulations is to-

1. Provide a car loan facility to state officers and public officers of the national government to purchase a motor car as prescribed in the regulations;
2. Cater for administrative expenses of the Fund;
3. Specify the sources, object and purpose of the Fund;
4. Provide guidance on the administration and management of the Fund;
5. Establish an Advisory Board to advise the Cabinet Secretary on the proper and effective performance of the Fund;
6. Provide for the withdrawals from the Fund; and
7. Provide for the winding up of the Fund.

1.2 Legal Basis of the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015

Section 24(4) of the Public Finance Management Act, 2012 provides for the Cabinet Secretary's power to make Regulations in the following terms:

24(4) "The Cabinet Secretary may establish a national government public fund with the approval of the National Assembly."

1.3 Stakeholder Consultations on the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015

The National Treasury, by a letter dated 9th November, 2015, submitted the Explanatory Memorandum to the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015. The National Treasury indicated that extensive consultations were done during the development of the Regulations with key stakeholders and their input taken into account prior to the publication of the Regulations. Some of the key stakeholders consulted were the Public Service Commission, Salaries and Remuneration Commission, Teachers Service Commission, Judicial Service Commission, Directorate of Public Service Management and Accounting Officers of National Government.

CHAPTER TWO COMMITTEE SCRUTINY AND OBSERVATIONS

The Committee scrutinized the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015 at the following sittings-

1. 23rd Sitting, held on 15th October, 2015;
2. 26th sitting held on 11th November, 2015;
3. 28th Sitting held on 18th November, 2015; and
4. 2nd Sitting held on 9th March, 2016.

2.1 Committee Observations

The Committee raised the following pertinent issues-

1. Regulation 9 establishes an eight member Advisory Board that is likely to be in favor of the National Treasury, who will have three (3) positions. Furthermore, the parties that determine the terms and conditions of the Board are closely linked to the Board. This therefore raises questions on the transparency capacity of the Board and also raises doubts on matters of corporate governance. A reconstruction of the Board may be required to enhance a neutral Board perspective and to facilitate transparency.
2. Regulation 18 refers to the procurement of a financial institution to carry out functions as indicated under Regulation 19. The institution is allowed to charge an additional 2% p.a. interest on loans to cover for managerial costs. This could raise loan borrowing costs charged to the beneficiaries from the intended 3% to 5%.

3. In general, the Committee noted that the Board, the secretariat and the financial institution are superfluous levels of management and possible sources of bureaucracy that would occasion additional expenditure in the management of the Fund and tie down funds which could otherwise be available to the scheme in administration costs.
4. Noting similar funds under Parliamentary Service Commission, Judiciary Service Commission as well as the Central Bank scheme that are all managed by internally set mechanisms i.e. staff and internally allocated resources; the Committee noted there would be no need for the Board, the secretariat and even the financial institution if there already exists a Public Service Commission (PSC), mandated to develop human resource in the public service. Existing administrative mechanisms within the PSC i.e. trained staff, public sector data/information, is an advantage and could be used to provide a more cost effective means of administering the Fund.
5. Under Regulation 14 on insurance in respect of motor car loan; the Advisory Board is mandated to approve the insurance companies from which the borrower can obtain a comprehensive motor car insurance policy. It is not expected that the Board will have the technical capacity to review and approve an insurance company.
 - It is therefore recommended that the list of insurance companies be as approved by the Insurance Regulatory Authority (K) and recommended to the

Advisory Board and that the IRA will be mandated to inform the Board on any changes to that list.

6. Concern was raised on whether the relevant stakeholders i.e. public officers, were consulted in the development of the Regulations. In addition, it was noted that some stakeholders consulted already form part of the proposed Advisory Board such as the Public Service Commission and the Salaries & Remuneration Commission thus questioning the diversity of the consultation process. Lastly, it was noted that the Judiciary Service Commission was consulted even though they are not affected by the Regulations.
7. The penalty provided under Regulation 27 of “*imprisonment for a term of not less than five years or to a fine not exceeding 10 million shillings*” exceeds the limits set under Section 24(5) of the Statutory Instruments Act, 2015. However, Members raised concern on the practicality of applying the provisions of the Act to the offence of misappropriation of funds or assets from the Fund. The penalty provided under the Act of a fine not exceeding twenty thousand or imprisonment for a term not exceeding six months may be too lenient.

The Committee having taken into consideration the above observations, noted that annulment of Regulation 9 of the PFM (State Officers and Public Officers Car Loan Scheme Fund, Regulations, 2015 would result in the annulment of several other Regulations where the Board appears. Consequently, the Committee invoked Section 16

of the Statutory Instruments Act, 2013 and requested the National Treasury to provide the rationale for the establishment of the Board to enable the Committee make an informed decision before tabling its Report in the House.

2.2 Response from the National Treasury

The National Treasury via a letter dated 2nd December, 2015 gave its rationale for the establishment of the Advisory Board. The Ministry noted that whereas the establishment of the Advisory Board would occasion additional expenditure, the National Treasury considered the following:

- i. The need to put in place a body to oversee the expenditure of the funds, considering the large sums of money to be managed by the Fund Secretariat;
- ii. To foster accountability and transparency in the management of the Funds;
- iii. To ensure representation of the stakeholders as provided for in Article 201 of the Constitution; and
- iv. To ensure good governance and equity in accessing the benefits.

The National Treasury therefore noted that the benefits of establishing the Advisory Board outweigh the expenditure on the same.

2.3 Committee meeting to consider the response from the National Treasury

The Committee, at its 2nd Sitting held on 9th March, 2016 considered and concurred with the rationale given by the National Treasury for the establishment of the Advisory Board.

CHAPTER THREE COMMITTEE RECOMMENDATIONS

The Committee accedes to the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015.

APPENDICES

EXPLANATORY MEMORANDUM TO THE PUBLIC FINANCE MANAGEMENT (STATE OFFICERS AND PUBLIC OFFICERS CAR LOAN SCHEME FUND) REGULATIONS, 2015

.....

PART I

1. Name of the Statutory Instrument: Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015.

Name of the Parent Act: Public Finance Management Act, 2012

Enacted Pursuant to: Section 24 of the Public Finance Management Act, 2012

Name of the Ministry/ Department: The National Treasury

PART II

2. **The Purpose of Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015.**

The purpose of these Regulations is to:

- (i) Provide a car loan facility to state officers and public officers of the national government to purchase a motor car as prescribed in these regulations;
- (ii) Cater for administrative expenses of the Fund;
- (iii) specify the sources, object and purpose of the Fund;
- (iv) provide guidance on the administration and management of the Fund;
- (v) establish an Advisory Board to advise the Cabinet Secretary on the proper and effective performance of the Fund;
- (vi) provide for the withdrawals from the Fund; and
- (vii) provide for the winding up of the Fund.

