

**THE NATIONAL ASSEMBLY**

**THIRTEENTH PARLIAMENT- FIRST SESSION**

**COMMITTEE ON DELEGATED LEGISLATION**

**REPORT ON THE STATUTORY INSTRUMENTS (EXEMPTION  
FROM EXPIRY) REGULATIONS, 2022**

**(Legal Notice No. 214 of 2022)**

**DECEMBER 2022**

*Directorate of Committee Services  
The National Assembly,  
Parliament Buildings, Continental House, Room 402  
**NAIROBI***

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## **ABBREVIATIONS**

<b>LN</b>	Legal Notice
<b>SI Act</b>	Statutory Instruments Act
<b>SI</b>	Statutory Instruments

## **CHAIRPERSON'S FOREWORD**

Section 21(1) of the Statutory Instruments Act, 2013 provides that a Statutory instrument stands automatically revoked on the day which is ten years after the date that the statutory instrument came into operation, unless it is sooner repealed or expires, or a regulation is made exempting the instrument from expiry. In this regard, the L.N 214 of 2022 was published on the 25<sup>th</sup> November, 2022 and was tabled in the National Assembly on the 30<sup>th</sup> November, 2022.

The Legal Notice was issued in accordance with Section 21(2) of the SI Act which confers powers to a regulation -making Authority , , in consultation with the National Assembly Select Committee on Delegated Legislation to make regulations exempting a statutory instrument from expiring by extending the operation for a period not exceeding twelve months.

The Committee scrutinized the Statutory Instruments (Exemption from Expiry) Regulations, 2022 in accordance with the Constitution, the Interpretations and General Provisions Act (Cap 2 Laws of Kenya), and the Statutory Instruments Act (No 23 of 2013 and the National Assembly Standing Order 210, and made various observations which informed the decision to approve in entirety, the submitted instrument.

The Committee wishes to express its gratitude to the Speaker for the support accorded to the Committee in the discharge of its mandate. The Committee also wishes to record its appreciation to the Office of the Clerk of the National Assembly and the supporting Directorates for providing the necessary technical support to the Committee.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4), it is my pleasure and duty to present to the House the Committee's Report on the Consideration of the Statutory Instruments (Exemption from Expiry) Regulations, 2022.

**HON. CHEPKONGA KIPRONO SAMUEL, CBS, MP.**



## 1.0 PREFACE

### 1.1 Establishment and Mandate of the Committee

1. The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.
2. The Committee is mandated to consider in respect of any statutory instrument, whether it: -
  - a) is in accordance with the provision of the Constitution, the Act pursuant to which it is made or other relevant written laws;
  - b) infringes on fundamental rights and freedoms of the public;
  - c) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
  - d) contains imposition of taxation;
  - e) directly or indirectly bars the jurisdiction of the court;
  - f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
  - g) it involves expenditure from the consolidated fund or other public revenues;
  - h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
  - i) appears to make some unusual or unexpected use of the power 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-renewable 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.

### **Committee Membership**

#### **1.2 Committee Membership**

3. The Committee membership comprises –

**The Hon. Chepkonga Kiprono Samuel, CBS, M.P. (Chairperson)**

Ainapko Constituency

**UDA**

**The Hon. Githinji Robert Gichimu, M.P. (Vice Chairperson)**

Gichugu Constituency

**UDA**

#### **COMMITTEE MEMBERS**

The Hon. Mbui Robert, M.P.

Kathiani Constituency

**WDM - Kenya**

Bomet County

**UDA**

The Hon. Rai Samwel Gonzi, M.P.

Kinango Constituency

**PAA**

The Hon. Munyoro Joseph Kamau, M.P.

Kigumo Constituency

**UDA Party**

The Hon. Sunkuli Julius Lekakeny, M.P.

Kilgoris Constituency

**KANU**

The Hon. Kipkoech Gideon Kimaiyo, M.P.

Keiyo South Constituency

**UDA**

The Hon. Mwirigi John Paul, M.P.

Igembe South Constituency

**UDA**

The Hon. Ruku Geoffrey Ruku, M.P.

Mbeere North Constituency

**DP**

The Hon. Kamene Joyce, M.P.

Machakos County I.

**WDM -Kenya**

The Hon. Komingoi Kibet Kirui, M.P.

Bureti Constituency

**UDA**

The Hon. Odoyo Jared Okello, M.P.

Nyando Constituency

**ODM**

The Hon. Chebor Paul, M.P.

Rongai Constituency

**UDA**

The Hon. Mwale Nicholas S. Tindi, M.P.

Butere Constituency

**ODM**

The Hon. Lenguris Pauline, M.P.

Samburu County

**UDA**

The Hon. Chepkorir Linet, M.P.

Bomet Central Constituency

**Jubilee Party**

The Hon. Mamwancha Onchoke Charles, M.P.

Bonchari Constituency

**UPA**

The Hon. Linet Chepkorir, M.P.

The Hon. Yakub Adow Kuno, M.P.

Bura Constituency

**UPIA**

The Hon. Mnyazi Laura Amina, M.P.

Malindi Constituency

**ODM**

The Hon. Abdullahi Bashir Sheikh, M.P.

Mandera North Constituency

**JUBILEE PARTY**

The Hon. Mugabe Innocent Maino, M.P.

Lugari Constituency

**ODM**

### 1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises -

**Ms. Esther Nginyo**  
*Clerk Assistant I (Team Leader)*

Mr. Dima Dima  
*Principal Legal Counsel I*

Mr. Jacknorine Buleemi  
*Clerk Assistant III*

Ms. Winny Otieno  
*Clerk Assistant III*

Mr. Brian Langwech  
*Clerk Assistant III*

Mrs. Sheila Cherobotim  
*Serjeant at Arms*

Mr. Charles Ayari  
*Audio Officer*

## **2.0 CONSIDERATION OF THE INSTRUMENT**

### **2.1 Introduction and Background Information**

5. The Legal Notice No. 214 of 2022 was issued in accordance with Section 21(2) of the Statutory Instruments Act, 2013 which confers powers to a Regulation-making Authority, in consultation with the National Assembly Select Committee on Delegated Legislation to make extension Regulations hence is a statutory instrument within the meaning of section 2 of the Statutory Instruments Act (*No 23 of 2013*) and was therefore properly before the Committee.
6. The Legal Notice was published in the Gazette on 25<sup>th</sup> November, 2022 and was received for tabling before the House on Wednesday 30<sup>th</sup> November, 2022 being within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

### **2.2 Scrutiny of the Instrument**

7. Section 21(1) of the Statutory Instruments Act, 2013 provides that a Statutory instrument stands automatically revoked on the day which is ten years after the date that the statutory instrument came into operation, unless it is sooner repealed or expires, or a regulation is made exempting the instrument from expiry. In this regard, the L.N 214 Of 2022 was published on the 25<sup>th</sup> November, 2022 and was tabled in the National Assembly on 30<sup>th</sup> November, 2022.
8. In this regard, the Committee noted that there are a number of statutory instrument which were made both under the Parliamentary Service Act, 2000 (Repealed) and the Public Finance Management Act, 2012 that anchor key operations in the National Assembly. These regulations relate to allocation of office space to Members, Members and Staff Mortgage Schemes, Members and Staff Car Loans Schemes, Constituencies and County offices and staff and the Centre for Parliamentary Studies and Training.
9. The Committee also noted that Section 27(2) of the Act saved all the statutory instruments that were made prior to the 25<sup>th</sup> January, 2013, which was the commencement date of the Act, as they were deemed to have been made under the Statutory instrument Act, 2013.

### 3.0 COMMITTEE OBSERVATIONS

10. Following comprehensive scrutiny of the Legal Notice No. 214 of 2022, the Committee made the following observations –

11. **THAT**, the main objective of the Legal Notice No. 214 of 2022 is to actualize smooth operations in the National Assembly.

