

FACTSHEET

08



PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY

Processing of Statutory Instruments

2nd Edition

Factsheet No. 8

**PROCESSING OF STATUTORY
INSTRUMENTS**

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Purpose and Acknowledgment

This Factsheet is part of the Kenya National Assembly Factsheets Series that has been developed to enhance public understanding and awareness, and to build knowledge on the work of the Assembly, and its operations. It is intended to serve as a guide for ready reference by Members of Parliament, staff and the public. The information contained here is not exhaustive and readers are advised to refer to the original sources for further information.

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FACTSHEET NO. 8

Processing of Statutory Instruments



1.0 Background

This **Factsheet** provides a condensed summary on the manner in which the National Assembly considers Statutory Instruments and the aspects taken into account in scrutinizing a statutory instrument. It provides a definition of a statutory instrument and lays out the prerequisites that a statutory instrument ought to satisfy, which are- compliance with the Constitution, the Interpretation and General Provisions Act (Cap 2), the Parent Act and the Statutory Instruments Act, 2013. The Factsheet also provides a summary of selected Speakers' Rulings on scrutiny of statutory instruments and amendments to the applicable law and their implications on the manner in which the National Assembly considers statutory instruments.

2.0 Introduction

Chapter eight of the Constitution of Kenya establishes the Legislature as the sole law-making body in the Republic. Article 94(5) precludes all other persons or bodies from making provisions having the force of law in Kenya except under authority conferred by the Constitution or by legislation passed by the Legislature.

In certain cases, Parliament may pass an Act without making provisions relating to the nitty gritty matters of implementation but instead leave it to the implementing body to propose provisions with force of law for the better implementation of the Act or carrying out of the provisions in the Act. To this end, Parliament, through an Act passed by it, may delegate its legislative authority to certain Government agencies for purposes of coming up with subsidiary legislation.

It is worth noting that the exercise of delegated legislative authority by government bodies other than Parliament is usually under strict supervision by Parliament, which donated the power, to ensure that the authority to whom the power is delegated acts within the authority delegated. The National Assembly scrutinizes all statutory instruments made pursuant to any legislative powers delegated by the Legislature as against the Constitution and the limits of the powers delegated. Scrutiny of statutory instruments is guided by the provisions of the Statutory

Instruments Act, 2013.

3.0 Meaning of a statutory instrument?

Section 2 of the Statutory Instruments Act, 2013 and the Standing Orders of the respective Houses of Parliament define a statutory instrument as—

Any rule, order, regulation, direction, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution, guideline or other statutory instrument issued, made or established in the execution of a power conferred by or under an Act of Parliament under which that statutory instrument or subsidiary legislation is expressly authorized to be issued.

4.0 Prerequisites for a statutory instrument

Statutory instruments are prepared by a Cabinet Secretary or a body with power to make them, for example, a commission, an authority or a board.

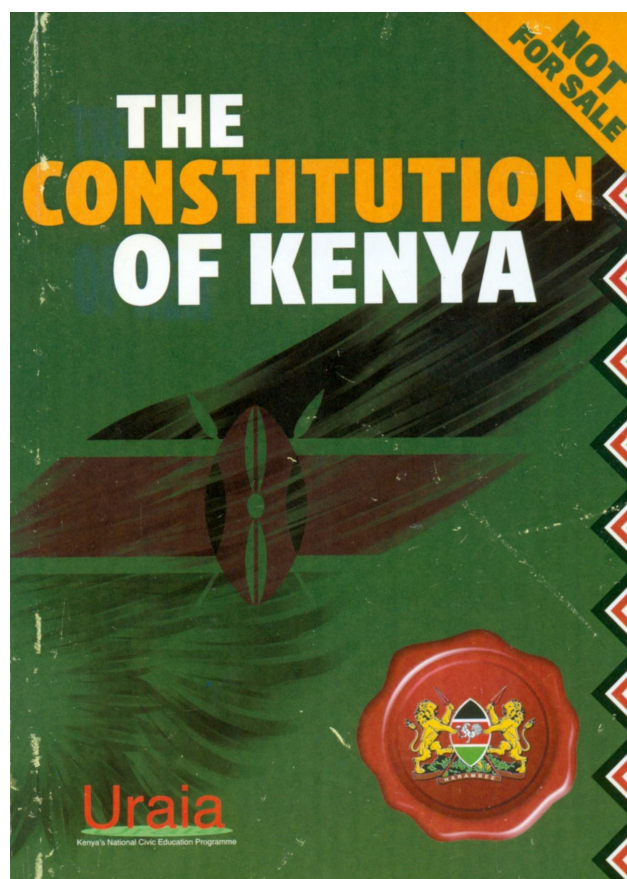
Statutory Instruments must be in conformity with the following prerequisites—