3. **The Legislative Context**

The Salaries and Remuneration Commission (SRC) in fulfillment of its Constitutional mandate and in exercise of the powers conferred to it under Article 230 of the Constitution and Section 13 of the Salaries and

Remuneration Act, 2011, set and advised on car loan benefits to all state officers and other public officers in Kenya vide the Circular Ref. No. SRC/ADM/ CIR/ 1/13 Vol. III (128) dated 17th December, 2014.

In order to operationalize the provisions of this SRC Circular and provide a legal framework geared towards safeguarding and ensuring prudent use of public resources, the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015 were developed pursuant to Section 24 of the Public Finance Management Act, 2012. The Public Finance Management Act, 2012 gives powers to the Cabinet Secretary responsible for matters relating to finance to make further regulations on any matter therein. It is in this context that the *"The Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2014"* are made to operationalize car loan benefits to all state officers and other public officers under Section 24 of the Public Finance Management Act, 2012 by providing a mechanism for use of this Fund. In addition, the Regulations are made to provide the management structure of the Fund.

4. Policy Background.

The Constitution assigned the duty to decide on the policy for setting the benefits of State Officers under the Constitution and any other Act of Parliament. Further, the Constitution provides that benefits and allowances of State Officers of the National Government and county governments shall be set by the Salaries and Remuneration Commission. In addition, Section 24 of the Public Finance Management Act, 2012 has assigned the duty to establish national public funds to the Cabinet Secretary responsible for matters relating to finance.

Accordingly, the National Government has decided that the State Officers and Public Officers Car Loan Scheme shall need a robust management structure to ensure the schemes objectives are achieved through an open, transparent and accountable mechanism. The management structure has been provided for in the Regulations. In addition, the Fund shall be applicable to state officers and other public officers who are not covered by any other scheme working at the national government level and shall not apply to other public officers under the National Government working in Constitutional Commissions, Independent Offices, State Corporations and National Security Organs.

5. Public Consultations

Extensive consultations were done while preparing the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015 with key stakeholders and their input taken into account before finalization of these Regulations. Some of the key stakeholders'

consulted were Public Service Commission, Salaries and Remuneration Commission, Teachers Service Commission, Judicial Service Commission, Directorate of Public Service Management and Accounting Officers of National Government.

6. Guidance

The National Treasury will sensitize stakeholders including Parliament, State Officers and Other Public Officers, accounting officers of National Government and the general public, on the process of accessing the State Officers and Public Officers Car Loan Scheme, the accountability mechanism, the monitoring and evaluation mechanism and the need to ensure regular reporting to Parliament.

7. Impact Assessment

An impact assessment has not been prepared for this statutory instrument. (Expected impact is, however, implied in the State Officers and Other Public Officers Car Loan Scheme determined by the Salaries and Remuneration Commission.

8. Review of the Marginalized Counties.

The National Treasury shall monitor the application of the State Officers and Other Public Officers Car Loan Scheme. This will be done through quarterly reports sent by the Administrator of the Fund. In addition, the Fund Secretariat at the National Treasury will also carry out regular monitoring and evaluation of the State Officers and Public Officers Car Loan Scheme.

9. National Treasury Contact Person.

The contact person at the National Treasury is the Mr. Henry Rotich, Cabinet Secretary, or Dr. Kamau Thugge, EBS, Principal Secretary

HENRY ROTICH
CABINET SECRETARY TO THE NATIONAL TREASURY

Date.....

SPECIAL ISSUE

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Kenya Gazette Supplement No. 166

25th September, 2015

(Legislative Supplement No. 67)

LEGAL NOTICE NO. 195

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 24(4) of the Public Finance Management Act, 2012, the Cabinet Secretary for the National Treasury makes the following Regulations:—

**THE PUBLIC FINANCE MANAGEMENT (STATE OFFICERS
AND PUBLIC OFFICERS MOTOR CAR LOAN SCHEME FUND)
REGULATIONS, 2015**

1. These Regulations may be cited as the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations, 2015.

Citation.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

“Accounting Officer” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

No. 18 of 2012.

“Accounting Standards Board” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

No. 18 of 2012.

“Advisory Board” means the Loans Management Advisory Board established under regulation 9;

“beneficiary” means State Officers and Public Officers working in the National Government as prescribed in regulation 31;

“borrower” means a person in receipt of a loan out of the Fund;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“Chief Executive Officer” means the Chief Executive Officer of the Fund appointed under regulation 20;

“commercial use” means any motorised road vehicle, that by its type of construction and equipment is designed for, and capable of transporting, goods and services for payment;

“financial institution” means any institution referred to in regulation 19 identified for the purposes of providing financial services to the Fund;

“financial year” means the period of twelve months ending on the 30th June in each year;

“Fund” means the State Officers and Public Officers Car Loan Scheme Fund established under regulation 3;

- “Motor car” has the meaning assigned to it under section 2 of the Traffic Act; Cap. 403.
- “Officer administering the Fund” means a person designated as such under section 24(5) of the Public Finance Management Act, 2012; No. 18 of 2012.
- “Public Officer” means an officer employed in the National Government or the Public Service;
- “revenue” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012; No. 18 of 2012
- “State Officers” has the meaning assigned to it under Article 260 of the Constitution but shall not include a state officer who is covered by any public motor car loan scheme; and
- “value of the loan” the initial loan granted to a beneficiary or any outstanding loan balance at any given time before full loan repayment.
- PART II—ESTABLISHMENT OF THE FUND**
3. There is established a Fund to be known as the State Officers and Public Officers Car Loan Scheme Fund. Establishment of the Fund.
4. The object and purpose of the Fund shall be to— Object and Purpose of the Fund.
- provide a car loan facility to state officers and public officers of the national government to purchase a motor car as prescribed in these Regulations; and
 - cater for administrative expenses of the Fund
5. The initial capital of the Fund shall be one billion Kenya shillings appropriated by Parliament in the financial year 2014/15 and additional capital of the Fund shall be made in the subsequent financial years’ budgets. Capital of the Fund.
6. There shall be paid into the Fund— Sources of the Fund.
- monies appropriated by Parliament for the purposes of the Fund;
 - income from investments made by the Fund;
 - grants, donations, bequests or other gifts made to the Fund; and
 - monies from any other source approved by the Cabinet Secretary.
7. (1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the object and purpose for which the Fund is established. Expenditure of the Fund.
- (2) The expenditure incurred on the Fund shall be on the basis of and limited to annual budget estimates prepared by the officer administering the Fund and shall be recommended by the Advisory Board for approval by the Cabinet Secretary at the beginning of the financial year to which they relate.