12. **THAT**, the following Statutory Instruments were pertinent to the operations of the National Assembly:-

- a) Parliamentary Service (Constituency Offices) Regulations, 2005 (L.N 77 of 2005)
- b) Parliamentary Services (Centre for Parliamentary Studies and Training) regulations, 2013 (L.N 95 of 2011)
- c) The Public Finance (Parliamentary Mortgage (Staff) Scheme Fund) Regulations, 2013 (L.N 18 of 2013)
- d) The Public Finance Management (Parliamentary Car Loan (Staff) Scheme Fund) Regulations, 2013 (L.N 19 of 2013)
- e) Parliamentary Services (Offices of Members of Parliament) Regulations, 2013 (L.N 65 of 2013)
- f) The Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) Regulations, 2013 (L.N 67 of 2013)
- g) The Public Finance Management (Parliamentary Car Loan (Members) Scheme Fund) Regulations, 2013 (L.N 68 of 2013)

### 4.0 RECOMMENDATION

13. The Committee recommends, pursuant to section 21 (2) of the Statutory Instruments Act, Standing Order 210 (4) (b), the Statutory Instruments (Exemption from Expiry) Regulations, 2022 that the House approves in entirety for the purposes of the grounds aforementioned hereinabove.

Signed.....

Date.....

HON. CHEPKONGA KIPRONO SAMUEL, CBS, MP  
CHAIRPERSON

## **ANNEXURES**

- a) Committee Minutes
- b) Adoption List
- c) Copy of Legal Notice 214, the Statutory Instruments (Exemption From Expiry) Regulations, 2022.





**MINUTES OF THE 7<sup>th</sup> SITTING OF THE COMMITTEE ON DELEGATED  
LEGISLATION HELD ON THURSDAY, 24<sup>th</sup> NOVEMBER, 2022, IN THE SMALL  
DINING ROOM, MAIN PARLIAMENT BUILDING AT 10:00 AM.**

**PRESENT**

1. The Hon Samuel Kiprono Chepkonga, CBS, M.P. Chairperson
2. The Hon. Robert Gichimu Githinji, M.P. Vice Chairperson
3. The Hon. John Paul Mwirigi, M.P.
4. The Hon. Gideon Kimaiyo Kipkoech, M.P.
5. The Hon. Paul Chebor, M.P.
6. The Hon. Ruku Geoffrey Kariuki Kiringa, M.P.
7. The Hon. Abdullahi Bashir Sheikh, M.

**APOLOGIES**

1. The Hon. Joyce Kamene, M.P.
2. The Hon. Linet Chepkorir M.P.
3. The Hon. Robert Mbui, M.P
4. The Hon. Samuel Gonzi Rai, M.P.
5. The Hon. Sunkuli Julius Lekakeny, MP
6. The Hon. Jared Okello Odoyo M.P
7. The Hon. Nicholas S. Tindi Mwale, M.P.
8. The Hon. Charles Onchoke Mamwacha.M.P
9. The Hon. Innocent Maino Mugabe, M.P.
10. The Hon. Adow Kuno Yakub, M.P.
11. The Hon. Joseph Kamau Munyoro, M.P.
12. The Hon. Laura Amina Mnyazi, M.P.
13. The Hon. Pauline Lenguris, M.P.
14. The Hon. Kibet Kirui Kimingoi, M.P.

**IN ATTENDANCE**

**THE NATIONAL ASSEMBLY.**

- |                           |   |                         |
|---------------------------|---|-------------------------|
| 1. Ms. Esther Nginyo      | - | Clerk Assistant I       |
| 2. Mr. Wilson Dima Dima   | - | Principal Legal Counsel |
| 3. Mr. Brian Langwech     | - | Clerk Assistant III     |
| 4. Ms. Winny Otieno       | - | Clerk Assistant III     |
| 5. Mr. Jacknorine Bulemi  | - | Clerk Assistant III     |
| 6. Geoffrey Kwatembera    | - | Media Relations Officer |
| 7. Mrs. Sheila Chebotibin | - | Serjeant-At-Arms.       |
| 8. Mr. Charles Ayari      | - | Audio Officer           |

## **NATIONAL TRASURY AND ECONOMIC PLANNING**

- |                          |  |
|--------------------------|--|
| 1. FCPA Julius Muia, PhD | - Principal Secretary                              |
| 2. John Karani           | - Chairman Kenya Institute of Supplies Management. |
| 3. Miriam Kakenya        | - Office of the Attorney General                   |

## **KENYA REVENUE AUTHORITY**

- |                     |                                     |
|---------------------|-------------------------------------|
| 1. Dr. Mohamed Omar | -Commissioner, KRA.                 |
| 2. Mr. Maurice Oray | - Deputy Commissioner, KRA          |
| 3. Sharon Kirai     | -Parliamentary Liaison Officer, KRA |

## **AGENDA**

1. Prayers;
2. Preliminaries;
3. Adoption of the Agenda;
4. Confirmation of previous minutes;
5. Matters arising;
6. Briefing on;
  - i. The Supplies Practitioners Management (Council Election) Regulations, 2022. (Legal Notice 94/2022)
  - ii. The Public Finance Management (Public Investment) Regulations, 2022. (Legal Notice 54/2022)
  - iii. Adjustment of Rates of Excise Duty for Inflation Regulations, 2022 and the Explanatory Memorandum. (Legal Notice 176/2022)
  - iv. Adjustment of Rates of Export Levy for Inflation Regulations, 2022 (Legal Notice 177/2022)
  - v. The Statutory Instruments Act, (Exemption from expiry) Regulations, 2022 By the Clerk of the National Assembly
  - vi. Statutory Instruments (Exemption from Expiry) Regulations, 2022 By the Attorney General
7. Any Other Business; and
8. Adjournment.

### **MIN. DAA&OSC/CDL/038/2022**

### **PRELIMINARIES**

The Chairperson called the Meeting to order at 11:00 a.m. after which prayers were said. The Chairperson then welcomed all present to the meeting, followed by a round of introduction.

### **MIN. DAA&OSC/CDL/039/2022**

### **ADOPTION OF THE AGENDA**

The Members adopted the agenda of the meeting as was proposed by Hon. Paul Chebor, M.P. and seconded by Hon. Gideon Kimaiyo Kipkoech, M.P.

### **MIN. DAA&OSC/CDL/040/2022**

### **BRIEFING ON THE SUPPLIES PRACTITIONERS MANAGEMENT (COUNCIL ELECTION)**

**REGULATIONS, 2022. (LEGAL  
NOTICE 94 OF 2022)**

Dr. Julius Muia, Principal Secretary, Ministry of Treasury and Economic Planning briefed the Committee on the **Supplies Practitioners Management (Council Election) Regulations, 2022. (Legal Notice 94 of 2022)** as follows, that:

1. **Supplies Practitioners Management (Council Election) Regulations, 2022. (Legal Notice 94 of 2022)** was made by the Cabinet Secretary for National Treasury and Economic Planning and were published in the Gazette as Legal Notice No. 94 of 2022.
2. The Regulations were received on 09<sup>th</sup> September 2022 by the Clerk of the National Assembly and thereafter tabled on Friday, 04<sup>th</sup> October 2022 in accordance with section 11(1) of the Statutory Instruments Act requiring tabling of the statutory instrument within seven (7) sitting days after publication.
3. The scope of the Regulations consists of: Preliminary provisions in Part I, Institutional Framework in Part II, Conduct of Elections in Part III and Election offences in Part IV.
4. The Regulations provide for;
  - i. The Procedure for the Election of the Chairperson of the Council and the six members of the Council.
  - ii. Appointment of the Electoral body by the Council. IEBC had been approved by the Council as the Electoral body and an acceptance letter from IEBC availed.
  - iii. Establishment of The Election Dispute Resolution Committee (EDRC) which comprised of;
    - a) 1 person nominated by the National Centre for International Arbitration- Chairperson.
    - b) 3 Members of the Institute nominated by the Council
    - c) An Advocate of the High Court of Kenya
    - d) Corporation Secretary of the Institute, who shall be an ex officio member.
    - e) Role of the EDRC- Resolving disputes arising from conduct of the Elections.
5. The Regulation also takes into consideration the dates for elections, eligibility to vote, the mode of voting (Electronic), qualification for nomination, verification of nomination forms, election offences and penalties for election offences.
6. The National Treasury, through Kenya Institute of Supplies Management noted that they had benchmarked with other Bodies like ICPAK and IHRM which had successfully procured the electoral materials and their decision to undertake the Procurement was done on this basis.
7. The Committee deliberated on the aforementioned Regulations and **Approved** to them as published in the *gazette*.

