

EXPLANATORY MEMORANDUM TO: the LAND REGULATIONS, 2017; the LAND (CONVERSION OF LAND) RULES, 2017; the LAND (EXTENSION AND RENEWAL OF LEASES) RULES, 2017; the LAND (ALLOCATION OF PUBLIC LAND) REGULATIONS, 2017; and, the LAND (ASSESSMENT JUST COMPENSETION) RULES, 2017.

PART I

Name of Statutory Instrument	the Land Regulations, 2017; the Land (Conversion of Land) Rules, 2017; the Land (Extension and Renewal of Leases) Rules, 2017; the Land (Allocation of Public Land) Regulations, 2017; and, the Land (Assessment Just Compensation) Rules, 2017.
Name of Parent Act	The Land Act, 2012
Enacted pursuant to	Section 160; 9(5); 13(2); 12(11); 111(2); Land Act, 2012 respectively.
Name of the Ministry	Ministry of Lands and Physical Planning
Gazetted on	24 th November, 2017 and 1 st December, 2017
Tabled on	

PART II

1. Purpose of the Statutory Instrument

The Land Regulations, 2017; the Land (Conversion of Land) Rules, 2017; the Land (Extension and Renewal of Leases) Rules, 2017; the Land (Allocation of

Public Land) Regulations, 2017; and, the Land (Assessment Just Compensation) Rules, 2017 are practice guidelines prescribing in detail how the Land Act, 2012 should be implemented. The main purpose is to set the rules and guidelines to be followed by practitioners and members of the public seeking services related to the land management and other connected purposes. Land transactions and processes related to allocation of public land, conversion of land from one category to another, extension and renewal of leases, compensation, are among provided in these regulations and rules. These regulations break down the Land Act and make it simple and are therefore critical if the Act has to be implemented and applied in letter and spirit.

2. Legislative Context

The Land Act has provided for various land administration functions and has gone at length to direct in each circumstance where the Ministry or National Land Commission is required to make Regulations or Rules. Since the enactment of the Land Act in the year 2012, these regulations or rules have never been formulated hence it is long overdue to have them in place.

These regulations and rules are being published alongside the Land Registration (General) regulations, 2017 and the Land Registration (Registration Units) Order, 2017 formulated under the Land Registration Act, 2012. The Community Land Regulations, 2017 formulated under the Community Land Act, 2016 are also published along these regulations and rules.

3. Policy Background

The land Act, under which these regulations are formulated, has consolidated and rationalized all matters relating to administration of land and land based resources. Apart from land management issues, the Land Act has consolidated issues to do with compulsory acquisition of land and the right to way or analogous rights by repealing the Land acquisition Act, cap 295 and the Wayleaves Act, cap 292. These Regulations and Rules therefore make a deliberate attempt to address in detail all general issues in regard to administration of public land and private land. Allocation of public land, a preserve of the President in the preceding legal regime and practice is now replaced by detailed guidelines on how the process should follow. Extension and renewal of leases, as well as compensation, have also been provided for in detail.

Further, these regulations and Rules prescribe forms for most, if not all, transactions prescribed under them as opposed to the earlier practice which permitted discretion and arbitrariness. This will in essence make transactions in respect to land easy and predictable.

The process of formulation of these regulations involved public consultations with members of the public in all regions of this country as well as receiving presentations both written and oral from various professional groups and organisations within the land sector. Going by the response received from the public, it was overwhelmingly clear that, save for the input and contributions made, the public was more ready than ever to have the regulations and rules published and operational. It should be noted that issues addressed by these regulations have always and constantly drawn the attention of the media owing to the sensitivity of land as a resource elicits.

4. Consultative Outcome

The formulation of the initial draft of these regulations was spearheaded by a ministerial taskforce. The initial draft was then first subjected to internal scrutiny of various departments and sections representing the Ministry of Land and Physical Planning and later to public participation where views were received from members of the public from various regions visited by the taskforce. Representations from at least the ward level as well as sub-county level in the regions (Nyeri, Garissa, Kisumu, Kakamega, Eldoret, Naivasha, Embu, Nairobi, Kitui) visited were received from the ordinary members of the public representing both individual and interest group interests. The land sector Professional groups such as Institute of Surveyors of Kenya (ISK) Kenya Institute of Planners (KIP) Law Society of Kenya (LSK) among others were consulted whereby their inputs received at plenary sessions as well as written memoranda. Electronic inputs were also received via a website set up for the purpose. Overall, eighty per cent of the initial copy of these regulations were endorsed by stakeholders twenty per cent accounting for the inputs received.

The process of stakeholder participation lasted for eight weeks in total.

5. Guidance

There is going to be need to engage with the users and enforcement agency involved in the application of these regulations. These regulations being new in

many aspects will need to be brought to the attention of the public and users through mass media and other forms. More importantly, the National Land Commission and the government agencies tasked with land administration will need to be educated of the changes wrought by these regulations and rules. The Cabinet Secretary plans to embark on this process by rolling out a program immediately these regulations and rules come into force.

6. Impact

6.1. The Impact on Fundamental Rights and Freedoms

These regulations have been formulated in conformity with the Constitution of Kenya, 2010 and within powers conferred to the Cabinet Secretary and the Chairman National Commission under the Land Act. The fundamental rights and freedoms as are spelled out in the Constitution have therefore not been interfered with in any way. On the contrary, the processes preceding registration of land have been made transparent and predictable.

6.2. The impact on the private sector

Going by the response and support received from the private sector during the formulation process of these regulations it is expected that the application thereof will create a positive impact on the private sector. The comprehensiveness of these regulations which does not leave room for discretion by providing multiple forms for all transactions envisaged under the Land Act and these regulations will go a long way to ease transactions made by various professional bodies on behalf of the members of the public. This also means that conduct of transactions will be easy, predictable and fast.

6.3. The impact on the public sector

Land being a critical sector, the public agencies vested with the responsibility of managing and enforcing these regulations have an enormous task of ensuring a positive impact envisaged by these regulations is delivered to the general public. It is expected that through the far reaching reforms introduced by these regulations will go a long way to enable public agencies vested with land management to deliver to the public expectation.

6.4. An impact assessment has not been prepared for these regulations.

7. Monitoring and Review

It is expected that upon application of these regulations, this country will experience a harmonised land management system since all management aspects have now been consolidated into one regime.

Disclaimer

This notes acts only as a guideline and as such they are not exhaustive and for clarity proper reference should be made to the main body of these regulations.