

SPECIAL ISSUE



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THE CONSTITUTION OF KENYA THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

PART I—PRELIMINARY

- 1.1 Title—Guidelines on the administration of the Equalization Fund established under Article 204 of the Constitution.
- 1.2 Authorization—These Guidelines are issued under section 12 (2) (k) of the Public Finance Management Act, 2012, which empowers the Cabinet Secretary for finance to issue guidelines to national government entities with respect to financial matters and monitoring their implementation and compliance.
- 1.3 Definitions—Terms used in these Guidelines are as defined in the Constitution and the Public Finance Management Act, 2012, except otherwise specified. Other terms used in these Guidelines shall be taken to have the meaning assigned to them hereunder:
 - 1.3.1 “Accounting Standards Board” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;
 - 1.3.2 “Board” means the Equalization Fund Advisory Board established under paragraph 4.1 of these Guidelines;
 - 1.3.3 “Cabinet Secretary” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;
 - 1.3.4 “Financial year” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;
 - 1.3.5 “Fund” means the Equalization Fund established under Article 204 of the Constitution;
 - 1.3.6 “Marginalized area” means an area identified under policy determined by the Commission on Revenue Allocation in accordance with Article 216 (4) of the Constitution.
 - 1.3.7 “officer administering the Fund” means a person nominated by the Principal Secretary responsible for finance and designated by the Cabinet Secretary as the administrator of the Fund;
 - 1.3.8 “revenue” has the meaning assigned to it under the Commission on Revenue Allocation Act, 2012; and
 - 1.3.9 “unutilized balance” means—
 - 1.3.9.1 any amounts not withdrawn from the Fund at the end of financial year; and

- 1.3.9.2 any amount withdrawn from the Fund for purposes of provision of basic services under an Appropriations Act and not expended at the end of financial year.

PART II—STATEMENT OF POLICY

2.1 Purpose

The purpose of these Guidelines is:

- (i) to specify the sources, object and purpose of the Fund;
- (ii) to provide guidance on the administration and management of the Fund;
- (iii) to establish an Equalization Fund Board to advise the Cabinet Secretary on the proper and effective performance of the Fund;
- (iv) to provide for the withdrawals from the Fund; and
- (v) provide for the winding up of the Fund.

2.2 Capital

The capital of the Fund shall be one half percent of all the revenue collected by the national government as appropriated by Parliament in each financial year.

PART III—SOURCES, OBJECTS AND PURPOSE OF THE FUND

3.1 Sources of the Fund

The Fund shall consist of:

- (a) one half of all revenue collected by the national government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly;
- (b) income generated from proceeds of the Fund; and
- (c) the cumulative amount of revenue from previous years not spent.

3.2 Object and purpose of the Fund

The object and purpose of the Fund is to provide basic services including water, roads, health facilities and electricity to the marginalized areas to the extent necessary to bring the quality of those services to the level generally enjoyed by the rest of the nation, so far as possible in an equitable, efficient and transparent manner.

PART IV—MANAGEMENT OF THE FUND

4.1 Establishment of the Board

There is established unincorporated board to be known as the Equalization Fund Advisory Board which shall consist of:

- (a) the Principal Secretary for the time being responsible for matters relating to finance who shall be the chairperson;

- (b) one Principal Secretary for the time being responsible for matters relating to Devolution and Planning or his or her representative;
- (c) the Principal Secretary for the time being responsible for matters relating to water or his or her representative;
- (d) the Principal Secretary for the time being responsible for matters relating to roads or his or her representative;
- (e) the Principal Secretary for the time being responsible for matters relating to health or his or her representative;
- (f) the Principal Secretary for the time being responsible for matters relating to energy or his or her representative;
- (g) the Principal Secretary for the time being responsible for matters relating to national coordination or his or her representative; and
- (h) four other members of either gender appointed by the Cabinet Secretary from outside the Public Service.

4.2 Co-option of other members:

- (a) The Board may, from time to time, co-opt other members as it may deem necessary for the proper and efficient discharge of the functions of the Board.
- (b) The Advisory Board may establish committees in marginalized areas to assist it in the identification of projects to be funded from the Fund and such committees shall be under the control of the Advisory Board.