(3) Any revision of the approved budget estimates, and of any cost estimate, shall be referred to the Advisory Board and the Cabinet Secretary for approval.

8. The Officer administering the Fund, in consultation with the Advisory Board shall develop guidelines for the proper management of the Fund for approval by the Cabinet Secretary.

Guidelines on the Fund

PART III—MANAGEMENT OF THE FUND

9. (1) There is established an Advisory Board of the Fund.

Establishment and composition of the Advisory Board.

(2) The Advisory Board shall comprise—

- (a) the Principal Secretary for the National Treasury or his or her nominee who shall not be below Job Group "T", who shall be the Chairperson;
- (b) the Principal Secretary of the State Department responsible for Public Service Management or his or her nominee who shall not be below Job Group R;
- (c) the Principal Secretary of the State Department responsible for Transport or his or her nominee drawn from the relevant technical department dealing with matters of motor car and shall not be below Job Group R;
- (d) the Chief Executive Officer or Secretary, Salaries and Remuneration Commission or his or her nominee who shall not be below the level of a director;
- (e) the Chief Executive Officer or Secretary, Public Service Commission or his or her nominee who shall not be below Job Group "R"; and
- (f) two persons nominated by the Principal Secretary for the National Treasury who shall not be below Job Group R, from the Directorates of—
 - (i) Budget, Financial and Economic Affairs; and
 - (ii) Administrative Services.

(3) The Chief Executive Officer of the Fund shall be the Secretary to the Advisory Board.

(4) The terms and conditions of service of members of the Advisory Board and the Secretariat shall be as determined by the Cabinet Secretary in consultation with the Public Service Commission and the Salaries and Remuneration Commission.

10. (1) The functions of the Advisory Board shall be to—

Functions of the Advisory Board.

- (a) process and approve loans in accordance with the existing terms and conditions of borrowing;
- (b) liaise with the financial institution to set up a Fund for the disbursement of the loans;

- (c) oversee the management of the Fund;
- (d) monitor and evaluate the performance of the Fund;
- (e) approve annual work programmes and procurement plans for the Fund;
- (f) recommend the investment of any surplus funds not immediately required in securities approved by the National Treasury, for the purposes of realizing the objects and purpose for which the Fund is established;
- (g) cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Fund;
- (h) receive any gifts, donations, grants or endowments made to the Fund;
- (i) consider and recommend approval of the financial statements to the officer administering the Fund;
- (j) recommend as when required the procurement of a financial institution to administer the Fund on its behalf ;
- (k) perform any other functions that are ancillary to the objects and purpose for which the Fund is established; and
- (l) determine its own procedures for conducting its business.

11. The maximum loan each beneficiary shall be eligible to, is set out in the Schedule to these Regulations or as may be determined by the Salaries and Remuneration Commission, from time to time.

Car loan threshold.

12. (1) An application for a loan under these Regulations shall be accompanied by the following documents where appropriate—

Loan application procedure.

- (a) an application form duly filled by the applicant;
- (b) a certified copy of the National Identify Card or Passport of the applicant;
- (c) copies of pay-slips for the immediate last three months certified by the respective accounting officers;
- (d) a certified copy of the sale agreement relating to the motor car;
- (e) a certified copy of the log book;
- (f) a non-refundable application fees of one thousand shillings or as determined from time to time by the officer administering the Fund; and
- (g) a valuation report on the motor car.

(2) For the purposes of these Regulations, the value of a new vehicle shall be as quoted on the invoice from the supplier whereas the value of a used vehicle shall be as determined by a report from the Automobile Association of Kenya, a Government Department dealing with similar matters or a certified automobile valuer registered in Kenya.

(3) For the purposes of these Regulations, a loan shall not be given to a beneficiary to purchase a used vehicle that is more than eight years old from the date of manufacture or as may be determined from time to time.

(4) The applicant shall bear the cost of valuation, registration and other legal fees.

13. (1) The officer administering the Fund shall use the following eligibility criteria when evaluating a loan application—

Eligibility criteria.

- (a) first in first out principle of loan processing;
- (b) applicable loan threshold for each grade of the beneficiary;
- (c) compliance with the provisions of regulation 12;
- (d) ability to repay the loan within existing statutes and the stipulated time;
- (e) an undertaking by the beneficiary that the motor car shall jointly be registered and owned for the period of the loan by the National Treasury on behalf of the Government of Kenya and the beneficiary until the loan is repaid in full by the beneficiary;
- (f) an undertaking to meet such costs for the purpose of securing a motor car comprehensive insurance cover and pay such sum of money on or before thirty days before the expiry of the comprehensive motor car insurance policy as may be determined by the officer administering the Fund from time to time;
- (g) no borrower shall be eligible for more than one loan at a time from the Fund within five years; and
- (h) any other conditions as may be prescribed by the officer administering the Fund.

14. A borrower shall take and maintain a comprehensive motor car insurance policy with an insurance company approved by the Advisory Board, the cost of which shall be paid out of the Fund and debited to the borrower's account.

Insurance in respect of motor car loan.

15. (1) A loan approved by the Advisory Board under these Regulations shall be released from the Fund to the bank account of the supplier or seller of the motor car.

Conditions for disbursement of Funds.

(2) Notwithstanding the provisions of paragraph (1), a person disbursing the funds shall confirm that the beneficiary has complied with regulations 12 and 13 of these Regulations.

(3) The officer administering the Fund shall issue a caveat prohibiting the transfer of the motor car and shall notify the Registrar of Motor Vehicles accordingly.

(4) The Registrar of Motor Vehicles shall confirm in writing to the officer administering the Fund, that a caveat issued under paragraph (3) has been entered and noted in the appropriate motor car file or data base in the registry of the Registrar of Motor Vehicles.

