



**SPECIAL ISSUE**

2285

Kenya Gazette Supplement No. 116

13th July, 2016

(Legislative Supplement No. 51)

LEGAL NOTICE NO. 122

THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

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

THE PUBLIC FINANCE MANAGEMENT (SENATE MONITORING AND EVALUATION) REGULATIONS, 2016

PART I—GENERAL PROVISION

1. These Regulations may be cited as the Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2016.

Citation.

2. In these Regulations—

Interpretation.

“accounting officer” means the Clerk of the Senate;

“bank account” means an account opened at a commercial bank for the purpose of monitoring and evaluation under these Regulations;

“Clerk” means the Clerk of the Senate appointed under Article 128 of the Constitution;

“Commission” means the Parliamentary Service Commission established under Article 127 of the Constitution;

“Committee” means Senate Monitoring and Evaluation Committee established in accordance with Regulation 13;

“county office” means an office set up by a Senator in accordance with the Parliamentary Service (Constituency Office) Regulations, 2005;

“county” means a county as prescribed under Article 6(1) of the Constitution;

“Fund” means the sum allocated to Senators for purposes of carrying out monitoring and evaluation under the Commission budget;

“House” means the Senate;

“recipient” means a nominated or elected Senator;

“returns” means documentation indicating expenditure incurred during the monitoring and evaluation exercise;

“Speaker” means the Speaker of the Senate; and

“staff” means an employee or employees of a Senator under these Regulations.

3. (1) The purpose of the Regulations is to guide the Senate Sessional Committee on Monitoring and Evaluation in the

Purpose.

administration, disbursement and management of the Fund to ensure efficiency and effectiveness.

- (2) The regulations—
  - (a) specify the sources of monies to the Fund;
  - (b) provide guidance on the administration and management of the Fund; and
  - (c) provide financial procedures for the Fund.

4. (1) These Regulations shall apply to recipients of funds, the Committee established under Regulation 13, employees of the Commission and any other staff or officer employed by the Senator for involved in the management and administration of the Fund.

Application.

(2) The application of these regulations shall be guided by Article 96(1) of the Constitution which mandates the Senate to represent the counties and serve to protect the interests of the counties and their governments.

#### PART II—ESTABLISHMENT OF THE FUND

5. (1) There is established a Fund to be known as the Senate Monitoring and Evaluation Fund.

Establishment of the Fund.

(2) The Fund shall be utilized to carry out monitoring and evaluation activities in exercise of the Senate's oversight function over county governments.

6. The Fund shall consist of the following—

Sources of the Fund.

- (a) monies appropriated under the Commission's Budget for monitoring, evaluation and impact assessment;
- (b) grants and donations to the Fund received through the Commission; and
- (c) any other lawful sources.

7. (1) The object of the Fund is to provide monies necessary to enable Senators to carry out monitoring and evaluation activities in exercise of the Senate's oversight role over county governments in accordance with Article 96 of the Constitution.

Objects of the Fund.

(2) Without prejudice to sub regulation (1), the Fund shall be utilized in—

- (a) carrying out county expenditure tracking surveys;
- (b) facilitating consultation forums on issues affecting the counties;
- (c) assessing public perception on service delivery in the counties;
- (d) research, studies and surveys on various thematic areas affecting counties;
- (e) social auditing of development projects being undertaken in the counties;

- (f) tracking of revenues being collected by county governments;
- (g) tracking and monitoring development activities in the counties; and
- (h) any other monitoring and evaluation activity relevant to the mandate of the Senate.

(3) Nominated Senators shall carry out the monitoring and evaluation activities in paragraph (1) at the national level in respect of the interest that they represent in the Senate.

8. The initial allocation to the Fund shall be one billion shillings provided under the Commission's 2016/17 budget provided that the allocation shall be reviewed from time to time.

Initial allocation.

9. The Fund shall be distributed as follows—

Distribution of the Fund.

- (a) a one per cent administration fee shall be charged on the total monies allocated and shall be retained by the Commission for purposes of facilitating administrative functions for the Fund;
- (b) one per cent of the total monies allocated shall be set aside for capacity building;
- (c) six per cent of the total monies allocated shall be set aside for the nominated Senators and this amount shall be divided equally among the nominated Senators; and
- (d) the balance shall be shared among the elected Senators according to the formula set out in the First Schedule.

10. The funds shall be disbursed in accordance with conditions set out in the Second Schedule.

Disbursement of funds.

#### PART III—ADMINISTRATION OF THE FUND

11. The Accounting Officer shall in writing, appoint an employee of the Commission as the administrator of the Fund and may designate such other officers as may be necessary to assist the administrator in the administration of the Fund.