MIN. DAA&OSC/CDL/041/2022

**BRIEFING ON THE PUBLIC FINANCE  
MANAGEMENT (PUBLIC INVESTMENT)  
REGULATIONS, 2022.  
(LEGAL NOTICE 54/2022)**

Dr. Julius Muia, Principal Secretary, The National Treasury and Economic Planning briefed the Committee on the **Public Finance Management (Public Investment) Regulations, 2022. (Legal Notice 54/2022)** as follows, that:

1. **Public Finance Management (Public Investment) Regulations, 2022. (Legal Notice 54/2022)** were made by the Cabinet Secretary, National Treasury and Economic Planning and were published in the Gazette as Legal Notice No. 54 of 2022.
2. The Regulations were received on 05<sup>th</sup> May, 2022 by the Clerk of the National Assembly and thereafter tabled on 10<sup>th</sup> May, 2022 in accordance with section 11(1) of the Statutory Instruments Act requiring tabling of the statutory instrument within seven (7) sitting days after publication.
3. The Regulations provide for:
  - a) **Regulation 3 & 4:** outlines the Objects and Purposes of the Regulations.
  - b) **Regulation 5:** provides for the scope of the Regulations.
  - c) **Regulation 6:** provides for the role of Parliament and County Assemblies in the process which shall be-
    - i) To provide oversight over the budgeting process and appropriate budget estimates of revenue and expenditure as provided by the PFM Act; and
    - ii) To ensure that appropriation for public investments is only for prioritized pipelined projects.
  - d) **Regulation 7:** provide for the Cabinet and County Executive committee as follows-
    - i) Provide strategic leadership and interventions in public investment processes;
    - ii) Issue policies required for proper, efficient and effective public investment processes; and
    - iii) Provide necessary approvals in respect of public investment process, where required.
  - e) **Regulation 8 :** provide for the role of the Cabinet Secretary of the line Ministry or County Executive Committee Member of the County department and the responsibilities of the National Treasury : -
    - i) Provide strategic leadership and interventions during implementation of public investments;
    - ii) Provide necessary approvals for projects emanating from State or County Corporations.
  - f) **Regulation 14:** Provides for the establishment of Project Committee. An accounting Officer in the National Government or its Entity shall establish a Project Committee comprising of appropriate officers as follows —
    - i) Head of Directorate or a Department, who shall be the Chairperson;
    - ii) An officer from Finance Department;
    - iii) A maximum of four members appointed on ad hoc basis based on their technical knowledge and depending on the project to be implemented;

iv) One officer from any Department of the National Government Ministries Departments and Agencies; and

v) Head of planning or his or her representative, who shall be the secretariat.

**g) Regulation 15:** Provides for establishment of county project committees –

An accounting officer in a County Government or its entity shall establish a project committee comprising of the following-

i) Head of the Directorate or a Department, who shall be the chairperson;

ii) One Officer from the Finance Department;

iii) A maximum of four members appointed on ad hoc basis on their technical knowledge and depending on the project being implemented;

iv) One member from any department of a County Government Departments and agencies; and

v) The head of planning or his or her representative, who shall be the secretariat.

**h) Regulation 16:** Provides for the functions of the project committees. This comprises as follows:-

i) To review project concept notes and make recommendations to the accounting officer for decision making within thirty days;

ii) To review project pre-feasibility and feasibility studies and make recommendations to accounting officer for decision making within thirty days;

iii) To identify potential project risks and propose mitigating measures for those risks not covered in the project concept note, pre-feasibility or feasibility studies;

iv) To prioritize projects based on the National Government Ministries, Departments and agencies or County Government Departments and Agencies strategic Plan, Medium Term Plan, and National and County development plans;

v) To recommend the mode of project financing

vi) Ensure projects are aligned to the National development Plans.

**i) Regulation 22 - 23:** provides for the implementation, monitoring, evaluation and reporting mechanism.

**j) Regulation 24 - 26:** provides for the project closure, sustainability and ex-post evaluation

**k) Regulation 29:** provides for the Public Investment Management Information System. The Public Investment Management Department at the National Treasury shall be responsible for designing and maintaining an efficient, effective and reliable Public Investment Management Information System. The Public Investment Management Information System shall automate the public investment management processes and shall be used for managing the whole project cycle.

**l) The scope of these Regulations shall apply to:**

**a)** National and County Governments and their entities, including Commissions, independent offices, and state organs when planning and Implementing Public Investments.

**b)** Public Investment projects whether wholly or partially funded through public Finances irrespective of source



- c) Projects considered for implementation through Public Private Partnership arrangements , in so far as the Regulations are not in Contradiction with the provisions of the Public Private Partnership Act, 2021
- d) Security projects or a class of security projects under classified procurement as provided for under section 90 of the Public Procurement and Asset Disposal Act, 2015 except where expressly included, or if the Cabinet Secretary so directs.

3.3. The Committee deliberated on the aforementioned Regulations and Approved to them as published in the gazette.

MIN. DAA&OSC/CDL/042/2022

**BRIEFING ON        ADJUSTMENT OF  
RATES OF EXCISE DUTY FOR  
INFLATION REGULATIONS, 2022  
AND THE EXPLANATORY  
MEMORANDUM. (LEGAL  
NOTICE 176 OF 2022)**

Mr. Maurice Oray, Deputy Commissioner, Kenya Revenue Authority informed the Committee that **Adjustment of Rates of Excise Duty for Inflation Regulations, 2022 and the Explanatory Memorandum. (Legal Notice 176/2022)** had been revoked by **Adjustment of Rates of Excise Duty for Inflation Regulations, 2022 and the Explanatory Memorandum. (Legal Notice 204/2022)**. He further briefed it as follows, that:

1. The **Adjustment of Rates of Excise Duty for Inflation Regulations, 2022 (Legal Notice 204/2022)** was published in the Gazette on 3<sup>rd</sup> October, 2022, and received by the Clerk of National Assembly on 14<sup>th</sup> October, 2022 and was tabled before the House on 1<sup>st</sup> November, 2022, being within the statutory timelines as contemplated under section 11(1) of the Statutory Instruments Act.
2. The **Adjustment of Rates of Excise Duty for Inflation Regulations, 2022 (Legal Notice 204/2022)** were made by KRA to;
  - i. Provide for adjustments for inflation and part I of the First Schedule of the Excise Duty Act on Rates of Excise Duty.
  - ii. The specific rate is imposed on the basis of weight, volume capacity, or any other physical unit of measurement other than its value. The commission noted that the average inflation rate for the year 2021/2022 was 6.3%, and therefore the affected goods were to be subjected to the rate upon National Assembly approval.
  - iii. It was further noted that the approval of the Regulations would lead to a generation of Ksh. 5.2 billion from the goods whose excise duty rates were adjusted for inflation excluding petroleum products, liquid nicotine for electronic cigar rates and imported ready to use SIM cards which were made excisable through the Finance Act 2022.
3. Upon deliberation on the aforementioned Regulations, the Committee resolved to recommend to the House to Approve the Legal Notice No. 204 of 2022 as published in the gazette.