(5) During the loan repayment period the beneficiary shall—

- (a) not lease, sell or agree to sell or part with possession of the charged motor car or any part of the motor car without the prior written consent of the officer administering the Fund;
- (b) meet costs for the motor car comprehensive insurance cover and pay such sum of money as may be determined by the officer administering the Fund from time to time;
- (c) ensure that the motor car is not used for commercial purposes; and
- (d) maintain the motor car in a satisfactory state of repair.

(6) All legal documentation and disbursement of funds shall be supervised by the Advisory Board.

(7) The officer administering the Fund shall be the custodian of the motor car log book until the loan is repaid in full by the beneficiary and thereafter the Officer Administering the Fund shall transfer the motor car log book to the beneficiary in his or her name within ninety days after full repayment of the loan.

(8) Upon receiving the motor car log book in his or her name, the beneficiary shall sign a discharge form confirming receipt of the motor car log book from the Officer Administering the Fund.

16. (1) A loan advanced under these Regulations shall be repaid in full within sixty months. Loan repayment.

(2) The preferred method of loan repayment shall be through a check-off system or a bank standing order by the beneficiary.

(3) Notwithstanding the provisions of paragraph (1), where a state officer or public officer leaves public service employment for whatever reason other than disciplinary grounds, the terms of the loan shall remain in force and shall not change for the life of the loan unless in cases of default in which case it shall revert to commercial terms.

(4) Where a beneficiary leaves the public service on disciplinary grounds, the terms of the loan shall convert to commercial terms after ninety days from the effective date of leaving the service.

(5) Where a default occurs for whatever reason there shall be a grace period of not more than three months, after which the car which is subject to the loan shall be repossessed and sold to recover the balance of the loan.

(6) Where a repossession of a motor car occurs under paragraph (5), the Officer Administering the Fund shall repossess the motor car within twenty one working days and the motor car shall be disposed-off within ninety days from the date of repossession to recover the loan balance.

(7) Where a motor car has been disposed-off under paragraph (6) and the amount recovered is not sufficient to cover the entire loan balance, the Officer Administering the Fund shall require the loan beneficiary to pay the difference.

(8) Any disposal of a motor car under paragraph (5) by the Officer Administering the Fund shall be through a public auction or private treaty

17. A loan granted to a member under these Regulations shall carry an interest rate of three per cent per annum on a reducing balance basis which shall be retained in the Fund or such other rate as may from time to time be determined by the Cabinet Secretary in a gazette notice.

Loan interest.

18. (1) The Fund or where applicable, the financial institution referred to under these Regulations may charge an interest of not more than two percent per annum of the value of loan to cover its management costs.

Management cost.

(2) The interest charged under regulation 17 and 18(1) shall be paid by the borrower.

19. (1) The responsibilities of a financial institution procured under these Regulations shall be to—

Responsibilities of the financial institution.

- (a) maintain and operate an individual account for each beneficiary;
- (b) charge securities on motor cars acquired through loans from the Fund so as to protect the interest of the Fund, and act as a custodian of such charges;
- (c) disburse monies for newly approved loans to various suppliers or sellers of motor cars to beneficiaries, after the necessary communication in writing authorizing disbursement to them by the officer administering the Fund;
- (d) pay all outgoing and issue demand notices to defaulting borrowers through the officer administering the Fund;
- (e) issue an annual account statement to the Officer Administering the Fund for each borrower;
- (f) upon repayment of the motor car loan, interest and other expenses which may be outstanding discharge the charge and release the security documents to the beneficiaries; and
- (g) provide quarterly reports on details of recovery of the loans to the Officer Administering the Fund.

(2) The expenses of the Fund Secretariat shall be met from funds provided by Parliament for that purpose which shall include but not limited to appropriations, earnings, accruals and shall not exceed five per cent of the annual approved budget of the Fund.

20. (1) There shall be a Chief Executive Officer of the Fund who shall be recruited and appointed through a competitive process subject to the provisions of Article 234 (5) of the Constitution.

Chief Executive Officer.

(2) A person is qualified for appointment as the Chief Executive Officer if the person—

- (a) is a citizen of Kenya;
- (b) holds a degree in economics, finance, accounting or social sciences from a university recognized in Kenya;
- (c) satisfies the requirements of Chapter Six of the Constitution; and
- (d) has at least ten years' experience in the relevant field.

(3) A person appointed as the Chief Executive Officer under this regulation, shall serve for one term of five years, which may be renewed for one further term of five years.

(4) The Chief Executive Officer shall be subject to the directions of the Advisory Board and shall be responsible for the day to day administration of the affairs of the Fund and the Secretariat of the Fund as delegated by the Advisory Board.

21. (1) There shall be a Secretariat of the Fund to be headed by the Chief Executive Officer.

Secretariat of the Fund.

(2) The composition of the Secretariat shall be determined by the Cabinet Secretary subject to Article 234 (2) of the Constitution.

(3) The terms and conditions of service for the Chief Executive Officer and the Fund Secretariat shall be determined by the Cabinet Secretary in consultation with the Public Service Commission and the Salaries and Remuneration Commission.

22. All receipts, earnings and accruals to the Fund, and the balance of the Fund at the close of each financial year, shall be retained by the Fund for strict use for the purpose for which the Fund is established.

Retention of receipts.

23. Subject to the provisions of the Act, any other legislation, the existing Government Regulations and Procedures shall apply in the administration of the Fund.

Application of Government Regulations and procedures.

24. (1) The Chief Executive Officer shall be designated as the administrator of the Fund.

Administration of the Fund.

(2) The administrator of the Fund shall—

- (a) open and operate a bank account into which all monies raised under the Fund shall be paid into;
- (b) operate and maintain the bank account in the manner as prescribed by the National Treasury from time to time;
- (c) supervise and control the administration of the Fund;
- (d) consult with the Advisory Board on matters relating to the administration of the Fund;
- (e) cause to be kept proper books of accounts and other books and records in relation to the Fund, of all activities and undertakings financed from the Fund;
- (f) prepare, sign and transmit to the Auditor-General, in respect of each financial year and within three months after the end

thereof, a statement of accounts relating to the Fund and submit a copy to the National Treasury and the statements shall be prepared in such a manner as the Public Sector Accounting Standards Board shall prescribe;

- (g) furnish any additional information which is proper and sufficient for the purpose of examination and audit by the Auditor-General in accordance with the provisions of the Public Audit Act;

Cap 421 C.

- (h) prepare a quarterly report on the receipts into and issues out of the Fund and submit it to the Cabinet Secretary for gazettment by the 10th day of every fourth month.