4.3 Qualification requirements of members

A person shall not be nominated and appointed to the Board under paragraph 4.1(g) unless that person:

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) meets the requirements of Chapter Six of the Constitution; and
- (d) has at least five years' experience in matters relating to the provisions of basic services.

4.4 Functions of the Board

The functions of the Board shall be to advise the Cabinet Secretary on the proper and effective performance of the Fund and in particular, the Board shall:

- (a) propose and advise the Cabinet Secretary on the allocation of funds among the various basic services in the marginalized areas in accordance with Articles 204 of the Constitution;
- (b) review the performance of the Fund and make recommendations to improve on the operations of the Fund to the Cabinet Secretary;
- (c) review the proposed work plans under paragraph 5 to be financed by the Fund.
- (d) propose and advise on distribution of resources from the Fund to the various marginalized areas;
- (e) review and propose annual estimates of expenditure to be funded from the Fund;
- (f) review the consolidated quarterly reports prepared by the administrator of the fund on the implementation of the work plans and submit them to the Cabinet Secretary with copies to the Commission on Revenue Allocation and the Controller of Budget; and
- (g) perform any other functions that may be assigned by the Cabinet Secretary, from time to time.

4.5 Establishment of committees

The Board may establish committees consisting of its members to deal with such matters as the Board may specify.

4.6 Expenses of the Board

The expenses of the Board shall be met out of funds provided by Parliament for that purpose and shall not exceed ten (10) percent of the annual voted provision.

4.7 Secretary to the Board

The officer administering the Fund shall be the Secretary to the Board.

4.8 Responsibilities of the Secretary

The Secretary shall be responsible for arranging the business of the Board's meetings, keeping records of the proceedings of the Board, and shall perform such other duties as the Board may direct.

4.9 Secretary to be responsible to the Board

In performance of duties under these Guidelines, the Secretary shall be responsible to the Board.

4.10 Absence of the Secretary

The Board may, in absence of the Secretary, appoint any member of the Board or staff of the National Treasury to temporarily perform the functions of the Secretary under paragraph 4.8.

4.11 Conduct of the affairs of the Board

The conduct and regulation of the business and affairs of the Board shall be provided for in the Schedule.

PART V—PREPARATION AND SUBMISSION OF WORKPLANS

5.1 Preparation and submission of work plans

The relevant State Department shall prepare a work plan in respect of a financial year and in preparing this work plan they shall ensure that the work plan:

- (a) contains information on the financial and non-financial performance of the Fund; and
- (b) is in a form that complies with the standards prescribed and published by the Accounting Standards Board from time to time;

5.2 Quarterly financial statements

The relevant State Departments shall prepare quarterly financial statements to officer administering the Fund.

5.3 Approval of reports

The work plans/projects/quarterly reports shall be prepared and approved by the respective State Department before submission to the Fund.

PART VI—WITHDRAWALS FROM THE FUND

6.1 Where a withdrawal from the Fund is authorized under an Act of Parliament that approves the appropriation of money, the National Treasury shall make a requisition for the withdrawal and submit it to the Controller of Budget for authorization.

6.2 The authorization by the Controller of Budget of a withdrawal from the Fund, together with written instructions from the National Treasury requesting for the withdrawal, shall be sufficient authority for the Central Bank of Kenya to pay amounts from the Equalization Fund Account in accordance with the authorization and instructions given.

6.3 All withdrawals made from the Fund under paragraph 6.1 shall be deposited into the respective spending agencies account.

PART VII—ADMINISTRATION OF THE FUND

7.1 The officer administering the Fund shall:

- (a) open a separate account at the Central Bank of Kenya into which all monies raised under paragraph 3.1 of this guidelines shall be paid into;
- (b) operate and maintain the bank account in (a) in the manner as prescribed by the National Treasury from time to time;
- (c) consult with the Cabinet Secretary and the Board on matters relating to the administration of the Fund;

- (d) 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;
- (e) prepare, sign and submit 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 with a copy to the Controller of Budget and the statements shall be prepared in a manner prescribed by the Accounting Standards Board;
- (f) furnish additional information as the officer considers to be proper and sufficient for the purpose of examination and audit by the Auditor-General in accordance with the provisions of the Public Audit Act, 2003;
- (g) consolidate the quarterly reports received from State Departments under paragraph 5.3 and submit a consolidated quarterly report to the Board;
- (h) In executing subparagraph (g), the administrator of the Fund, may with the approval of the Board, undertake monitoring and evaluation of projects implemented through funding from the Equalization Fund;
- (i) prepare a quarterly report on the receipts into issues and withdrawals from the Fund and submit it to the Cabinet Secretary for gazettelement before or on the 21st day of every fourth month of the financial year.