**ADJUSTMENT OF RATES OF  
EXPORT LEVY FOR  
INFLATION REGULATIONS,  
2022) (LEGAL NOTICE 177 OF  
2022)**

Mr. Maurice Oray, Deputy Commissioner, Kenya Revenue Authority informed the Committee that **Adjustment of Rates of Adjustment of Rates of Export Levy for Inflation Regulations, 2022 (Legal Notice 177/2022)** had been revoked by **Adjustment of Rates of Export Levy for Inflation Regulations, 2022 (Legal Notice 177/2022)(Legal Notice 203/2022)**. He further briefed it as follows, that:

1. The Legal Notice was published in the Gazette on 3rd of October, 2022, received by the Clerk of National Assembly on 14<sup>th</sup> October, 2022 and was tabled before the House on 1<sup>st</sup> November, 2022, being within the statutory timelines as contemplated under section 11(1) of the Statutory Instruments Act.
2. The **Adjustment of Rates of Export Levy for Inflation Regulations, 2022 (Legal Notice 203/2022)** provides for;
  - i. The miscellaneous Fees and levies specific rate is imposed on the basis of weight, volume capacity, or any other physical unit of measurement other than its value. The commission noted that the average inflation rate for the year 2021/2022 was 6.3%, and therefore the affected goods were to be subjected to the rate upon National Assembly approval.
  - ii. The main purpose of this inflation adjustment is to ensure elasticity of tax revenue when the economy grows.
  - iii. The Approval for the Regulation would lead to generation of additional Ksh. 18.16Million from the goods whose miscellaneous fees and levy duty rates were adjusted for inflation excluding iron ores and concentrates including roasted iron pyrites.
3. The Committee however urged the Commission to expand its tax base to capture MSMEs as this will increase its tax collection.
4. Upon deliberation on the aforementioned Regulations, the Committee resolved to recommend to the House to **Approve** the Legal Notice No. 203 of 2022 as published in the gazette.

MIN. DAA&OSC/CDL/044/2022

**BRIEFING OD THE DRAFT STATUTORY  
INSTRUMENTS (EXEMPTION FROM  
EXPIRY) REGULATIONS, 2022 BY THE  
CLERK OF THE NATIONAL ASSEMBLY.**

The Committee considered and approved for publication the Draft Statutory Instruments (Exemption from Expiry) Regulations, 2022 from the office of the Clerk of the National Assembly seeking for extension of the following Statutory Instruments that are set to automatically expire on 23<sup>rd</sup> January 2023:

- a) Parliamentary Service (Constituency Offices) Regulations, 2005 (L.N 77 of 2005)
- b) Parliamentary Services (Centre for Parliamentary Studies and Training) regulations, 2013 (L.N 95 of 2011)
- c) The Public Finance (Parliamentary Mortgage (Staff) Scheme Fund) Regulations, 2013 (L.N 18 of 2013)
- d) The Public Finance Management (Parliamentary Car Loan (Staff) Scheme Fund) Regulations, 2013 (L.N 19 of 2013)
- e) Parliamentary Services (Offices of Members of Parliament) Regulations, 2013 (L.N 65 of 2013)
- f) The Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) Regulations, 2013 (L.N 67 of 2013)
- g) The Public Finance Management (Parliamentary Car Loan (Members) Scheme Fund) Regulations, 2013 (L.N 68 of 2013)

Having examined the aforementioned Letter, The Committee directed that the Regulatory making body be requested to present a Regulation seeking for the extension pursuant to section 21 of the Statutory Instruments Act (No. 23 of 2013).

MIN. DAA&OSC/CDL/045/2022

**BRIEFING ON THE DRAFT STATUTORY  
INSTRUMENTS (EXEMPTION FROM  
EXPIRY) REGULATIONS, 2022 BY THE  
ATTORNEY-GENERAL.**

The Committee considered and approved for publication the Draft Statutory Instruments (Exemption from Expiry) Regulations, 2022 from the office of the Attorney General seeking for extension of 1,764 Statutory Instruments that are set to automatically expire on 23<sup>rd</sup> January 2023 pursuant to section 21 of the Statutory Instruments Act (No. 23 of 2013)

MIN. DAA&OSC/CDL/046/2022

**ADJOURNMENT.**

There being no other business, the meeting was adjourned at Ten Minutes to Two O'clock. The next meeting will be held on Tuesday, 29<sup>th</sup> November, 2022 at Ten O'clock.

SIGNED:  .....

THE HON. SAMUEL CHEPKONGA, CBS. M.P.  
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

DATE: 30/12/2022 .....

URGENT

MEMO

TO: THE CLERK OF THE NATIONAL ASSEMBLY

① Dips  
for Tabling, and processing 29/11  
29/11/22

THRO': DIRECTOR LEGAL SERVICES – NATIONAL ASSEMBLY

② H/O  
to priority 30.11.22  
arap Kirui  
30/11/22

THRO': DEPUTY DIRECTOR LEGAL SERVICES – NATIONAL ASSEMBLY

Forwarded for Tabling in the House under section 28(3)  
of the Statutory Instruments Act and Standing Order 2106.

FROM: PRINCIPAL LEGAL COUNSEL

DATE : 30<sup>TH</sup> NOVEMBER, 2022

③ 30/11/22

RE: THE STATUTORY INSTRUMENTS (EXEMPTION FROM EXPIRY)  
REGULATIONS, 2022 LN. No. 214 of 2022.

The above matter refers.

The Committee on Delegated Legislation at its sitting on the 24<sup>th</sup> of November, 2022 considered and approved the draft Statutory Instruments (Exemption from Expiry) Regulations, 2022.

The Rt. Hon. Speaker being the Chairperson, Parliamentary Service Commission signed the draft Regulations which were subsequently forwarded to the Government Printer for publication. The Regulations were published on the 25<sup>th</sup> of November, 2022 as LN. No. 214 in a special issue in *Kenya Gazette Supplement No. 191*.

Section 28(3) of the Statutory Instruments Act, 2013 provides that *"upon receipt of such statutory instrument by the Clerk as envisaged under subsection (2), the Clerk shall within seven (7) days when Parliament is in session, cause the statutory instrument to be tabled before Parliament and the provisions of Part IV shall take effect."*

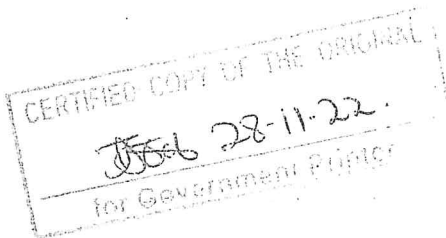
The purpose of this memo is to forward a copy of the published Regulations with an Explanatory Memorandum for tabling in the House, if you approve.

Submitted for further directions.

**DIMA DIMA W,**  
**PRINCIPAL LEGAL COUNSEL**



URGENT



**SPECIAL ISSUE**

Kenya Gazette Supplement No. 191

1537

25th November, 2022

(Legislative Supplement No. 92)

LEGAL NOTICE NO. 214

**THE STATUTORY INSTRUMENTS ACT  
(No. 23 of 2013)**

IN EXERCISE of the powers conferred by section 21(2) of the Statutory Instruments Act, 2013, the Parliamentary Service Commission, in consultation with the National Assembly Select Committee on Delegated Legislation, makes the following Regulations—

**THE STATUTORY INSTRUMENTS (EXEMPTION FROM EXPIRY) REGULATIONS, 2022**

1. These Regulations may be cited as the Statutory Instruments (Exemption from Expiry) Regulations, 2022. Citation.

2. The operation of the statutory instruments set out in the first column of the Schedule that were made pursuant to the Acts specified in the second column thereto, that have a continuing purpose is extended for a period of twelve months with effect from the 24th day of January, 2023. Extension of operation of statutory instruments.

**SCHEDULE**

	STATUTORY INSTRUMENT	ACT OF PARLIAMENT
1.	L.N. No. 77 of 2005 Parliamentary Service (Constituency Offices) Regulations, 2005	Parliamentary Service Act, (No. 10 of 2000) (Repealed)
2.	L.N. No. 95 of 2011 Parliamentary Services (Centre for Parliamentary Studies and Training) Regulations, 2011	Parliamentary Service Act, (No. 10 of 2000) (Repealed)
3.	LN. No. 18 of 2013 The Public Finance (Parliamentary Mortgage (Staff) Scheme Fund) Regulations, 2013	The Public Finance Management Act, (No. 18 of 2012)
4.	L.N. No. 19 of 2013 The Public Finance Management (Parliamentary Car Loan (Staff) Scheme Fund) Regulations, 2013.	The Public Finance Management Act, (No. 18 of 2012)
5.	L.N. No. 65 of 2013 Parliamentary Services (Offices of Members of Parliament) Regulations, 2013	Parliamentary Service Act, (No. 10 of 2000) (Repealed)

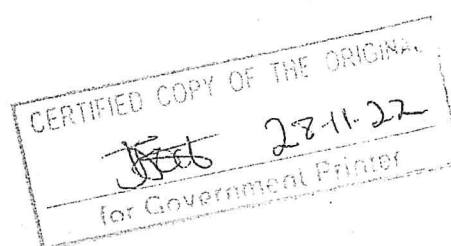
*Handwritten notes:*  
To register, copy tabling and referral to committee.  
29/11/22



	STATUTORY INSTRUMENT	ACT OF PARLIAMENT
6.	L.N. No. 67 of 2013 The Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) Regulations, 2013	The Public Finance Management Act, (No. 18 of 2012)
7.	L.N. No. 68 of 2013 The Public Finance Management (Parliamentary Car Loan (Members) Scheme Fund) Regulations, 2013	The Public Finance Management, (No. 18 of 2012)

Made on the 24th November, 2022.