- (i) prepare estimates of revenue and expenditure and submit to the Advisory Board for consideration and recommendation for approval by the Cabinet Secretary; ;

- (j) prepare a work plan in respect of a financial year and in preparing this work plan they shall ensure that the work plan—

(i) contains information on the financial and non-financial performance of the Fund; and

(ii) is in a form that complies with the standards prescribed and published by the Accounting Standards Board from time to time; and

- (k) prepare quarterly financial statements to the Advisory Board for onward transmission to the National Treasury.

(2) Every statement of account shall include details of the balance between the assets and liabilities of the Fund, and shall indicate the financial status of the Fund as at the end of the financial year concerned.

PART V—FINANCE AND ADMINISTRATION

25. (1) A bank account of the Fund shall be opened and maintained at the Central Bank of Kenya or a bank approved by the National Treasury.

Fund Bank
Account".

(2) The signatories to the bank account of the Fund under paragraph(1) shall be the Chief Executive Officer and two other persons authorized by the Advisory Board from amongst the staff of the Fund.

(3) The signing instructions shall be such that the signature of the Chief Executive Officer shall be mandatory on all payment cheques and instruments intended for actual release of money from the Fund, plus any one of the other two Fund account signatories.

26. (1) All withdrawals from the Fund shall be recommended by the Chief Executive Officer and authorized by the Advisory Board as reflected in the Fund's approved annual estimates of expenditure for that financial year.

Withdrawal of funds
from the Fund

(2) All payments made from the Fund shall be on the basis of the approved annual estimates of expenditure.

PART IV—MISCELLANEOUS PROVISIONS

27. A person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term of not less than five years or to a fine not exceeding ten million shillings or to both.

Offences and penalties.

28. In the event of winding up of the Fund, the cash balances shall be transferred to the National Exchequer Account while other assets of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to finance.

Winding-up of the Fund.

29. These Regulations shall be supplemented by such requirements as may be detailed in the loan application form issued by the Officer Administering the Fund and by the contract between the Fund and the beneficiary.

Supplementary requirements.

30. The Advisory Board may from time to time recommend to the Cabinet Secretary any amendments to these Regulations.

Amendments to these Regulations.

31. (1) These Regulations shall apply to—

Persons to whom these Regulations shall apply.

- (a) State Officers in the national government except state officers under the service of Judicial Service Commission and Parliamentary Service Commission; and
- (b) Civil Servants under the service of Public Service Commission.

SCHEDULE

LOAN THRESHOLD FOR STATE OFFICERS AND OTHER PUBLIC OFFICERS

<i>Beneficiaries</i>	<i>Maximum Car Loan (KSh.)</i>
State Officers	
Cabinet Secretary Attorney-General Secretary to the Cabinet Auditor-General	10 million
Principal Secretaries Chairs and Members of Independent Commissions Controller of Budget	8 million
Director of Public Prosecution	6 million
Register of Political parties Secretaries of Independent Constitutional Commissions, Accounting Officers/Chief Executive Officers of Government Agencies	5 million

<i>Beneficiaries</i>	<i>Maximum Car Loan (KSh.)</i>
Other Public Officers	
Chief Executive Officers of Government Agencies or Organs	5 Million
Civil Service Grades S, T, U and Equivalent grades in public service	4 Million
Civil Service Grades P, Q, R and Equivalent grades in the public service	3 Million
Civil Service Grades K, L, M, N and Equivalent grades in the public service	1.5 Million
Civil Service Grades G, H, J and Equivalent grades in the public service	800,000
Civil Service Grades A, B, C, D, E, F and Equivalent grades in the public service	600,000

Made on the 8th September, 2015.

HENRY K. ROTICH,
Cabinet Secretary for the National Treasury.

MINUTES OF THE 23RD SITTING OF THE SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 15TH OCTOBER, 2015 AT 9.00 A.M . IN THE 2ND FLOOR BOARDROOM, KICC

PRESENT

- | | |
|-----------------------|--------------------|
| 1. Sen. Judith Sijeny | - Vice-Chairperson |
| 2. Sen. Boy Juma Boy | |
| 3. Sen. Liza Chelule | |

ABSENT WITH APOLOGY

- | | |
|-----------------------------|---------------|
| 1. Sen. Stephen Sang | - Chairperson |
| 4. Sen. Daniel Karaba | |
| 2. Sen. Godliver Omondi | |
| 3. Sen. Emma Mbura | |
| 4. Sen. (Dr.) Boni Khalwale | |
| 5. Sen. Joy Gwendu | |

IN ATTENDANCE

1. Sen. David Musila

IN ATTENDANCE

SENATE

- | | |
|--------------------------|--------------------|
| 1. Ms. Josephine Kusinyi | - Legal Counsel |
| 2. Ms. Carol Kirorei | - Committee Clerk |
| 3. Ms. Grace Wahu | - Research Officer |
| 4. Mr. James Machage | - Budget Officer |

MIN. NO. 162/2015

- PRELIMINARIES

The Vice-Chairperson called the meeting to order at 9.16 a.m. followed by a word of prayer.

MIN. NO. 163/2015**- ADOPTION OF THE AGENDA**

The agenda of the sitting was adopted as presented having been proposed by Sen. Liza Chelule and seconded by Sen. Boy Juma Boy.

MIN. NO. 164/2015**-CONFIRMATION OF PREVIOUS MINUTES**

The minutes of the 22nd sitting were confirmed as a true record of the proceedings after being proposed by Sen. Liza Chelule and seconded by Sen. Boy Juma Boy.

MIN. NO. 165/2015**- CONSIDERATION OF THE PUBLIC FINANCE
MANAGEMENT (STATE OFFICERS AND PUBLIC
OFFICERS MOTOR CAR LOAN SCHEME FUND)
REGULATIONS, 2015**

The Budget Officer gave a brief of the Public Finance Management (State Officers and Public Officers Motor Car Loan Scheme Fund) Regulations, 2015 as follows-

1. The regulations aim to establish a fund known as the State Officers and Public Officers Car Loan Scheme Fund whose purpose shall be to provide a car loan facility to state officers and public officers of the national government to purchase a motor car and to cater for administrative expenses of the fund;
2. A public officer is an officer employed in the national government/public service; while the state officers' definition follows the meaning assigned under Article 260 of the Constitution but excludes those covered in any public motor car loan scheme;
3. The minimum capital for the Fund shall be Kshs. 1 billion appropriated by Parliament in FY 2014/15 with additional capital made in subsequent financial budgets. The fund shall either be domiciled at the Central Bank of Kenya or in a bank approved by the National Treasury with signatories to either bank account being the Chief Executive Officer (mandatory) and 2 persons authorized by the advisory board amongst the staff.
4. The Fund shall be managed by an 8 member (inclusive of the CEO) advisory board whose functions shall be to process and approve loans, oversee the management of the fund, monitor and evaluate the fund approve annual work

programs and procurement plans of the fund, recommend investment of surplus funds of the fund, among other functions.