4.1 The Constitution

Article 94 (5) and (6) of the Constitution provide that-

- (5) *No person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation.*
- (6) *An Act of Parliament, or legislation of a county, that confers on any State organ, State officer or person the authority to make provision having the force of law in Kenya, as contemplated in clause (5), shall expressly specify the purpose and objectives for which that authority is conferred, the limits of the authority, the nature and scope of the law that may be made, and the principles and standards applicable to the law made under the authority.*

Therefore, a Cabinet Secretary or a body or a commission, or an authority or a board with power to make a delegated legislation, must ensure that they act within the power delegated under the Constitution.



4.2 The Interpretation and General Provisions Act (Cap 2)

Statutory instruments must conform to the provisions of the Interpretation and General Provisions Act in regard to construction, application and interpretation. The Act provides, among other things, the following: *(Please Turn Over)*

a) Effect of repeal of Act on subsidiary legislation

Where an Act or part of an Act is repealed, the subsidiary legislation issued under or made under the law, unless a contrary intention appears, will remain in force, so far as it is not inconsistent with the repealing Act; or until it has been revoked or repealed by subsidiary legislation issued or made under the provisions of that law.

b) Retrospective operation of subsidiary legislation

Subsidiary legislation may be made to operate retrospectively to any date, not being a date earlier than the commencement of the written law under which the subsidiary legislation is made, but no person shall be made or become liable to any penalty whatsoever in respect of an act committed or of the failure to do anything before the day on which that subsidiary legislation is published in the Gazette.

c) Construction of subsidiary legislation

Where an Act confers power to make subsidiary legislation, expressions used in the subsidiary legislation, except where a contrary intention appears, have the same respective meanings as in the Act conferring the power, and a reference in the subsidiary legislation to “the Act” means the Act conferring the power to make the subsidiary legislation.

d) General provisions with respect to power to make subsidiary legislation

Where an Act confers power on an authority to make subsidiary legislation, the following provisions shall, unless a contrary intention appears, have effect with reference to the making of the subsidiary legislation—

- (i) when subsidiary legislation purports to be made or issued in exercise of a particular power or powers, it shall be deemed also to be made or issued in exercise of all other enabling powers;
- (ii) no subsidiary legislation shall be inconsistent with the provisions of an Act;
- (iii) subsidiary legislation may at any time be amended by the same authority and in the same manner by and in which it was made; but where the authority has been replaced wholly or in part by another authority, the power conferred upon the original authority may be exercised by the replacing authority;
- (iv) where an Act confers power on an authority to make subsidiary legislation for a general purpose and also for special purposes incidental thereto the enumeration of the special purposes are not deemed to derogate from the generality of the powers conferred with reference to the general purpose;
- (v) there may be annexed to the breach of subsidiary legislation a penalty, not exceeding Ksh. 6,000 or such term of imprisonment not exceeding six (6) months, or both, which the authority making the subsidiary legislation may think fit.

e) Acts done under subsidiary legislation deemed done under Act which authorizes it

An act shall be deemed to be done under an Act or by virtue of the powers conferred by an Act or in pursuance or execution of the powers of or under the authority of an Act, if it is done under or by virtue of or in pursuance of subsidiary legislation made under a power contained in that Act.

4.3 All directions, resolutions, orders and authorizations given by by-laws made, and licenses or permits issued by the local authorities established, under the Local Government Act and

subsisting or valid immediately before the commencement of this Act shall be deemed to have been given, issued or made by the boards established pursuant to this Act, as the case may be, until their expiry, amendment or repeal.

4.4 The Parent Act

All delegated legislation are made pursuant to powers delegated under a parent Act. In this regard, it is worth noting that delegated legislation must be made in conformity with the parent Act and particular attention must be paid to the provision delegating legislative powers. As such, a regulation-making authority must take due care so as to ensure that a statutory instrument is made without unreasonable delay in the event that no timelines are stipulated in the parent Act. Where timelines for preparing delegated legislation are stipulated, strict adherence ought to be observed.