Administration of the Fund.

12. (1) The administrator of the Fund shall—

Functions of the administrator.

- (a) consult and regularly update with the accounting officer and the Committee on matters relating to the administration of the Fund;
- (b) cause to be kept proper books of accounts and other books and records in relation to the Fund, of all activities and undertakings financed by the Fund;
- (c) consolidate the required reports under these regulations and submit them to the Committee; and
- (d) carry out any other duties assigned by the Accounting Officer.

(2) The administrator may in writing delegate an employee of the Commission to exercise any of the administrator's powers or the performance of any of the functions under these regulations.

(3) The accounting officer shall ensure that the Senate Monitoring and Evaluation Office is resourced with requisite personnel for purposes of the day to day operations and handling of matters related to the management of the Fund.

(4) The accounting officer shall open, maintain and manage a separate account with a reputable bank where the monies due to the Fund shall be kept.

(5) The disbursement of monies out of the Fund to the recipients shall be bi-annual.

(6) The accounting officer shall with the approval of the Committee established under part IV of these regulations, introduce additional administration measures from time to time for effective operation of the Fund.

PART IV—ESTABLISHMENT OF A COMMITTEE

13. The Senate shall in accordance with its Standing Orders, establish a Committee to be known as the Senate Monitoring and Evaluation Committee consisting of a chairperson and not more than eight other members to oversight the Fund.

Establishment of the Senate Monitoring and Evaluation Committee

14. (1) The Committee shall—

Functions of the Committee

- (a) consider the bi-annual disbursements out of the Fund;
- (b) receive reports on the performance of the Fund from the administrator;
- (c) examine the monitoring programmes being undertaken by the recipients of the Fund;
- (d) prepare and submit an annual report on the operations and performance of the Fund to the Senate; and
- (e) perform any other function as the Senate may approve.

(2) The business and affairs of the Committee shall be conducted in accordance with the Senate Standing Orders.

PART V—FINANCIAL PROCEDURES

15. The 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 use for the purpose for which the Fund is established.

Receipts and earnings to be retained

16. (1) The accounting officer shall cause to be kept all proper books and records of the accounts of the income, expenditure and liabilities associated with the Fund.

Accounts and records

17. Within three months after the end of each financial year, the accounting officer shall submit to the Commission the accounts of the Fund showing —

Financial statements

- (a) a statement of income and expenditure during that year; and
- (b) a statement of the assets and liabilities of the Fund as at the last day of the financial year.



18. (1) The administrator of the Fund shall, within three months after the end of each financial year, prepare and submit to the accounting officer a report of the operations of the Fund for the immediately preceding year.

Report on operations of Fund.

(2) The accounting officer shall submit the said report to the committee for consideration.

19. The accounting officer shall lay the annual report before the Commission within three months from the day the Commission next sits after the report is presented to the accounting officer.

Annual report.

20. The procurement of all works and services relating to activities under these regulations shall be governed by the Procurement and Disposal Act and shall be processed through the Commission's procurement unit.

Procurement services.

Cap 421A.

21. An account approved by the Commission shall be opened for every Senator's monitoring and evaluation activities, with a reputable commercial bank at the nearest location from the constituency office.

Opening of bank account.

22. At the commencement of every financial year, the constituency office manager shall be issued with an Authority to Incur Expenditure by the accounting officer for that financial year.

Authority to Incur Expenditure.

23. The constituency office manager shall purchase office equipment as may be necessary to effectively enable monitoring and evaluation.

Equipment.

24. The constituency office manager shall ensure that the money available is spent in conformity with existing Government financial regulations to facilitate quick, efficient and effective delivery of services.

Conformity with Government financial regulations.

25. The signatories to the account opened pursuant to regulation 22 shall be—

Signatories.

(a) the constituency office manager whose signature shall be mandatory; and

(b) two signatories appointed by the Senator for that purpose.

26. Copies of bank statements and any other financial records from every Senator's allocation shall be availed to the Clerk at the end of every month.

Bank statements.

#### PART VI—OFFICES AND STAFFING FOR PURPOSES OF MONITORING AND EVALUATION

27. (1) A Senator may utilize the constituency office established under the Parliamentary Service (Constituency Offices) Regulations, 2005, for purposes of administrative activities in undertaking monitoring and evaluation.

Monitoring and evaluation offices.

(2) Despite paragraph (1), a Senator may, to ensure effective monitoring and evaluation, establish a separate office for that purpose.

(3) The provisions of the Parliamentary Service (Constituency Offices) Regulations, 2005 on constituency offices shall, with

necessary modifications, apply to any office established under paragraph (2).