PART VIII—WINDING UP OF THE FUND

- 8.0 At the 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 State Department responsible for matters relating to finance.

SCHEDULE

CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD

1. Tenure of Office.

Members of the Board appointed under these Guidelines shall, subject to the provisions of this Schedule, hold office for a term of three years, on such terms and conditions as may be specified in the instrument of appointment but shall be eligible for re-appointment for a further term of three years.

2. Vacation of office

A Member of the Board, other than *ex officio* member, may—

- (a) at any time resign from office by notice in writing to the Cabinet Secretary;
- (b) be removed from office by the Cabinet Secretary, if the member—
 - (i) has been absent from three consecutive meetings of the Board without permission from the chairperson;
 - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
 - (iii) is convicted of an offence involving dishonesty or fraud;
 - (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;
 - (v) is incapacitated by prolonged physical or mental illness; or
 - (vi) is otherwise unable or unfit to discharge his functions.

3. Meetings of the Board

- (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of the next meeting.
- (2) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days written notice of every meeting of the Board shall be given to every member of the Board.
- (3) The quorum for the conduct of the business of the Board shall be five members excluding the Secretary, of whom the majority of shall be from amongst the non *ex officio* members.

- (4) The chairperson shall preside at every meeting of the Board at which he or she is present but in his or her absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.
- (5) Unless a unanimous decision is reached a decision on any matter before the Board shall be reached by consensus.
- (6) Subject to subparagraph (3), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.
- (7) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of any other persons at its meetings and may make standing orders in respect thereof.

4. Disclosure of Interest

- (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Provided that if the majority of the members present are of the opinion that the experience or expertise of that member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose.

- (2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

5. Minutes

The Board shall cause minutes of all proceedings of meetings of the Board to be entered in books for that purpose.

EXPLANATORY MEMORANDUM TO THE PUBLIC FINANCE MANAGEMENT (EQUALIZATION FUND) GUIDELINES, 2015

PART I

- 1. Name of the Statutory Instrument: Public Finance Management (Equalization Fund) Regulations, 2015.

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

Enacted Pursuant to: Section 205 of the Public Finance Management Act, 2012

Name of the Ministry/ Department: The National Treasury

PART II

- 2. The Purpose of Public Finance Management (Equalization Fund) Regulations, 2015.

The purpose of these Regulations is to:

- (i) specify the sources, object and purpose of the Fund;
- (ii) provide guidance on the administration and management of the Fund;
- (iii) establish an Equalization Fund Board to advise the Cabinet Secretary on the proper and effective performance of the Fund;
- (iv) provide for the withdrawals from the Fund; and
- (v) provide for the winding up of the Fund.

3. The Legislative Context

The Constitution under Article 204 establishes the Equalization Fund whose resources shall be applied to marginalized areas as identified through the Marginalization Policy determined by the Commission on Revenue Allocation and approved by Parliament.

The provisions of the Constitution are further expounded in the Public Finance Management Act, 2012. This Act 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 (Equalization Fund) Regulations, 2015" are made to operationalize the Equalization Fund established under Article 204 of the Constitution by providing a mechanism for use of this Fund directly by the national government or indirectly through conditional or unconditional transfers to marginalized counties as identified by the Marginalization Policy determined by the Commission on Revenue Allocation in accordance with Article 216(4) of the Constitution. In addition, the Regulations are made to provide the management structure of the Fund which is clearly linked with Ministries, State Departments and Agencies as well as marginalized counties.

4. Policy Background.

The Constitution assigned the duty to decide on the policy for implementation of the Equalization Fund to the National Government under Article 204 of the Constitution. Further, the Constitution provides that the national government may use the Fund either directly or indirectly through conditional or unconditional grants to marginalized counties. In addition, the Public Finance Management Act, 2012 has assigned the duty to administer the Equalization Fund to the Cabinet Secretary responsible for matters relating to finance.