MOSES M. WETANG'ULA,  
*Chairperson, Parliamentary Service Commission.*









THE REPUBLIC OF KENYA

LAWS OF KENYA

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## THE STATUTORY INSTRUMENTS ACT

NO. 23 OF 2013

Revised Edition 2022 [2013]

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## NO. 23 OF 2013

## STATUTORY INSTRUMENTS ACT

## ARRANGEMENT OF SECTIONS

## PART I – PRELIMINARY

*Section*

1. Short title
2. Interpretation
3. Application
4. Object of the Act

PART II – CONSULTATIONS BEFORE  
MAKING STATUTORY INSTRUMENTS

5. Consultation before making statutory instruments
- 5A. Explanatory memorandum

## PART III – REGULATORY IMPACT STATEMENTS

6. Regulatory impact statements
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8. Notification of regulatory impact statements
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11. Laying of statutory instruments before Parliament
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## PART VII – TRANSITION AND SAVING

- 
- 27. Transition and saving
  - 28. Actions necessary after effective date

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SCHEDULES

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## NO. 23 OF 2013

## STATUTORY INSTRUMENTS ACT

[Date of assent: 14th January, 2013.]

[Date of commencement: 25th January, 2013.]

**An Act of Parliament to provide for the making, scrutiny, publication and operation of statutory instruments and for matters connected therewith**

[Act No. 23 of 2013, Act No. 25 of 2015, Act No. 4 of 2018, Act No. 22 of 2022.]

## PART I – PRELIMINARY

**1. Short title**

This Act may be cited as the Statutory Instruments Act, 2013.

**2. Interpretation**

In this Act, unless the context otherwise requires—

**"Committee"** means the Committee on Delegated Legislation established under the Standing Orders of the National Assembly or the Senate or any other Committee that may be established by Parliament for the purpose of reviewing and scrutinizing statutory instruments;

**"effective date"** means the 27th of August, 2010;

**"explanatory memorandum"** means 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;

**"public participation"** means involvement by the regulation-making authority of persons or stakeholders that the statutory instrument may directly or indirectly apply to;

**"regulation-making authority"** means any authority authorized by an Act of Parliament to make statutory instruments;

**"responsible Cabinet Secretary"** means the Cabinet Secretary for the time being responsible for administering the relevant Act or provision under which or in relation to which the statutory instrument is made or preserved;

**"statutory instrument"** means 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.

[Act No. 4 of 2018, Sch.]

**3. Application**

(1) This Act applies to every statutory instrument made directly or indirectly under any Act of Parliament or other written legislation.

(2) Nothing under this section may be construed as precluding Parliament from applying the provisions of this Act to any published bills awaiting parliamentary consideration.

#### **4. Object of the Act**

The object of this Act is to provide a comprehensive regime for the making, scrutiny, publication and operation of statutory instruments by—

- (a) requiring regulation-making authorities to undertake appropriate consultation before making statutory instruments;
- (b) requiring high standards in the drafting of statutory instruments to promote their legal effectiveness, clarity and intelligibility to anticipated users;
- (c) improving public access to statutory instruments;
- (d) establishing improved mechanisms for parliamentary scrutiny of statutory instruments; and
- (e) establishing mechanisms to ensure that statutory instruments are periodically reviewed and, if they no longer have a continuing purpose, repealed.

### **PART II – CONSULTATIONS BEFORE MAKING STATUTORY INSTRUMENTS**

#### **5. Consultation before making statutory instruments**

(1) Before a regulation-making authority makes a statutory instrument, and in particular where the proposed statutory instrument is likely to—

- (a) have a direct, or a substantial indirect effect on business; or
- (b) restrict competition;

the regulation-making authority shall make appropriate consultations with persons who are likely to be affected by the proposed instrument.

(2) In determining whether any consultation that was undertaken is appropriate, the regulation making authority shall have regard to any relevant matter, including the extent to which the consultation—

- (a) drew on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and
- (b) ensured that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content.

(3) Without limiting by implication the form that consultation referred to in subsection (1) might take, the consultation shall—

- (a) involve notification, either directly or by advertisement, of bodies that, or of organizations representative of persons who, are likely to be affected by the proposed instrument; or
- (b) invite submissions to be made by a specified date or might invite participation in public hearings to be held concerning the proposed instrument.

#### **5A. Explanatory memorandum**

(1) Every statutory instrument shall be accompanied by an explanatory memorandum which shall contain—



- (a) a statement on the proof and demonstration that sufficient public consultation was conducted as required under Articles 10 and 118 of the Constitution;
- (b) a brief statement of all the consultations undertaken before the statutory instrument was made;
- (c) a brief statement of the way the consultation was carried out;
- (d) an outline of the results of the consultation;
- (e) a brief explanation of any changes made to the legislation as a result of the consultation.

(2) Where no such consultations are undertaken as contemplated in subsection (1), the regulation-making authority shall explain why no such consultation was undertaken.

(3) The explanatory memorandum shall contain such other information in the manner specified in the Schedule and may be accompanied by the regulatory impact statement prepared for the statutory instrument.

[Act No. 4 of 2018, Sch.]

### PART III – REGULATORY IMPACT STATEMENTS

#### 6. Regulatory impact statements

If a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the regulation making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument.

#### 7. Contents of regulatory impact statements

(1) A regulatory impact statement shall include the following information about the proposed statutory instrument in clear and precise language—

- (a) a statement of the objectives of the proposed legislation and the reasons for them;
- (b) a statement explaining the effect of the proposed legislation, including in the case of a proposed legislation which is to amend an existing statutory instrument the effect on the operation of the existing statutory instrument;
- (c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
- (d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives;
- (e) the reasons why the other means are not appropriate;
- (f) any other matters specified by the guidelines;
- (g) a draft copy of the proposed statutory rule.

(2) The assessment of the costs and benefits shall include an assessment of the economic, environmental and social impact and the likely administration and compliance costs including resource allocation costs.

(3) The responsible Cabinet Secretary shall ensure that independent advice as to the adequacy of the regulatory impact statement and of the assessment included in the regulatory impact statement is obtained and considered in accordance with the guidelines.

(4) The responsible Cabinet Secretary shall before a statutory rule in respect of which a regulatory impact statement is required is made, give a certificate in writing specifying that—

- (a) the requirements relating to regulatory impact statements in this Act and the guidelines have been complied with; and
- (b) in the Cabinet Secretary's opinion, the regulatory impact statement adequately assesses the likely impact of the proposed statutory rule.

(5) The responsible Cabinet Secretary shall ensure that a copy of the regulatory impact statement and the compliance certificate is tabled in Parliament with the statutory instrument as provided under section 11.

#### **8. Notification of regulatory impact statements**

(1) Preparation of a regulatory impact statement for proposed statutory instrument shall be notified in the Gazette and in a newspaper likely to be read by people particularly affected by the proposed legislation.

(2) If the proposed statutory instrument is likely to have a significant impact on a particular group of people, the notice shall be published in a way likely to ensure members of the group understand the purpose and content of the notice.