Additionally, some delegated legislation require pre-publication scrutiny by the National Assembly and the draft thereof must therefore be tabled in the House before publication. In such cases, the requirements are expressly provided for under the parent Act. For instance, with respect to statutory instruments relating to election, section 109(3) of the Elections Act (No. 24 of 2011) provides—

The power to make regulations shall be exercised only after a draft of the proposed regulations has been approved by the National Assembly, at least four months preceding a general election:

Provided that this applies to the first general election under this Act.

Therefore, any regulation relating to election matters once made by the Independent Electoral and Boundaries Commission (IEBC), must be approved by the House. This was the case in 2017 when the House approved the following Elections-Related Regulations: The Draft Elections (Technology) Regulations, 2017, The Draft Elections (Registration of Voters) (Amendment) Regulations, 2017, The Draft Elections (Voter Education) Regulations, 2017, The Draft Elections (General) (Amendment) Regulations, 2017 and The Draft Elections (Party Primaries and Party Lists) Regulations, 2017.

Although the provisions of the Elections Act (No. 24 of 2011) limited the application of parliamentary approval of election-related statutory instruments to the first elections conducted under the Act, the same case applied to similar instruments made to guide the 2022 General Elections. On 8th June 2022 when the House passed the Draft Elections (Registration of Voters) (Amendment) Regulations, 2022; the Draft Elections (General) (Amendment) Regulations, 2022; the Draft Elections (Voter Education) (Amendment) Regulations, 2022; the Draft Elections (Party Nominations and Party Lists) (Amendment) Regulations, 2022; and, the Draft Elections (Technology) (Amendment) Regulations, 2022.

Similarly, under section 205(4) of the Public Finance Management Act, regulations made under the Act should be approved by Parliament. Under this provision, for instance, the House approved the Public Finance Management (Uwezo Fund) Regulations, 2014.

Since the Statutory Instruments Act was passed, hundreds of regulations have been considered and either approved or annulled by both Houses of Parliament.

4.5 Conformity with the Statutory Instruments Act, 2013

The Statutory Instruments Act outlines the criteria that guide the scrutiny of delegated legislation. The key requirements under the Act are:

4.5.1 Consultations between the regulation-making authority and persons likely to be affected by a proposed instrument (section 5)

The regulation-making body is expected to consult persons who are likely to be affected by a proposed instrument. It ought to explain in detail in an Explanatory Memorandum that consultations were carried out, the scope and outcome of such consultations.

Various amendments were introduced through the Statute Law (Miscellaneous Amendments) Act No. 4 of 2018 regarding consultation on public participation. These included:

- a) definition for public participation;
- b) definition of memorandum to include statements on proof of sufficient public consultations;
- c) the manner in which consultations were carried out;
- d) the results of public consultations;
- e) changes on the legislation after undertaking public consultations, and
- f) an explanation for lack of public consultations in case there was none.

The amendments served to emphasize the centrality of public participation in the scrutiny to ensure compliance of statutory instruments with the principles espoused under Articles 10 and 118 of the Constitution.

4.5.2 Regulatory Impact Statement (sections 6, 7 and 8).

The Statutory Instrument Act provides for the need for the regulation making authority to provide an impact statement if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community. The regulatory making authority must provide a certificate in writing confirming that the guidelines have been complied with and that the statement adequately assesses the likely impact of the proposed instrument. A copy of the regulatory impact statement and the compliance certificate must be tabled in Parliament together with the instrument.

The Act exempts submission of a regulatory impact statement where an instrument—

- (a) deals with a matter that is not of a legislative character, including, for example, a matter of a machinery, administrative, drafting or formal nature;
- (b) deals with a matter that does not operate to the disadvantage of any person (other than a government entity) by—
 - (i) decreasing the person's rights; or
 - (ii) imposing liabilities on the person;
- (c) deals with an amendment of statutory instrument to take account of the prevailing Kenyan legislative drafting practice;
- (d) deals with the commencement of an Act or subordinate legislation or a provision of an Act or statutory instrument;
- (e) deals with an amendment of statutory instrument that does not fundamentally affect the legislation's application or operation;
- (f) deals with a matter of a savings or transitional character;
- (g) deals with a matter arising under legislation that is substantially uniform or
- (h) is complementary with legislation of the National Government or any County;
- (i) deals with a matter advance notice of which would enable someone to gain unfair advantage;
- (j) deals with an amendment of a fee, charge or tax consistent with announced government policy.