5. The regulations also establishes a Fund Secretariat whose composition shall be determined by the cabinet secretary and whose expenses shall be met out of funds provided by parliament but shall not be limited to appropriations, earnings accruals and shall be limited to 5% of the annual approved budget of the fund.
6. In applying for a loan an applicant shall pay a fee of Ksh. 1000 and the application shall be accompanied by documents such as certified copies of the national ID or passport, copies of pay slips, copy of the sale agreement, certified copy of the logbook etc.
7. The maximum loan an applicant shall be eligible to shall be as indicated in the regulation schedule, and shall be applicable once every five year. If application successful, the loan is to be repaid in full within *60 months (5 years)* at a rate of *3% per annum* although the financial institution procured to operate the fund can charge up-to of 2% extra on the loan to cover for fund management costs.
8. The preferred method of loan repayment system shall be through check off system of a bank standing order by the beneficiary. The terms of loan do not change if the beneficiary leaves public service employment.

He noted that the Regulations are likely to have a wide range of effects in 3 major areas being-

a. Promotion to the insurance sector

As a standard for qualification for the loan facility according to the regulations, a beneficiary will be required to take and maintain comprehensive motor car insurance. This is likely to have positive impact on the Kenyan insurance industry which is vital in risk management and attracting investment into the economy.

b. Effects on patterns and levels of vehicle importation in Kenya

Vehicle importation patterns in Kenya are likely to increase and stress the existing road infrastructure already in place, and there is the possibility that new road infrastructural developments might not be able to cope with this growing trend. This is likely to effect on the amount of resources allocated by county governments to infrastructure as these units might have to allocate more resources for road maintenance and expansion.

c. Effects on the current account balance

The proposed regulations are likely to have an incremental effect on the importation of vehicle and vehicle spare parts into Kenya. This will affect the current account balance.

The following concerns were raised on the Regulations-

1. Regulation 9 on the establishment and composition of the Advisory Board, is in favor of the National Treasury (who will have 3 seats). Further, the parties that determine the terms and conditions of the Board are closely linked to the Board. This would bring into question the transparency of the board and doubts on matters of corporate governance. It was recommended that a relevant and independent 3rd party office also be consulted or the names be submitted to Parliament for approval.
2. Regulation 18 refers to the procurement of a financial institution that to carry out functions as indicated under Regulation 19. The institution is allowed to charge 2% p.a. to cover managerial costs. This is expected to raise the borrowing costs from the fund charged to the beneficiary, from the intended 3% to 5%.
3. The Board, the secretariat and the financial institution are superfluous levels of management and possible sources of bureaucracy that will occasion additional expenditure in the management of the fund and tie down funds, which could otherwise be available to the scheme, in administration costs.
4. The requirements set under Regulation 20 for one to qualify as a CEO of the Fund are not stringent enough for an officer who will be responsible for over 1 billion of public funds and does not take full advantage of the diverse qualified personnel in

the country. There is need for a person with higher qualifications to administer the Fund.

5. Members raised concern on whether the relevant stakeholders i.e. public officers were consulted in the development of the Regulations.
6. Members also noted that there was no explanatory memorandum accompanying the Regulations as provided under Section 11 of the Statutory Instruments Act, 2013.
7. The penalty provided under Regulation 27 of imprisonment for a term of not less than five years or to a fine not exceeding 10 million shillings exceeds the limits set under Section 24(5) of the Statutory Instruments Act, 2015.

Members raised concern on the practicality of applying the provisions of the Act to the offence of misappropriation of funds or assets from the Fund. The penalty provided under the Act of a fine not exceeding twenty thousand or imprisonment for a term not exceeding six months may be too lenient.

It was agreed that the secretariat research on this matter and report back to the Committee.

Members resolved to request for the explanatory memorandum from the National Treasury.

MIN. NO. 166/2015

-DATE OF NEXT MEETING

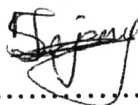
The next meeting would be held on 22nd October, 2015.

MIN. NO. 167/2015

-ADJOURNMENT

The meeting was adjourned at 9.56 a.m.

SIGNED:



.....
(CHAIRPERSON)

DATE:

5/11/2015
.....

MINUTES OF THE 26TH SITTING OF THE SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION HELD ON WEDNESDAY, 11TH NOVEMBER, 2015 AT 12.00 NOON IN THE 2ND FLOOR BOARDROOM, KICC

PRESENT

- | | |
|-----------------------|--------------------|
| 1. Sen. Stephen Sang | - Chairperson |
| 2. Sen. Judith Sijeny | - Vice-Chairperson |
| 3. Sen. Boy Juma Boy | |
| 4. Sen. Liza Chelule | |
| 5. Sen. Emma Mbura | |
| 6. Sen. Daniel Karaba | |

ABSENT WITH APOLOGY

1. Sen. Godliver Omondi
2. Sen. (Dr.) Boni Khalwale
3. Sen. Joy Gwendu

IN ATTENDANCE

1. Ms. Josephine Kusinyi
2. Ms. Carol Kirorei
3. Mr. James Machage

SENATE

- | |
|-------------------|
| - Legal Counsel |
| - Committee Clerk |
| - Budget Officer |

MIN. NO. 178/2015

- PRELIMINARIES

The Vice-Chairperson called the meeting to order at 12.12 p.m. followed by a word of prayer.

MIN. NO. 179/2015

- ADOPTION OF THE AGENDA

The agenda of the sitting was adopted as presented having been proposed by Sen. Emma Mbura and seconded by Sen. Liza Chelule.

MIN. NO. 180/2015

-CONFIRMATION OF PREVIOUS MINUTES

The minutes of the 25th sitting were confirmed as a true record of the proceedings after being proposed by Sen. Liza Chelule and seconded by Sen. Judith Sijeny.