28. (1) A Senator may utilize the constituency officers appointed under the Parliamentary Service (Constituency Offices) Regulations, 2005, for purposes of administrative activities in undertaking monitoring and evaluation.

Monitoring and  
evaluation staff.

(2) A Senator who opts to utilize the staff appointed under the Parliamentary Service (Constituency Offices) Regulations, 2005, shall vary the terms of the contracts of appointment of the staff to take into account the new responsibilities.

(3) Despite paragraph (1), a Senator may engage such additional staff as may be necessary to ensure effective monitoring and evaluation, subject to the ceiling of staff salaries approved by the Commission.

(4) The provisions of the Parliamentary Service (Constituency Offices) Regulations, 2005 with necessary modifications, apply to any office established under paragraph (3).

29. The constituency office manager appointed by a Senator under the Parliamentary Service (Constituency Offices) Regulations, 2005, shall—

Constituency office  
manager.

- (a) be the officer incharge of management of the finances allocated for monitoring and evaluation; and
- (b) keep the Senator well informed about the transactions of the monitoring and evaluation bank account established under these Regulations.

#### PART VII—MISCELLANEOUS PROVISIONS

30. (1) In the event of the winding up of the Fund, the cash balances shall be transferred to the Commission.

Winding up of the  
Fund.

(2) All assets and liabilities accrued by the Fund shall be transferred to the Commission.

31. All assets acquired from the Fund shall remain the property of the Commission and shall vest in the Commission.

Vesting of assets.

32. Part V of the Parliamentary Service (Constituency Offices) Regulations, 2005, shall, with necessary modifications, apply to handing over of offices, records and other property by a Senator who ceases to hold office.

Handing over.

33. The Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2015 are hereby revoked.

Revocation of L.N.  
No. 251.

## FIRST SCHEDULE

(reg. 9)

## FORMULA FOR ALLOCATING MONIES AMONG THE ELECTED SENATORS

<i>Parameter</i>		<i>Weight (%)</i>
Equal Share	q	47
Population	s	45
Size of County	r	8

$$CA = ((q \text{ (BES)})/47) + ((r \text{ (SC)})/TS) + ((s \text{ (CP)})/TP)$$

Where:

CA—Allocation due to Individual Elected Senator

ES—Equal Share

CP—County population

TP—Total Population

SC—Size of the County

TS—Total Size

q, r, s-parameter weights where:  $q + r + s = 1$  or 100%

## SECOND SCHEDULE

(reg. 10)

## CONDITIONS FOR DISBURSEMENT

1. All disbursements from the Fund to the respective recipients shall be approved and minuted by the committee.
2. All disbursements from the Fund's main account shall be made through the recipient bank accounts maintained for every recipient by the Fund administrator.
3. The record of the amounts received by each recipient shall be submitted to the committee within thirty days after the close of the financial year and no disbursements for the succeeding financial year shall be made into the accounts until the said records are duly received.
4. The committee shall set out general conditions and requirements for release of monies from the Fund to ensure efficient and effective management of the Fund.
5. The committee may impose reasonable requirements including restrictions on a particular recipient and such restrictions or requirements shall be reported together with the monthly returns to be submitted to the Senate.
6. Returns from the first disbursement made to a recipient in any financial year must be filed with the administrator of the Fund by a recipient or the staff two months after the close of the first half of the financial year.

7. Returns from the second disbursement made to a recipient in any financial year must be filed with the administrator of the Fund by individual recipients or their staff two months after the close of the financial year.
8. No disbursement to any recipient shall be processed and approved until the administrator of the Fund is satisfied that the required returns have been filed in such manner as shall be required by the administrator of the Fund filed within the timelines set.
9. The administrator of the Fund shall develop a schedule showing documentation to be submitted when recipients or their staff are filing the returns.

Dated the 6th July, 2016.

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



## EXPLANATORY MEMORANDUM

### PART I

**Name of Statutory Instrument:** The Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2016

**Name of the Parent Act:** The Public Finance Management Act, No. 18 of 2012

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

**Name of the Ministry/Authority:** Parliamentary Service Commission

### PART II

#### **1. Purpose of the Statutory Instrument**

To provide a legal framework for the establishment, administration and disbursement of the Senate Monitoring and Evaluation Fund and to facilitate Senators to carry out monitoring and evaluation and impact assessment activities at the county level in the context of Article 96 of the Constitution.

#### **2. Legislative Context**

Article 96 of the Constitution provides for the role of the Senate. In particular, Article 96(1) provides that “*the Senate represents the counties, and serves to protect the interests of the counties and their governments*”. Article 96(3) of the Constitution further requires the Senate to “*.....exercise oversight over national revenue allocated to the county governments*”.