(3) The notice shall—

- (a) include a brief statement of the policy objectives sought to be achieved by the proposed legislation; and
- (b) state where copies of the regulatory impact statement may be obtained or inspected;
- (c) if a draft of the proposed legislation may be obtained or inspected, state that the draft may be obtained or inspected and where;
- (d) state that anyone may comment on the proposed legislation;
- (e) state how and when comments may be made; and
- (f) state how consultation about the proposed legislation will take place.

(4) The notice shall allow at least fourteen days from publication of the notice for the making of comments.

(5) A copy of the regulatory impact statement may be available free, or on payment of a reasonable price, at the place, or each of the places, stated in the notice.

(6) The responsible Cabinet Secretary shall ensure that—

- (a) all comments and submissions are considered before the statutory rule is made; and
- (b) a copy of all comments and submissions is given to the Committee as soon as practicable after the statutory rule is tabled in the House or when requested by the Committee.

#### **9. Where regulatory impact statements may be unnecessary**

A regulatory impact statement need not be prepared for a proposed statutory instrument if the proposed legislation only provides for, or to the extent it only provides for—

- (a) a matter that is not of a legislative character, including, for example, a matter of a machinery, administrative, drafting or formal nature;

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

#### **PART IV – PARLIAMENTARY SCRUTINY OF STATUTORY INSTRUMENTS**

##### **10. Purpose of Part**

The purpose of this Part is to facilitate the scrutiny by Parliament of statutory instruments and to set out the circumstances and manner in which the statutory instruments, or provisions of the statutory instruments, may be disallowed, as well as the consequences of the disallowance.

##### **11. Laying of statutory instruments before Parliament**

(1) Every Cabinet Secretary responsible for a regulation-making authority shall within seven (7) sitting days after the publication of a statutory instrument, ensure that a copy of the statutory instrument is transmitted to the responsible Clerk for tabling before the relevant House of Parliament.

(2) Notwithstanding subsection (1) and pursuant to the legislative powers conferred on the National Assembly under Article 109 of the Constitution, all regulation-making authorities shall submit copies of all statutory instruments for tabling before the National Assembly.

(3) The responsible Clerk shall register or cause to be registered every statutory instrument transmitted to the respective House for tabling or laying under this Part.

(4) If a copy of a statutory instrument that is required to be laid before the relevant House of Parliament is not so laid in accordance with this section, the statutory instrument shall cease to have effect immediately after the last day for it to be so laid but without prejudice to any act done under the statutory instrument before it became void.

[Act No. 4 of 2018, Sch.]

##### **12. Referral to the Committee**

(1) Every statutory instrument issued, made or established after the commencement of this Act shall upon tabling before the respective House of

Parliament stand referred to the Committee or any other committee that may be established for the purpose of reviewing and scrutinizing statutory instruments.

(2) Nothing under subsection (1) may be construed as precluding the Committee from scrutinizing statutory instruments previously published before the commencement of this Act.

(3) The provisions of subsection (1) shall not apply to any rules, regulations and orders emanating from a court of competent jurisdiction in Kenya.

[Act No. 25 of 2015, Sch.]

### **13. Relevant considerations**

The Committee shall, in carrying out its scrutiny of any statutory instrument or published Bill be guided by the principles of good governance, rule of law and shall in particular consider whether the statutory instrument—

- (a) is in accord 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.

### **14. Exemptions**

Subject to section 16, the Committee may exempt certain statutory instruments or class of statutory instruments from scrutiny if the Committee is satisfied that the scrutiny is not reasonably practical due to the number of regulations in that class.

**15. Report to Parliament**

(1) The Committee shall make a report to Parliament containing only a resolution that the statutory instruments that stands permanently referred to the Committee be revoked.

(2) Where the Committee does not make the report referred to in subsection (1) within twenty eight sitting 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.

(3) Despite the provision of this Act or any other written law, where a time is prescribed for doing an act or taking a proceeding by the National Assembly relating to the handling of a statutory instrument, the National Assembly may, by resolution, extend that time by a period not exceeding twenty-one days.

(4) Without prejudice to the provisions of section 12 and this section, any statutory instrument which contains provisions dealing with taxes, levies or fees, or has the effect of imposition of a charge on a public fund or variation or repeal of such charge, the National Assembly shall, within twenty-eight sitting days from the date of receipt of the notice under section 11, consider the notice and make a resolution either to approve or reject the notice.

[Act No. 25 of 2015, Sch., Act No. 4 of 2018, Sch, Act No. 22 of 2022, s. 62.]

**16. Notice to the regulation-making authority**

Subject to section 11, and in so far as its practically possible, the Committee shall confer with the regulation-making authority for which the statutory instrument has been made and brought before the Committee for scrutiny, before tabling the report to Parliament for their information and modification where necessary.

**17. Tabling the Report**

In tabling the report before Parliament, the Committee shall state the overall objective of the statutory instrument, identify the portion of the statutory instrument in relation to which the report has been made and indicate the manner in which it offends the criteria set out in section 10 and the recommendations thereof.

**18. Annulment**

When a report on a statutory instrument has been tabled in Parliament, the statutory instrument shall be deemed to be annulled if Parliament passes a resolution to that effect.

**19. Revocation**

Where Parliament has adopted a report or a resolution that a statutory instrument be revoked, the instrument shall stand revoked and the regulation making authority shall publish the revocation within fourteen days.

**PART V – STAGED AUTOMATIC EXPIRY OF STATUTORY INSTRUMENTS****20. Purposes of Part**

The purpose of this Part is to—

- (a) reduce substantially the regulatory burden on the people of Kenya without compromising law and order and essential economic, environmental and social objectives;



- (b) ensure subordinate legislation is relevant to the economic, social and general wellbeing of the people of Kenya;
- (c) ensure the part of the Kenya statute book consisting of statutory instruments is of the highest standard;
- (d) ensure continuous review of statutory instruments by the various regulation making authorities and the agencies under them.

#### **21. Automatic revocation of statutory instruments**

(1) Subject to subsection (3), a statutory instrument is by virtue of this section revoked on the day which is ten years after the making of the statutory instrument unless—

- (a) it is sooner repealed or expires; or
- (b) a regulation is made exempting it from expiry.

(2) The responsible Cabinet Secretary may in consultation with the Committee, make a regulation under this Act extending the operation of a statutory rule that would otherwise be revoked by virtue of this section for a period as is specified in the regulation not exceeding twelve months.

(3) Only one extension of the operation of a statutory rule can be made under subsection (2).

(4) The automatic revocation period for statutory instruments issued under the Income Tax Act (Cap. 470), the Stamp Duty Act (Cap. 480), the Value Added Tax Act, No. 35 of 2013, Tax Appeal Tribunal Act, No. 40 of 2013, Excise Duty Act, No. 23 of 2015 and Tax Procedure Act, No. 29 of 2015, is hereby extended for a period of twenty-four months with effect from the twenty fifth day of January, 2023.

[Act No. 22 of 2022, s. 63.]

### **PART VI – GENERAL PROVISIONS**

#### **22. Publication of instruments**

(1) Subject to subsection (2), every statutory instrument shall be published in the Kenya Gazette and shall be assigned a serial number as of the year in which it is made which shall be printed on the face of the statutory instrument.

(2) If a question arises as to whether statutory instruments under any provision of an enactment are statutory instruments the Attorney-General may, by certificate in writing, decide the matter.

(3) Every certificate issued under subsection (2) shall be published in the *Gazette*.

[Act No. 25 of 2015, Sch.]

#### **23. Commencement of statutory instrument**

(1) A statutory instrument shall come into operation on the date specified in that behalf in the statutory instrument or, if no date is so specified, then, subject to subsection (2), it shall come into operation on the date of its publication in the *Gazette* subject to annulment where applicable.

(2) If a statutory instrument is made after the passing or making but before the coming into operation of the enabling legislation under which it is made, the statutory instrument, whether or not it is previously published, shall not come into operation before the date on which the enabling legislation comes into operation.

(3) A statutory instrument may be made to operate retrospectively to any date not being earlier than the commencement of the enactment under which it

is made but no person shall be liable to a penalty in respect of any contravention of a provision in an statutory instrument required to be published in the *Gazette* where the alleged contravention occurred before the publication unless the court is satisfied that before the alleged contravention the purport of the statutory instrument had been brought to that person's notice.