MIN. NO. 181/2015

**- CONSIDERATION OF THE PUBLIC FINANCE
MANAGEMENT (STATE OFFICERS AND PUBLIC
OFFICERS MOTOR CAR LOAN SCHEME FUND)
REGULATIONS, 2015**

Members were informed that the National Treasury had submitted the Explanatory Memorandum to the Public Finance Management (State Officers and Public Officers Motor Car Loan Scheme Fund) Regulations, 2015. The Explanatory memorandum contained the purpose of the Regulations, the legislative context and policy background. It further stated that extensive consultations were done during the development of the Regulations with key stakeholders and their input taken into account before finalization of the Regulations. Among the stakeholders consulted were the Public Service Commission, Salaries and Remuneration Commission, Teachers Service Commission, Judicial Service Commission, Directorate of Public Service Management and Accounting Officers of National Government.

Members raised the following concerns-

1. Some stakeholders consulted already form part of the proposed advisory board such as; the Public Service Commission, Salaries & Remuneration Commission etc. thus questioning the diversity of the consultation process.
2. Under Regulation 9, the Committee noted that the Board, the secretariat and the financial institution are superfluous levels of management and possible sources of bureaucracy that will occasion additional expenditure in the management of the Fund and tie down funds, which could otherwise be available to the scheme, in administration costs.
3. Noting similar funds under Parliamentary Service Commission, Judiciary Service Commission as well as the Central Bank scheme that are all managed by internally

set mechanisms i.e. staff and internally allocated resources; the Committee noted there would be no need for the Board, the secretariat and even financial institution if there already exists a Public Service Commission (PSC), mandated to develop human resource in the public service. Existing administrative mechanisms within the PSC i.e. trained staff, public sector data/information, is an advantage and could be used to provide a more cost effective means of administering the Fund.

4. Under Regulation 14 the Committee recommended that the list of insurance companies be as approved by the Insurance Regulatory Authority (K) and recommended to the advisory board and that the IRA will be mandated to inform the board on any changes to that list.

MIN. NO. 182/2015

-ANY OTHER BUSINESS

Procedure of processing Regulations in the Senate

Members raised concern on the procedure used in processing Regulations in the Senate after the tabling of the Committee Report; and the delays caused in dispensing Regulations. The Committee resolved that the procedure for considering Committee Reports on Regulations should be urgently reviewed.

MIN. NO. 183/2015

-DATE OF NEXT MEETING

The next meeting would be held on 12th November, 2015.

MIN. NO. 184/2015

-ADJOURNMENT

The meeting was adjourned at 1.00 p.m.

SIGNED:



.....
(CHAIRPERSON)

DATE:

18 / 11 / 2015
.....

MINUTES OF THE 28TH SITTING OF THE SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION HELD ON WEDNESDAY, 18TH NOVEMBER, 2015 AT 12.00 NOON IN THE 2ND FLOOR BOARDROOM, KICC

PRESENT

- | | |
|-------------------------|--------------------|
| 1. Sen. Judith Sijeny | - Vice-Chairperson |
| 2. Sen. Godliver Omondi | |
| 3. Sen. Boy Juma Boy | |
| 4. Sen. Liza Chelule | |
| 5. Sen. Daniel Karaba | |

ABSENT WITH APOLOGY

- | | |
|-----------------------------|---------------|
| 1. Sen. Stephen Sang | - Chairperson |
| 2. Sen. Emma Mbura | |
| 3. Sen. (Dr.) Boni Khalwale | |
| 4. Sen. Joy Gwendu | |

IN ATTENDANCE

SENATE

- | | |
|--------------------------|-------------------|
| 1. Ms. Josephine Kusinyi | - Legal Counsel |
| 2. Ms. Carol Kirorei | - Committee Clerk |

MIN. NO. 189/2015

- PRELIMINARIES

The Vice-Chairperson called the meeting to order at 12.05 p.m. followed by a word of prayer.

MIN. NO. 190/2015

- ADOPTION OF THE AGENDA

The agenda of the sitting was adopted as presented having been proposed by Sen. Daniel Karaba and seconded by Sen. Judith Sijeny.

MIN. NO. 191/2015

- CONFIRMATION OF PREVIOUS MINUTES

- i. The minutes of the 21st sitting were confirmed as a true record of the proceedings after being proposed by Sen. Godliver Omondi and seconded by Sen. Boy Juma Boy.
- ii. The minutes of the 26th sitting were confirmed as a true record of the proceedings after being proposed by Sen. Daniel Karaba and seconded by Sen. Judith Sijeny.
- iii. The minutes of the 27th sitting were confirmed as a true record of the proceedings after being proposed by Sen. Judith Sijeny and seconded by Sen. Daniel Karaba.

MIN. NO. 192/2015

**- MATTERS ARISING FROM PREVIOUS
MINUTES**

i. Under Min. No. 181/2015

It was noted that annulment of Regulation 9 of the PFM (State Officers and Public Officers Car Loan Scheme Fund, Regulations, 2015 would result in the annulment of several other Regulations where the Board appears. In light of Section 16 of the Statutory Instruments Act which requires the committee to confer with the regulation making authority before tabling its report, *the Committee resolved to communicate to the National Treasury requesting for the rationale for the establishment of the Board to enable the Committee make an informed decision.*

MIN. NO. 193/2015

**- CONSIDERATION AND ADOPTION OF THE
REPORT ON THE BASIC EDUCATION
REGULATIONS, 2015**

Members were taken through the Report on the Basic Education Regulations, 2015. The following was noted-

1. The issues raised by stakeholders on the Regulations were mainly proposed amendments to the Regulations, while the Committee does not have the mandate to amend Regulations. Further, annulment of the provisions would result in a loss of content of the Regulations.
2. Following deliberations, Members resolved to annul Regulation 30 and Regulation 84.

3. The Committee further recommended that the Ministry of Education, Science and Technology should consult further with the stakeholders in the education sector with a view to amend the provisions of the Basic Education Act No. 14 of 2013 to incorporate their proposals.

Members adopted the Report as presented with the addition of the annulments in Chapter 4-Committee Recommendations.