4.5.3 Preparation of an Explanatory Memorandum (section 11)

The regulation making authority is required to transmit a copy of the statutory instrument together

with the explanatory memorandum to the responsible Clerk for tabling before Parliament. An Explanatory Memorandum is a statement prepared by the regulation-making authority that explains the purpose and operation of the statutory instrument and it includes any documents incorporated in the statutory instrument by reference and indicates how they may be obtained.

4.5.4 Tabling of the statutory instruments (section 11)

A statutory instrument is required to be transmitted to the Clerk within seven sitting days from the date of publication.

4.5.5 Adherence to principles of good governance and rule of law (section 13)

While scrutinizing a statutory instrument the Committee on Delegated Legislation is guided by the principles of good governance and the rule of law. Consequently, the Committee considers whether the statutory instrument:

- (a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other 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) contains imposition of taxation;
- (e) directly or indirectly bars the jurisdiction of the Courts;
- (f) gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;
- (g) involves expenditure from the Consolidated Fund or other public revenues;
- (h) is defective in its drafting or for any reason the form or purport of the statutory instrument calls for any elucidation;
- (i) appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;
- (j) appears to have had unjustifiable delay in its publication or laying before Parliament;
- (k) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions;
- (l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- (m) inappropriately delegates legislative powers;
- (n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- (o) appears for any reason to infringe on the rule of law;
- (p) inadequately subjects the exercise of legislative power to parliamentary scrutiny; and
- (q) accords to any other reason that the Committee considers fit to examine.

4.5.6 Exemption from scrutiny (section 14)

The Statutory Instruments Act allows for certain statutory instruments to be exempted from parliamentary scrutiny. The Committee may therefore exempt certain classes of statutory instruments from scrutiny if satisfied that it is not reasonably practical to undertake scrutiny due to the high number of regulations in that class that must be scrutinized.

4.5.7 Tabling of Committee report on scrutiny of instruments (section 15 (2))

The Committee must report to the House within twenty-eight (28) days after the date of referral of the statutory instrument failure to which the statutory instrument is deemed to have fully met the relevant considerations and the responsible regulation making authority will be at liberty to operationalize it.

4.5.8 Notice to the regulation making authority (section 16)

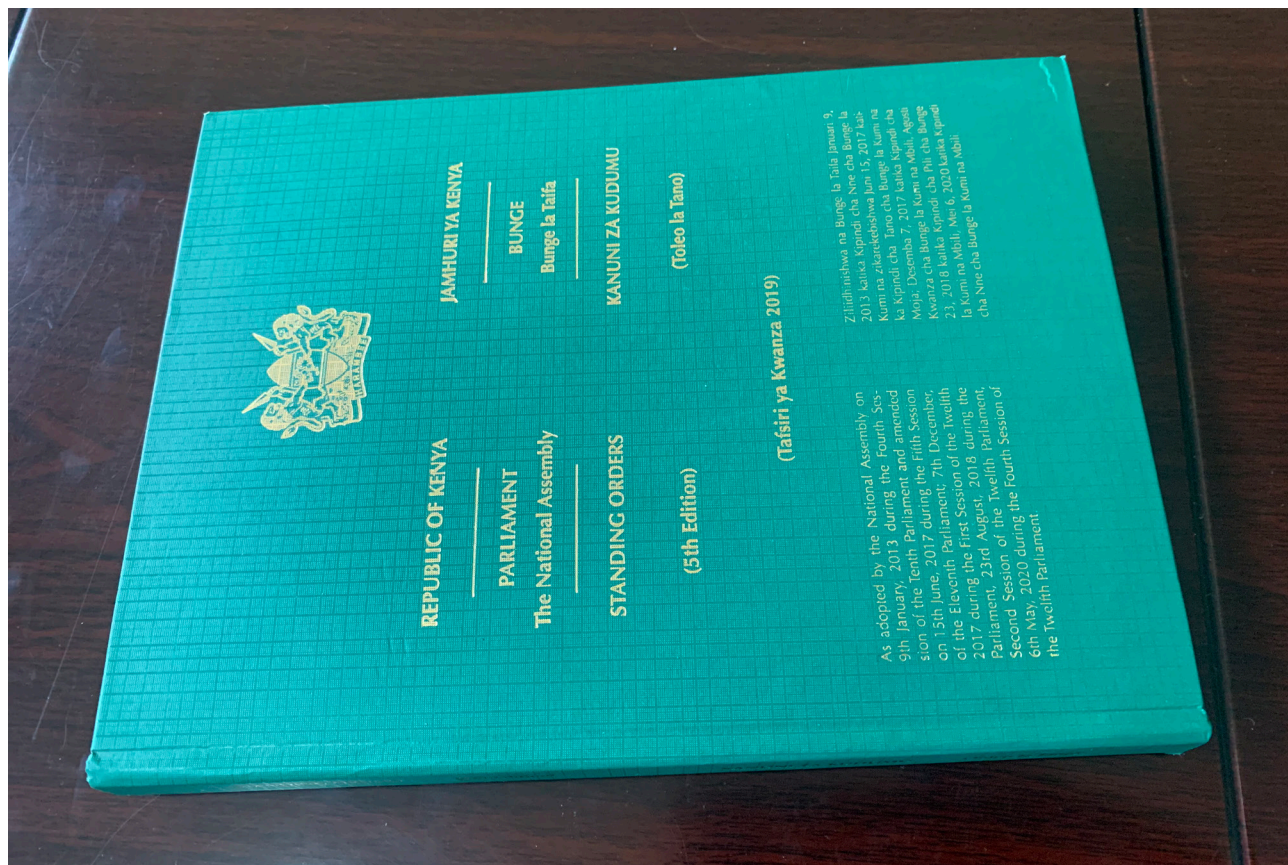
The Act empowers the Committee to confer with the regulation-making authority before tabling