#### 24. Exercise of powers

(1) Where any statutory instrument or appointment or any other thing purports to be made or done in exercise of a particular power, it shall be deemed also to be made or done in exercise of all powers thereunto enabling.

(2) A statutory instrument shall not be inconsistent with the provisions of the enabling legislation, or of any Act, and the statutory instrument shall be void to the extent of the inconsistency.

(3) Where an enactment confers a power to make a statutory instrument it shall be deemed also to include a power exercisable in the like manner and subject to the like conditions (if any) to amend, repeal or replace any the statutory instrument.

(4) Where any enactment power is conferred on any person to make a statutory instrument or to do anything for any general purpose, and also for any special purposes incidental thereto, the enumeration of the special purposes shall not derogate from the generality of the general purpose.

(5) There may be annexed to the breach of statutory instrument a penalty, not exceeding twenty thousand shillings or such term of imprisonment not exceeding six months, or both, which the regulation making authority may think fit.

#### 25. Fees and charges

(1) A statutory instrument may provide for the imposition of fees and charges in respect of any matter with regard to which provision is made in the enabling legislation.

(2) A power to impose fees or charges shall include power to provide for all or any of the following matters—

- (a) specific fees or charges;
- (b) minimum fees or charges;
- (c) maximum fees or charges;
- (d) ad valorem fees or charges;
- (e) the payment of fees or charges either generally or under specified conditions or in specified circumstances; and
- (f) the reduction, waiver or refund, in whole or in part, of any fees or charges, either upon the happening of a certain event or in the discretion of a specified person.

(3) Where any reduction, waiver or refund, in whole or in part, of any fee or charge is provided for, such reduction, waiver or refund may be expressed to apply or to be applicable either generally or specifically—

- (a) in respect of certain matters or transactions or classes of matters or transactions;
- (b) in respect of certain documents or classes of documents;
- (c) when any event happens or ceases to happen;
- (d) in respect of certain persons or classes of persons; or

- (e) in respect of any combination of such matters, transactions, documents, events or persons, and may be expressed to apply or to be applicable subject to such conditions as may be specified in the statutory instrument or in the discretion of any person specified therein.

**26. Forms**

(1) Where an enabling legislation confers power on any person to prescribe any form, then unless that person prescribes such form, any form approved for the purpose by that person may be used.

(2) Where any form has been prescribed by or under any legislation, a document or statutory instrument which purports to be in such form shall not be void by reason of any deviation there from which does not affect the substance thereof or which is not calculated to mislead.

**PART VII – TRANSITION AND SAVING****27. Transition and saving**

(1) Sections 27 and 34 of the Interpretation and General Provisions Act (Cap. 2) are hereby repealed.

(2) Despite the provisions of subsection (1), any regulations, order or notice issued immediately before the commencement of this Act shall continue in force as if it were made under this Act unless it is expressly revoked by an Act of Parliament under which it is made.

**28. Actions necessary after effective date**

(1) Before the final announcement of all the results of the first election of Parliament as contemplated under section 2 of the Sixth Schedule to the Constitution, any reference to a Cabinet Secretary in this Act shall with necessary modifications be construed to mean a Cabinet Minister.

(2) Where this Act requires a Cabinet Secretary to table or cause to be laid any statutory instrument after the effective date, it shall accordingly be the duty of the responsible Cabinet Secretary to transmit such statutory instrument to the office of the Clerk.

(3) Upon receipt of such statutory instrument by the Clerk as envisaged under subsection (2), the Clerk shall within seven (7) days when Parliament is in session, cause the statutory instrument to be tabled before Parliament and the provisions of Part IV shall take effect.

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**Schedule**

[Section 8.]



EXPLANATORY MEMORANDUM  
EXPLANATORY MEMORANDUM TO  
THE [Title of Statutory instrument]  
[Year] No. [XXXX]

## PART I

Name of the Statutory :  
Instrument  
Name of the Parent Act :  
Enacted Pursuant to :  
Name of the Ministry/ :  
Department  
Gazetted on :  
Tabled on :

## PART II

1. Purpose of the Statutory instrument
  - 1.1 [Free Text]
2. Legislative Context
  - 2.1 [Free Text]

**3. Policy Background**

- *What is being done and why*

**3.1 [Free Text]**

- *Consolidation*

**3.2 [Free Text]****4. Consultation outcome****4.1 [Free Text]****5. Guidance****5.1 [Free Text]****6. Impact****6.1 *The impact on Fundamental Rights and Freedoms [free text]*****6.2 *The impact on the Private Sector [free text]*****6.3 *The impact on the public sector [free text]*****6.4 *An impact assessment is attached to this memorandum or an impact assessment has not been prepared for this statutory instrument [free text]*****7. Monitoring and review****7.1 [Free Text]****8. Contact****8.1 *[Name of Contact] and the [Name of the department] Tel: [Telephone Number] or email: [email address] can answer any queries regarding the statutory instrument.***

### **NOTES ON PREPARING EXPLANATORY MEMORANDA TO STATUTORY INSTRUMENTS**

The purpose of the Explanatory Memorandum (EM) is to provide to the lay reader plain English, self contained, explanation of the effect of the legislation and why it is necessary.

In preparing the EM departments should ensure that they do not repeat the content of the Explanatory Note. The EM is not aimed at lawyers, but to help people who know nothing about the law or the subject quickly to gain an understanding of the statutory instrument's intent and purpose.

It can be helpful to produce a single EM for a group of linked statutory instruments (SIs). This prevents unnecessary duplication of common background and makes sure that the reader is aware of the linkage. It may be helpful to explain (usually in the policy section) the special features of each SI and how it contributes to the overall policy objective. A copy of the group EM should be attached to each of the individual SIs to which it relates. Where possible all the statutory instruments should be laid on the same day and numbered sequentially.

The numbering of the individual section headings is fixed, so the paragraphs that follow should be numbered as subparagraphs. Your explanation should be concise but comprehensive – the EM should not generally exceed 4 pages.

#### **1. Purpose of the statutory instrument**

In no more than 3 sentences please describe in **Plain English** what the statutory instrument does and why. Assume that the reader knows nothing about the subject and explain, or better avoid, acronyms and terms of art.

The legal powers under which the statutory instrument is made are generally irrelevant here, and in any case are set out in the statutory instrument itself.

## 2. Legislative Context

Paragraph(s) 4.1 onwards will be free text.

The power under which the statutory instrument is made will be clear from the statutory instrument itself and reference need not be made to the power unless there is a specific reason to do so, for example, if this is the first use of a power under an Act or the power is being used in a novel way. In these paragraphs you should explain why the statutory instrument is being made: for example, to implement a new Act or European obligation, to effect an annual uprating in line with inflation, or to amend the law following a significant court case.

Relevant background information should be given to set the statutory instrument in context. Mention in particular—

- if in the course of debate, parliamentary question or Committee appearance any specific undertakings were given to Parliament that relate to this instrument (including Hansard or report reference where relevant);
- if this instrument relates to any other statutory instruments (i.e. it is one of a group), please cross reference;
- if this statutory instrument paves the way for future statutory instruments it is helpful to indicate what they will do and when they are likely to appear.

## 3. Policy Background

Paragraph(s) 3.1 onwards will be free text.

### • *What is being done and why*

Departments should state in particular:

- the policy objectives of the parent Act/Directive and how this statutory instrument fulfils them;
- the size and nature of the problem it is addressing;
- the level of public interest in the policy, (for example from the response to consultation if undertaken, or from media attention);
- whether the change is politically or legally important Departments should ensure that, although brief, explanation should start from the basic.

Departments should ensure that, although brief, explanation should start from the basic. The EM is aimed at the lay reader: not just at the committee on delegated legislation but also Members of Parliament. Don't say "this amends the XYZ scheme to open it to the under 18s" without providing a sentence about what the XYZ scheme does. Please explain any acronyms or technical terms.

The EM should also make clear why the Government needs to legislate and what other avenues of attaining the desired objective (e.g. self-regulation through a voluntary code of practice) were explored and why they were rejected.