MIN. NO. 194/2015

-ANY OTHER BUSINESS

i. Foreign Visits

Members queried on the status of proposed foreign visits. The meeting was informed that feedback was yet to be received from the Ministry of Foreign Affairs and International Trade.

ii. Communication Authority of Kenya Regulations on Cyber crime

Members sought to know whether they were transmitted to the Senate and committed to the Committee. The meeting was informed that the Regulations had not been transmitted yet. The secretariat was tasked to track whether the Regulations were transmitted to the Clerk of the Senate.

iii. Meeting with Counties

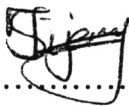
Members were reminded of the meeting with the counterpart committees of the County Assemblies of Bungoma, Kilifi, Siaya, Embu, Meru and Tharaka Nithi scheduled to be held on Thursday, November 19, 2015 at the Mini Chamber, County Hall.

MIN. NO. 195/2015

-ADJOURNMENT

The meeting was adjourned at 12.40 p.m.

SIGNED:



.....
(CHAIRPERSON)

DATE:

25/11/2015

**MINUTES OF THE 2ND SITTING OF THE SENATE SESSIONAL COMMITTEE
ON DELEGATED LEGISLATION HELD ON WEDNESDAY, 9TH MARCH, 2016
AT 11.00 A.M. IN ROOM 302, THIRD FLOOR, KICC BUILDING.**

PRESENT

- | | |
|-----------------------|--------------------|
| 1. Sen. Stephen Sang | - Chairperson |
| 2. Sen. Judith Sijeny | - Vice-Chairperson |
| 3. Sen. David Musila | |

ABSENT WITH APOLOGY

1. Sen. Stewart Madzayo
2. Sen. Emma Mbura
3. Sen. Joy Gwendu
4. Sen. Godliver Omondi
5. Sen. Hosea Onchwang'i
6. Sen. Daniel Karaba

IN ATTENDANCE

1. Ms. Josephine Kusinyi
2. Ms. Carol Kiorei
3. Mr. Humphrey Ringeera
4. Ms. Grace Wahu

SENATE

- | |
|--------------------|
| - Legal Counsel |
| - Committee Clerk |
| - Research Officer |
| - Research Officer |

MIN. NO. 10/2016

- PRELIMINARIES

The meeting was called to order at 11.15 a.m. followed by a word of prayer.

MIN. NO. 11/2016

- ADOPTION OF THE AGENDA

The agenda of the sitting was adopted as presented having been proposed by Sen. Judith Sijeny and seconded by Sen. Daniel Karaba.

MIN. NO. 12/2016**- CONFIRMATION OF PREVIOUS MINUTES**

- i. The Minutes of the 1st Sitting were confirmed as a true record of the proceedings after being proposed by Sen. Judith Sijeny and seconded by Sen. David Musila.
- ii. The Minutes of the 1st Joint Sitting with the Standing Committee on Finance, Commerce and Budget were confirmed as a true record of the proceedings after being proposed by Sen. David Musila and seconded by Sen. Judith Sijeny.

MIN. NO. 13/2016**- STUDY VISIT BY THE COMMITTEE ON
SCRUTINY OF SUBORDINATE LEGISLATION,
GAUTENG PROVINCIAL LEGISLATURE, SOUTH
AFRICA**

The meeting was informed of a request for a study visit by the Committee on Scrutiny of Subordinate Legislation of the Gauteng Provincial Legislature, South Africa. The purpose of the visit is to meet the Committee on Delegated Legislation to learn more about the scrutiny of subsidiary legislation and to share experiences.

Members resolved to host the Committee on Scrutiny of Subordinate Legislation in May, 2016. It was further resolved that four (4) counterpart committees from the County Assemblies be invited for further interactions and sharing of experiences.

MIN. NO. 14/2016**- THE PUBLIC FINANCE MANAGEMENT (STATE
OFFICERS AND PUBLIC OFFICERS CAR LOAN
SCHEME FUND) REGULATIONS, 2015**

Members were briefed on the response from the National Treasury on the rationale of the establishment of the Advisory Board. It was noted that whereas the establishment of the Advisory Board would occasion expenditure, the National Treasury considered the following:

- i. The need to put in place a body to oversee the expenditure of the funds, considering the large sums of money to be managed by the Fund Secretariat;
- ii. To foster accountability and transparency in the management of the Funds;
- iii. To ensure representation of the stakeholders as provided for in Article 201 of the Constitution; and

iv. To ensure good governance and equity in accessing the benefits.

The National Treasury therefore noted that the benefits of establishing the Advisory Board outweigh the expenditure on the same.

Following deliberations, Members were in concurrence with the National Treasury's rationale for the establishment of the Advisory Board. *Members acceded to the Regulations and tasked the Secretariat to finalize the report for tabling in the House.*

MIN. NO. 15/2016

- THE PUBLIC FINANCE MANAGEMENT

(COUNTY GOVERNMENT) REGULATIONS, 2015

The Legal Counsel briefed Members on the Joint meeting with the Standing Committee on Finance Commerce and Budget. The following issues were raised by the County Assemblies Forum (CAF):

- i. Regulation 25: Capping of the county assemblies budgets at 7% of the total budget of the county government or double the personnel and emoluments whichever is lower.
- ii. Regulation 37: Reducing the role of county assemblies in budget making by limiting its power to amend only 1% of the Vote as contained in the County Fiscal Strategy Paper.

The Committee was in concurrence with the CAF position on the two Regulations, and noted that at a meeting with the National Treasury, it was agreed that the two provisions be amended. However, the National Treasury republished the Regulations without incorporating the proposed amendments.

It was agreed that the Chairperson liaise with the Chairperson of the Standing Committee on Finance, Commerce and Budget towards annulment of the Regulations.

MIN. NO. 16/2016

- MEETINGS WITH COUNTIES AND COUNTY VISITS

Members were presented with a schedule of all counties visited (9), meetings with counties (17) and pending counties (21). Members agreed as follows:

1. The Committee would undertake county visits to "Cluster 2" - Kiambu, Nyeri and Nyandarua Counties in April, 2016 during the recess period.
2. The Committee will host four (4) Counties for capacity building and sharing experiences in May, 2016 at a joint meeting with the Committee on Scrutiny of Subordinate Legislation, Gauteng Provincial Legislature, South Africa.

MIN. NO. 17/2016

- DATE OF NEXT MEETING

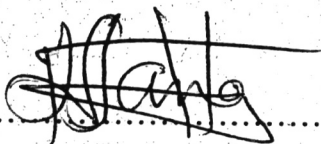
The next meeting would be held on Thursday, 17th March, 2015.

MIN. NO. 18/2016

- ADJOURNMENT

The meeting was adjourned at 11.45 a.m.

SIGNED:



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(CHAIRPERSON)

DATE:

14/04/2016
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