a report to Parliament for their information and modification if necessary. This consultation is necessary to facilitate understanding of the regulations by the Committee and an opportunity for the regulation making authority to rectify errors in the statutory instruments.

4.5.9 Expiry of statutory instruments (section 21)

Statutory instruments are automatically revoked ten years after their making unless a sooner expiry date is provided or if such regulation is made exempting it from expiry.

4.6 National Assembly Standing Orders



Standing Order 210 contains provisions for dealing with delegated legislation. Standing Order 210(3) provides the criteria for scrutinizing statutory instruments which criteria is imported from section 13 of the Statutory Instruments Act. Upon scrutinizing a statutory instrument, the Committee on Delegated Legislation may, pursuant to Standing Order 210(4) either:

- (a) accede to the instrument; or
- (b) recommend to the House that the instrument be annulled in part or in its entirety.

Standing Order 210(4) provides that where the Committee on Delegated Legislation resolves that a statutory instrument be acceded to, the Clerk conveys the resolution to the relevant state authority or department that published the statutory instrument. In this case, there is no report tabled in the House for debate, except where the parent Act requires approval of the House.

Where the Committee resolves that all or any part of the statutory instrument be annulled, there are two scenarios that would arise:

- (a) where the instrument is not made under any legislation concerning counties and a resolution is passed by the Assembly within twenty one days on which it next sits after the instrument was laid before it, the instrument or part of it shall stand annulled; and

- (b) where the legislation concerns counties, then the Clerk of the National Assembly shall within seven days of the resolution transmit a message to the Senate.

In June 2022, the House reviewed the Standing Orders and inserted new paragraphs to Standing Order 210. The new insertions were intended to improve accountability of the Committee to the House, especially with regard to keeping the House informed on statutory instruments acceded to, given that under before the review, the Committee would ordinarily communicate such decision to the relevant bodies without notifying the House. New 210(5A) now requires the Committee on Delegated Legislation to report to the House on the list of statutory instruments approved under paragraph (4)(a) on a quarterly basis.

The House also introduced the following new paragraphs to Standing Order 210 with a view to improving the processing and recording of statutory instruments –

(5B) Where the House annuls part or an entire statutory instrument, the regulation making authority shall notify the Clerk and submit evidence of the publication of the annulment within twenty-one days.

(5C) The Clerk shall record information received under paragraph (5B) in the register of Statutory Instruments and refer it to the Committee.

5.0 Committee on Delegated Legislation

The Committee on Delegated Legislation is one of the select committees of the National Assembly established under the Statutory Instruments Act and the Standing Order 210. The Committee consists of a Chairperson and not more than twenty (20) other Members. The Committee on Delegate Legislation is constituted immediately following a general election and serves for a period of three calendar years and the Committee constituted thereafter shall serve for the remainder of the parliamentary term.