Pursuant to these provisions of the Constitution, the statutory instrument is intended to provide a legal framework that establishes mechanisms to facilitate the Senate in the effective execution of its oversight mandate over the county governments as part

of its broader mandate of protecting the interests of the counties and their governments.

### 3. **Policy Background**

While Article 96(3) of the Constitution mandates the Senate to provide oversight over national revenue allocated to county governments, it is important to observe that there does not exist any legal framework that establishes a mechanism that would facilitate the Senate in the discharge of this function.

The Public Finance Management (Senate Monitoring and Evaluation) Regulations are intended to provide this framework.

Part I of the Regulations provides for general provisions on the Fund. Part II provides for the establishment of the Fund.

Regulation 5(1) establishes the Senate Monitoring and Evaluation Fund which is to be utilized to *“carry out monitoring and evaluation activities in the exercise of the Senate’s oversight function over county governments”*. The object of the Fund as set out in regulation 7 is to provide monies to Senators to carry out monitoring and evaluation activities in exercise of the Senate’s oversight role over county governments in accordance with Article 96 of the Constitution.

Regulations 8, 9 and 10 provide for the initial allocation to the Fund, for the distribution of the Fund and the disbursement of Funds allocated, respectively.

Part III provides for the administration of the Fund which, pursuant to regulation 11(1), is to be administered through the Senate Monitoring and Evaluation office which is to be established by the Parliamentary Service Commission.

Part IV establishes the Senate Monitoring and Evaluation Committee and sets out its functions while Part V provides for the financial procedures.

Part VI sets out the offices and staffing for purposes of monitoring and evaluation. In particular, regulation 27(1) provides that a Senator may utilize the county office established under the Parliamentary Service (Constituency Offices) Regulations, 2005, for purposes of administrative activities in undertaking monitoring and evaluation. Regulation 28(1) further provides that a Senator may utilize the constituency officers appointed under the Parliamentary Service (Constituency Offices) Regulations, 2005, for purposes of administrative activities in undertaking monitoring and evaluation.

Regulation 29 provides that the county office manager appointed by a Senator under the Parliamentary Service (Constituency Offices) Regulations, 2005, shall-

- (a) be the officer in charge of management of the finances allocated for monitoring and evaluation; and
- (b) keep the Senator informed about the transactions of the monitoring and evaluation bank account established under these Regulations.

Part VII sets out miscellaneous provisions regarding the winding up of the Fund, vesting of assets and the handing over of offices, records and other properties by a Senator who ceases to hold office.

The First Schedule sets out the formula for allocating monies among the elected Senators while the Second Schedule provides for conditions for disbursement of the Fund.

#### **4. Consultation Outcome**

The following institutions were consulted during the formulation of the Regulations: the National Treasury, the Parliamentary Budget Office and the Senators. The institutions submitted their views which have since been included in the Regulations.

## 5. **Impact**

The Regulations shall have no impact on fundamental rights and freedoms and shall have no impact on the private sector.

The Regulations will enable the Senate to effectively provide oversight over national revenue allocated to the county governments in the manner set out in regulation 7(2) by —

- (a) carrying out county expenditure tracking surveys;
- (b) facilitating consultation fora on issues affecting the counties;
- (c) assessing public perception on service delivery in the counties;
- (d) undertaking research, studies and surveys on various thematic areas affecting counties;
- (e) social auditing of development projects being undertaken in the counties;
- (f) tracking of revenues being collected by county governments;
- (g) tracking and monitoring development activities in the counties; and
- (h) performing any other monitoring and evaluation activity relevant to Senate's mandate.

## 6. **Monitoring and Evaluation**

The Regulations are intended and expected to enhance the Senate's execution of its oversight mandate as set out under Article 96(3) of the Constitution. The Regulations are further intended to enhance the monitoring, evaluation and impact assessment activities by the Senate at the county level.

The effective implementation of these Regulations is expected to enhance accountability and prudent use of resources allocated to county governments.

On review of the implementation of the Regulations, the Senate Monitoring and Evaluation Committee is required under regulation 14(b) and (c) to regularly receive reports on the performance of the Fund from the administrator and to examine the monitoring programmes being undertaken by the recipients of the Fund.



The Committee is further required under regulation 14(1)(d) to prepare and submit annual reports on the operations and performance of the Fund to the Senate.

**M. A. MOHAMMED,  
FOR: CLERK OF THE SENATE/SECRETARY,  
PARLIAMENTARY SERVICE COMMISSION.**