For "Miscellaneous Amendments" SIs, the EM should briefly address each of the broad areas covered. If there is no obvious structure offered by the format of the statutory instrument itself, one way of doing this is to break the Regulations down into associated groups.

- **Consolidation**

Where a statutory instrument amends another statutory instrument, particularly if not for the first time, the memorandum should indicate whether the department intends to consolidate the relevant legislation and if so, what the projected timescale for consolidation may be. If an informal consolidated text is available to the public for free then provide details of the website or other reference from where this can be obtained.

#### **4. Consultation outcome**

Paragraph(s) 4.1 onwards will be free text.

The EM should contain a brief explanation of who was consulted, over what period and with what responses. There should be some analysis of the outcome and the Department's policy response to the opinions expressed (e.g. "60% supported the proposal, of the rest, the main objections were on the proposed fee structure and the Department has responded to this by agreeing to phase in the increase over 3 years").

#### **5. Guidance**

Paragraph(s) 5.1 onwards will be free text.

The memorandum should set out what guidance or other form of publicity, if any, the department is providing to users and stakeholders and enforcement agencies to explain the new obligation and to ensure that it is fulfilled. This is particularly important where a regulation is legally complex, for example a serial amendment or the implementation of a European obligation by multi-level cross-reference to European statutory instruments.

Where the guidance is essential to understanding how the statutory instrument will operate, but is not itself subject to Parliamentary scrutiny, please send copies to the libraries of both Houses at the same time the SI is laid.

#### **6. Impact**

Paragraphs 6.1, 6.2 and 6.3 should be completed.

Paragraph 6.4 – One of the two options shall be selected.

**Note:** Where an Impact Assessment has been prepared then this should be attached as an Annex. There is no need to duplicate the information. If you are recycling the IA prepared for an Act which this statutory instrument helps implement, please only include the relevant extracts and confirm in the EM that the figures are still up to date. If no IA has been prepared please confirm that this is because no impact on the private or voluntary sector is foreseen and simply mention any public sector impacts.

#### **7. Monitoring and review**

Paragraph(s) 7.1 onwards are free text.

What are the success criteria for this statutory instrument? Where possible please define the intended outcome in measurable terms e.g. the changes in

the fee structure aim to achieve full cost recovery of the process of issuing and administering this licence by April 2010, or the changes set out in this statutory instrument aim to reduce identity theft by 10% over the next 3 years.

When and how will they be reviewed? State who will review the outcome, when and how the results will be published. For example:

*The outcome will be subject to internal review after 12 months and the legislation may be amended accordingly or*

*The University of Nairobi has conducted a benchmark study and will review the position again in 3 years; a report will be published towards the end of 2012.*

Where this material has already been included in the IA, please include the headline answers in the EM and cross refer to further detail in the IA (specifying the relevant paragraph or page).

#### **8. Contact**

All details shall be completed on the copies provided for Parliament. The contact phone number given should be covered by someone who is able to answer questions on the statutory instrument for at least 3 weeks after the statutory instrument has been laid.

#### ***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 the Act.

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**EXPLANATORY MEMORANDUM TO THE NATIONAL ASSEMBLY ON THE  
STATUTORY INSTRUMENTS (EXEMPTION FROM EXPIRY)  
REGULATIONS,2022.**

**GAZETTE SUPPLEMENT NO. 191  
LEGISLATIVE SUPPLEMENT NO. 92  
LEGAL NOTICE NO. 214 OF 2022**

**PART I**

<b>Statutory Instrument</b>	<b>Statutory Instruments (Exemption from Expiry) Regulations,2022</b>
<b>Parent Act</b>	<b>Statutory Instruments Act, 2013</b>
<b>Enacted Pursuant To</b>	<b>Section 21(2) Statutory Instruments Act, 2013</b>
<b>Name of Authority</b>	<b>National Assembly</b>
<b>Gazetted on</b>	<b>25<sup>th</sup> November,2022.</b>

**PART II**

**1. The purpose of the Statutory Instrument**

The Purpose of the Statutory Instruments (Exemption from Expiry) Regulations,2022 is to provide for extension of operation of statutory instruments made both under the Parliamentary Service Act,2000 (Repealed) and the Public Finance Management Act that were in operation before the 25<sup>th</sup> of January, 2013 for a period of twelve months with effect from 25<sup>th</sup> of January,2023, being ten years from the date on which the Statutory Instruments Act,2013(the Act) came into force.

**2. Legislative context**

Section 21(1) of the Act, provides that statutory instruments shall be automatically revoked on the day that is ten years after the date that the instrument came into operation unless it is sooner repealed, expires, or a regulation is made exempting the instrument from expiry. This section provides for the power to make a regulation exempting an instrument from expiry, where the regulation-making authority consults with the Committee on Delegated Legislation of the National Assembly.





Section 27(2) provides that all statutory instruments in force on the commencement of the Statutory Instruments Act, 2013 are deemed to have been made under the Act and consequently, all statutory instruments in force on or before the 25<sup>th</sup> of January, 2013, are scheduled to be automatically revoked on the 24<sup>th</sup> of January, 2023. This affects the statutory instruments made under the Parliamentary Service Act, 2000 (Repealed) and the Public Finance Management Act, which anchors on operations in the National Assembly. The statutory instruments include;

- (i) L.N No. 77 of 2005 Parliamentary Service (Constituency Offices) Regulations, 2005.
- (ii) L.N No. 95 of 2011 Parliamentary services (Centre for Parliamentary Studies and Training) Regulations, 2011.
- (iii) L.N No. 18 of 2013 The Public Finance (Parliamentary Mortgage (Staff) Scheme Fund) Regulations, 2013.
- (iv) L.N No. 19 of 2013 The Public Finance Management (Parliamentary Car Loan (Staff) Scheme Fund) Regulations, 2013.
- (v) L.N No. 65 of 2013 Parliamentary Services (Offices of Members of Parliament) Regulations.
- (vi) L.N No. 67 of 2013 The Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) Regulation, 2013.
- (vii) L.N No. 68 of 2013 The Public Finance Management (Parliament Car Loan (Members) Scheme Fund) Regulations, 2013.

### **3. Policy background**

In recognition of the fact that section 21(2) of the Statutory Instruments Act, 2013 anticipates that Cabinet Secretaries to make regulations in consultation with the Committee on Delegated Legislation, to exempt statutory instruments made under the laws they administer from automatic expiry. The National Assembly, has submitted its Statutory Instruments (Exemption from Expiry) Regulations, 2022, for consultation with the committee in respect to the affected statutory instruments with the view to seeking exemptions from expiry before the deadline, 25<sup>th</sup> of January, 2023.

### **4. Consultation**

The National Assembly has made internal consultations on the Statutory Instruments (Exemption from Expiry) Regulations, 2022 and further submitted the draft Statutory Instruments (Exemption from Expiry) Regulations, 2022 to the Committee on Delegated Legislation.



## **5. Financial implications**

There shall be no financial implications on the Government by the proposed regulations and no expenditure of public funds shall be incurred in implementing them.

## **6. Impact**

- (i) Impact on Fundamental Rights and Freedoms: The Statutory Instruments (Exemption from Expiry) Regulations, 2022 are necessary in order to ensure the continued operation of statutory instruments with a continuing purpose, that are necessary for enjoyment and protection of fundamental rights and freedoms.
- (ii) Impact on private sector: the Regulations will ensure that the National Assembly will continue to operate and thus affect the operations in the private sector.
- (iii) Impact on public sector: the Regulations will ensure that the National Assembly continues to operate in accordance with the existing regulatory and administrative frameworks established by statutory instruments with a continuing purpose.

## **7. Monitoring and review**

Implementation and review of the Statutory Instruments (Exemption from Expiry) Regulations, 2022, will be carried out by the National Assembly. The Commission is in the process of reviewing the Regulations which are sought to be saved from expiry and a joint task Force of Legislative Drafters both from the senate and the National Assembly are finalizing the process.

## **8. Contact**

The Contact person for the purpose of this explanatory Memorandum is the Clerk, National Assembly as detailed hereunder.

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