Whenever a statutory instrument is laid before the Assembly, it is referred to the Committee for scrutiny. After scrutinizing a statutory instrument, the Committee may resolve that the statutory instrument be acceded to or if it does not accede to it, recommend in its report to the House that the House resolves that all or any part of the statutory instrument be annulled.



Members of The Committee on Delegated Legislation pose for a photo after a consultative meeting with The Judicial Service Commission at Sarova Whitesands Beach Resort and Spa Mombasa (8th February 2019)

6.0 Can the House amend delegated legislation?

Ordinarily, when Parliament delegates legislative authority to a regulation making body, the statutory instruments made thereof ought not be subject to amendment by Parliament.

Parliament is expected to either approve them in the form presented or reject them and require the responsible body to re-submit in compliance with the Statutory Instruments Act. In a Communication on *the Procedure for Consideration of Delegated Legislation* delivered on 26th March 2014, the Speaker stated that the House is not required under the Statutory Instruments Act to approve or make any amendments to the statutory instrument. The Speaker ruled:

It is apparent that Part IV of the Statutory Instruments Act does not contemplate the full involvement of the House in the regulation making process. As such, the House is not required to approve or make any amendments to the statutory instrument. Rather, the House is only required to annul the whole or any part of the statutory instrument that the House is not happy with. In making the annulment of the whole or any part of the regulation, the House is required to give it reasons which will guide the regulation making authority in formulating new provisions to replace the ones annulled by the House.

The National Assembly has therefore not been making any amendments to statutory instruments submitted to the House for scrutiny.

7.0 What are the timelines imposed on the Committee on Delegated Legislation to consider statutory instruments?

Section 15 of the Statutory Instruments Act, 2013 was amended through the Statute Law (Miscellaneous Amendments) Act of 2015. The amendment introduced a timeline of twenty-eight (28) days within which the National Assembly is required to consider any statutory instrument laid before it. New Section 15 of the Act provides as follows in Sub-section (2):

“Where the Committee does not make the report referred to in Subsection (1) within twenty eight days after the date of referral of the statutory instrument to the Committee under Section 12, or such other period as the House may, by resolution approve, the statutory instrument shall be deemed to have fully met the relevant considerations referred to in Section 13.”

Previously, the timelines were not provided for under the Statutory Instruments Act. Earlier on, in a ruling titled *Timelines for Consideration of Statutory Instruments* delivered on Thursday, 3rd July 2014, the Speaker ordered that the Committee had 20 calendar days after committal of the statutory instrument to notify the Clerk of its resolution to accede to a statutory instrument or table its annulment report in the House. If the Committee failed to notify the Clerk within 20 calendar days after committal of the statutory instrument, the Committee would have been deemed to have acceded to the statutory instrument and the Clerk had an obligation, upon the expiry of the specified time, to communicate the accession to the relevant regulation-making authority.

The genesis of the ruling was that 14 statutory instruments had been committed to the Committee on Delegated Legislation and the House had only considered a report on one instrument and the Committee had tabled a report on one additional regulation. The Clerk of the House had not received any resolution from the Committee that any of the remaining instruments be acceded to for the purpose of conveying this resolution to the relevant regulation making authority, as contemplated under Standing Order No.210(4).

In the same ruling, the Speaker clarified on the need for the Committee on Delegated Legislation to consult with relevant departmental committee responsible for the subject matter of the statutory instruments before the Committee on Delegated Legislation submits its report to the House.

In the ruling titled *Consideration of Statutory Instruments* delivered by Speaker Justin Muturi on Tuesday, 2nd August 2016, nine regulations had been laid on the Table of the House, pursuant to Section 11 of the Statutory Instruments Act on diverse dates and committed to the Committee on Delegated Legislation. However, the Committee failed to report to the House whether part or whole of the regulations should be annulled within twenty eight days after the date of

referral of the statutory instrument to the Committee.

The Speaker observed that since the Committee had neither reported to the House a proposed annulment of any of the affected statutory instruments nor sought any extension of time for consideration of the said statutory instruments as contemplated in the Act, the House was deemed to have had no objection to those statutory instruments. The Speaker ruled that the statutory instruments had the full force of approval by the House and stated that the Clerk had a duty under the law to convey these facts to the respective regulation-making authorities so that they were to be notified that the instruments had the force of law as no objections had been made by the National Assembly.