Accordingly, the National Government has decided that the Equalization Fund shall need a robust management structure to ensure the Fund's objectives are achieved through a transparent and accountable mechanism. The management structure has been provided for the Regulations. In addition, the Fund may be used directly by the national government, where the functions fall under the national government or under intergovernmental agreements between the marginalized counties and the national government. Alternatively, the Fund may be used as conditional grants to marginalized counties, which have been identified through the marginalization policy determined by the Commission on Revenue Allocation in line with Article 216 (4) of the Constitution, and where the functions are assigned to county governments under Schedule Four of the Constitution.

The Marginalization policy determined by the Commission on Revenue Allocation in line with Article 216 (4) of the Constitution, identified fourteen counties to benefit from the Fund namely: Turkana; Mandera; Wajir; Marsabit; Samburu; West Pokot; Tana River; Narok; Kwale; Garissa; Kilifi; Taita Taveta; Isiolo; and Lamu.

5. Public Consultations

Extensive consultations were done while preparing the Public Finance Management (Equalization Fund) Regulations, 2015 with key stakeholders and their input taken into account before finalization of these Regulations. Some of the key stakeholders' consulted are Commission on the Implementation of the Constitution, Commission on Revenue Allocation, Controller of Budget, Accounting Officers of national and county governments, County Executive Committee Members of Finance, Senate, Members of Parliament as well as international experts in public finance management such as the International Monetary Fund and the World Bank among others.

Different stakeholders had different views especially on the mode of implementation of the Equalization Fund. Some held the view that the fund should be implemented directly by the national government through State Departments while others proposed that it be implemented indirectly through conditional grants to marginalized counties. The National Government therefore made a deliberate choice to stick to the Constitutional provisions that the Fund can either be used directly by the National Government or as a conditional allocation to the marginalized counties. This will give flexibility to the Fund to ensure maximum impact in terms of bringing the services of the marginalized counties closer to those enjoyed by other areas.

6. Guidance

The National Treasury will sensitize stakeholders including Parliament, accounting officers of national and county governments and the general public, on the process of accessing

the Equalization Fund resources, the accountability mechanism, the monitoring and evaluation mechanism and the need to ensure regular reporting to both the Parliament and relevant County Assemblies.

7. Impact Assessment

An impact assessment has not been prepared for this statutory instrument. (Expected impact is, however, implied in the Marginalization Policy determined by the Commission on Revenue Allocation).

8. Review of the Marginalized Counties.

The National Treasury shall monitor the application of the Equalization Fund resources. This will be done through quarterly reports sent by the relevant accounting officer of the national government. In addition, the Fund Secretariat at the National Treasury will also carry out regular monitoring and evaluation of the specific projects funded through the Equalization Fund.

It is important to note that the marginalization policy determined by the Commission on Revenue Allocation and approved by Parliament shall be in force for a maximum period of three years from the operationalization of these Regulations. In this respect, a review thereof will be done by the Commission on Revenue Allocation for in line with Article 216 (4) of the Constitution.

9. National Treasury Contact Person.

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

Made on the 11th March, 2015.

HENRY ROTICH,
Cabinet Secretary for the National Treasury.

GAZETTE NOTICE NO. 1712

THE BASIC EDUCATION ACT

(No. 14 of 2013)

THE NATIONAL COUNCIL FOR NOMADIC EDUCATION IN KENYA (NACONEK)

APPOINTMENT

IN EXERCISE of the powers conferred by section 2 of the Sixth Schedule of the Basic Education Act, 2013, the Cabinet Secretary for Education, Science and Technology appoints—

CHRISTOPHER GALGALO ALI

to be the chairperson of the National Council for Nomadic Education in Kenya for a term of four (4) years; and

Beth Kalunda,
Catherine Wanjala,
Gertrude M. Wamae,
Gilbert Kimutai arap Bor,
Irshad A. Ibrahim,
Fr. Linus Ekai,
Lucy Chepkukumun Loboo,
Nesphory Nyange,
Timira Diyad Elmi,
Belio R. Kipsang (Dr.),
Kamau Thugge (Dr.),
Mwanamaka A. Mabruki (Ms.),

to be members of the National Council for Nomadic Education in Kenya (NACONEK) for a term of three (3) years with effect from 23rd February, 2015.

Dated the 11th March, 2015.

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