However, in the same ruling, the Speaker clarified that the above guidance did not apply to specific subsidiary legislation where positive approval of the National Assembly or both Houses under the specific statutes was mandatory. Therefore, he observed that in such cases, the House would not be time-bound unless there is an express provision prescribing the period within which the National Assembly or both Houses ought to approve or reject such subsidiary legislation.

In the ruling titled *Implementation of NTSA (Operation of Motor Cycles) Regulations, 2015* delivered on Thursday, 1st September 2016, a Member had sought clarification of the House on the alleged implementation of regulations by the National Transport Safety Authority (NTSA). The Speaker indicated that the Select Committee on Delegated Legislation had received the regulations for scrutiny and approved it. The Speaker clarified that there was no need for the Committee on Delegated Legislation to table a report and that they could do so if the Committee does not accede to the statutory instrument, in which case the Committee may recommend to the House that the Assembly resolves that all or any part of the statutory instrument be annulled.

8.0 Selected Rulings on Processing Statutory Instruments in the House

The legal framework for scrutiny of statutory instruments as provided for in the Statutory Instruments Act, 2013 emanated from the requirements of the Constitution of Kenya 2010. As such, there were some grey areas in the law that necessitated the Speaker to guide the House on how to proceed when need arose.

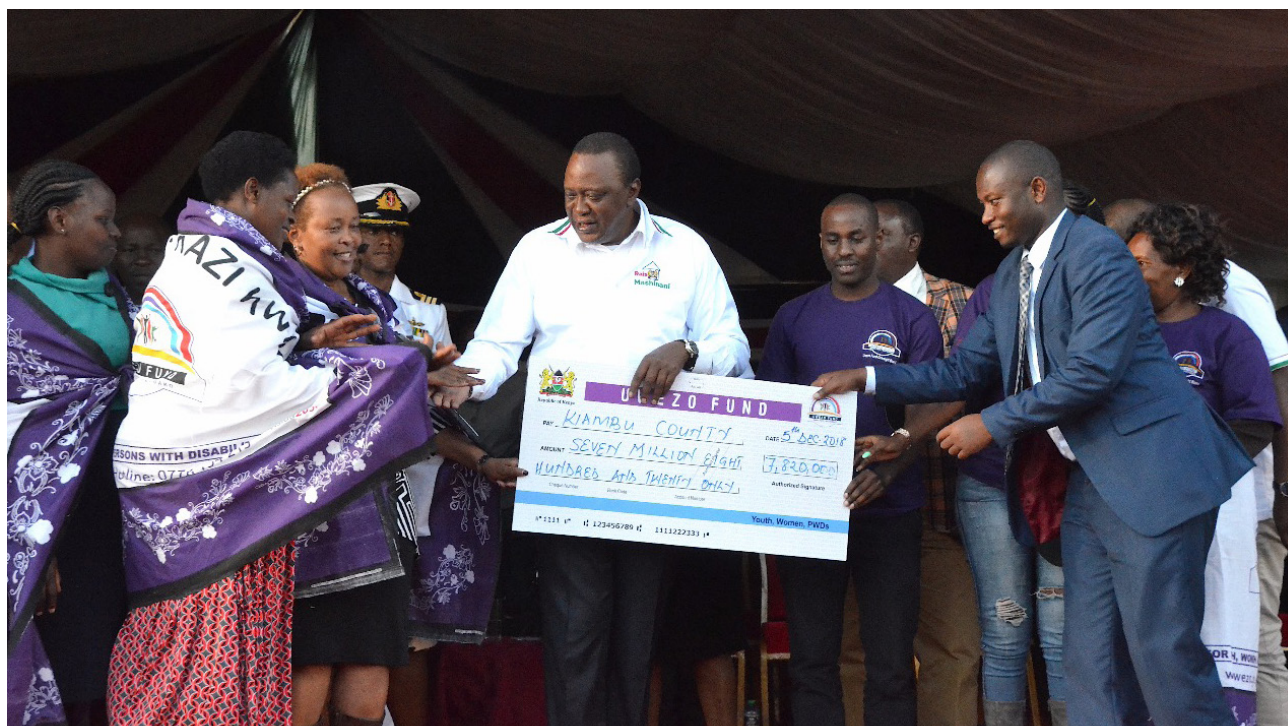
In the 11th Parliament, when the law was first implemented, the Speaker gave several rulings touching on consideration of delegated legislation.

The first instance was on 22nd October 2013, through a ruling titled *Committal of Uwezo Fund Regulations to the Committee on Delegated Legislation*¹, in which the Speaker provided guidance in regard to how the House would proceed with the scrutiny of the Uwezo Fund Regulations. In that Ruling, the Speaker guided that if the Committee on Delegated Legislation resolved that the Regulations were in order, the Clerk was to convey the resolution of the Committee to the National Treasury for necessary action, in which case the Committee was not required to make a Report to the House. The Speaker further clarified that should the Committee, if the Committee did not accept all or any part of the Regulations, the Committee would recommend that the Assembly resolves that all or any part of the Regulations be annulled or make further recommendations on amendments. In such case, the Committee would be required to table its Report in the House within fourteen (14) days.

The Ruling had two implications. First is that the Committee on Delegated Legislation was not obligated to report to the House on Regulations if it acceded to them. Instead, the Clerk would convey the decision of the Committee to the regulation-making authority for necessary action. Second, the ruling implied that the House could actually amend statutory instruments. Before the House considered the Regulations in the Committee of the Whole House, the Speaker, in a Ruling titled *Procedure for Consideration of Uwezo Fund Regulations* made on 13th November 2013, guided the House on procedure for consideration of the Public Finance Management (Uwezo Fund) Regulations, 2013 in the Committee of the Whole House. In his

¹ The full text of the ruling is published in Speakers' Considered Rulings and Guidelines 2013 – 2017, : National Assembly of Kenya 10th and 11th Parliament, pages 13-14.

Ruling, the Speaker ordered certain proposed amendments to the Regulations inadmissible for consideration in the Committee of the Whole House for not complying with the requirements of Article 114 of the Constitution.



HE. The 4th President of Kenya Uhuru Muigai Kenyatta hand over a cheque to a Kiambu based womens group.

In 2014, the Speaker made two Rulings that expounded further on the processing of delegated legislation by the House. On 26th March 2014, in a Ruling titled *Procedure for considering Delegated Legislation*, the Speaker re-affirmed that where the Committee on Delegated Legislation resolved to accede to any statutory instrument after scrutiny, such decision would be conveyed to the relevant body without recourse to the House. Most importantly, the Speaker revoked his earlier guidance of 22nd October 2013 in which he had guided that the House could amend statutory instrument in Committee of the Whole House. The Speaker clarified that in delegating its legislative power under Article 94(6) of the Constitution, Parliament specifies the purpose and objective for which the authority is delegated, the limits of that authority, the nature and scope of the law to be made and the principles and standards applicable to the law made under that authority. He concluded that Parliament should only come in to check on the procedural exercise of that power and not exercise the power itself. He stressed that Article 94(6) of the Constitution and sections 15, 18 and 19 of the Act do not contemplate the House amending delegated legislation. The House may only accede to the instrument or annul it, either in part or in entirety². With this Communication, it was clear that the House cannot amend a statutory instrument.

On 3rd July 2014, the Speaker also gave another ruling titled *Timelines for Consideration of Statutory Instruments*. The Ruling was occasioned by inordinate delay by the Committee on Delegated Legislation to conclude, within the timelines in law, certain statutory instruments committed to it for scrutiny. The Speaker directed the committee to expeditiously conclude on them, failure to which the instruments would be deemed to have obtained parliamentary approval at the expiration of the timeline set out in the law and the Clerk would be obligated to communicate the accession to the relevant regulation-making authority. The significance of this Ruling was that it set the precedence that the Committee on Delegated Legislation must conclude on its scrutiny of statutory instruments committed to it in strict adherence to the statutory timelines provided for in the Act, failure to which such instruments would stand

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The full Ruling may be accessed in *Speaker's Considered Rulings and Guidelines 2013 – 2017*, Pages 42-45

acceded to at the expiry of the set timeline, without parliamentary scrutiny³.

9.0 Conclusion

Given that the making of statutory instruments is a delegated mandate, it is the duty of every regulation-making authority to ensure that it complies with the Constitution, the Statutory Instruments Act, the Interpretation and General Provisions Act, the parent Act of the Instrument and relevant legislation. The National Assembly is expressly mandated to annul any instrument that does not comply with the stated legislation.

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