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THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FOURTH SESSION (2016)

SELECT COMMITTEE ON DELEGATED LEGISLATION

REPORT ON:

THE PARLIAMENTARY SERVICE (SENATE MONITORING AND  
EVALUATION) (PROCEDURES FOR MANAGEMENT OF FUNDS)  
REGULATIONS, 2016

Directorate of Committee Services,  
The National Assembly,  
Parliament Buildings,  
NAIROBI

October, 2016

Paper laid by  
chairperson select  
committee on  
delegated legislation  
Thursday 27/10/16  
Attention  
Aids



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1. Minutes of Committee sittings
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## 1.0 CHAIRPERSON'S FOREWARD

In exercise of powers conferred by Section 36 of the Parliamentary Service Act (No. 10 of 2000), the Parliamentary Service Commission published the Parliamentary Service (Senate Monitoring and Evaluation) (Procedures for Management of Funds) Regulations, 2016 on 27<sup>th</sup> September, 2016.

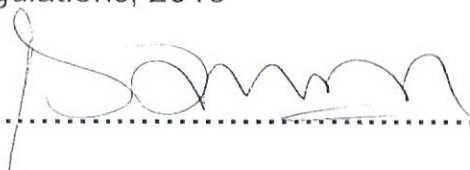
After publication, the Regulations were tabled in the House on the 6<sup>th</sup> of October, 2016 and immediately committed to the Select Committee on Delegated Legislation for review and scrutiny in line with section 12 of the Statutory Instruments Act, 2013 and Standing Order 210 of the National Assembly Standing Orders.

The Committee considered the Regulations at five (5) sittings held between 5<sup>th</sup> August, 2016 and 26<sup>th</sup> October, 2016 at the Voyager Hotel in Mombasa and Parliament Buildings. These included meetings with the Chairperson of the Senate Monitoring and Evaluation Fund Committee and the Parliamentary Budget Office.

The Committee considered and adopted its report at a sitting held on 27<sup>th</sup> October, 2015 at Parliament Buildings. The adoption of the report was proposed by Hon. Tom J. Kajwang' and seconded by Hon. Michael Kiso. There was no dissenting voice to the adoption. Minutes of sittings of the Committee as well list of Members attendance are annexed hereto as appendices 1 and 2.

The Committee expresses gratitude to the Speaker for the support and direction the House under his leadership has accorded Committees in the discharge of their mandate. The Committee also wishes to record its appreciation to the office of the Clerk of the National Assembly and the Directorates of Committees and Legal Services for providing technical support which was vital in the execution of its mandate.

On behalf of the Members of the Select Committee on Delegated Legislation, and pursuant to Standing Order No. 199, it is my pleasure and duty to present to the House the Committee's report on the Parliamentary Service (Senate Monitoring and Evaluation) (Procedures for Management of Funds) Regulations, 2016

Signed..........Date. 27. 10. 16

**HON WILLIAM CHEPTUMO, M.P.**  
**CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION**



## 2.0 EXECUTIVE SUMMARY

The Parliamentary Service (Senate Monitoring and Evaluation) (Procedures for Management of Funds) Regulations, 2016 were tabled in the House on 6<sup>th</sup> of October, 2016 and immediately committed to the Select Committee on Delegated Legislation for scrutiny and approval in line with the Standing Orders and the Statutory Instruments Act, 2013.

Having considered the Regulations, the Committee observed that their making did not comply with Regulation 207 of the Public Finance Management Regulations, 2015. The Committee further noted that Regulation 13 provides for the establishment of the Senate Monitoring and Evaluation Committee whose function is to oversight monies allocated to the Fund. This would create conflict of interest since the membership of the Committee would comprise the same members who would be responsible for receiving and distributing the Fund monies.

The Committee also noted that Regulation 21-26 on financial procedures provides for the disbursement of the monies allocated to the Fund through the County Office which was duplication of a structure already in place vide the Parliamentary Service (Constituency Offices) Regulations, 2005.

In view of the foregoing, the Committee recommends that the Regulations be annulled in entirety.

### 3.0 PREFACE

#### 3.1 Committee's mandate

The Select Committee on Delegated Legislation is established pursuant to provisions of Standing Order No. 210 and its mandate is 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 opinion 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) *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.*

Standing Order No. 210(4) provides that if the Committee:-

- (a) *Resolves that the statutory instrument, be acceded to, the Clerk shall convey that resolution to the relevant state department or the authority that published the statutory instrument.*

- (b) *Does not accede to the statutory instrument, the Committee may recommend to the House that the Assembly resolves that all or part of the statutory instrument be annulled and if the instrument:-*
- (i) *is not made under a legislation concerning counties and a resolution is passed by the Assembly within twenty days on which it next sits after the instrument laid before it under paragraph (2), that all or part of the statutory instrument be annulled, the instrument of part thereof shall henceforth stand annulled; and*
  - (ii) *is made under a legislation concerning counties the Clerk shall within seven days of the resolution transmit a message to the Senate.*

Standing Order No. 210(5) provides that:-

*The Clerk shall submit the resolution under paragraph 4(b) (i) to the relevant state department or the authority that published the statutory instrument.*

Section 13 (a) of the Statutory Instruments Act, 2013 further states as follows:-

*13 "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 any other law.*

### 3.2 Committee Membership

The Committee was constituted on 21<sup>st</sup> May, 2013 and as at the time scrutiny the regulations and adopting its report comprised:-

Hon. William Cheptumo, M.P.	-	<b>Chairperson</b>
Hon. Joseph Gitari, M.P.	-	<b>Vice Chairperson</b>
Hon. Alfred Keter, M.P.		
Hon. Hassan Aden Osman, M.P.		
Hon. Timothy W. Wanyonyi, M.P.		
Hon. George Theuri, M.P.		
Hon. Elisha Busienei, M.P.		
Hon. (Eng) Shadrack Manga, M.P.		
Hon. Yusuf Hassan, M.P.		
Hon. Michael Kisoi, M.P.		
Hon. Mohamed Adan Huka, M.P.		
Hon. John M. Waiganjo, M.P.		
Hon. Paul K. Bii, M.P.		
Hon. Charles Gimose, M.P.		
Hon. Tom J. Kajwang', M.P.		
Hon. Simba Arati, M.P.		
Hon. Rachael A. Ameso, M.P.		
Hon. Vincent Musau, M.P.		
Hon. William Kisang', M.P.		
Hon. Neto Agostinho, M.P.		
Hon. Paul Koinange, M.P.		
Hon. Ibrahim Abdi Saney, M.P.		
Hon. Eusilah Ng'eny, M.P.		
Hon. Nicholas Ngi'kor Nixon, M.P.		
Hon. Bernard Shinali, M.P.		
Hon. Kabando Wa Kabando, M.P.		
Hon. Daniel Maanzo, M.P.		
Hon. Junet Nuh Sheikh, M.P.		

Hon. (Major Rtd) John Waluke was a Member at the time of scrutinizing the Regulations but had been discharged from the Committee as at the time of adopting the report.



### 3.3 Committee secretariat

Senior Clerk Assistant	-	George Gazemba
First Clerk Assistant	-	Abdullahi Aden
Third Clerk Assistant	-	Halima Hussein
Senior Legal Counsel	-	Wilson Dima

## **4.0 INTRODUCTION AND BACKGROUND INFORMATION**

### **4.1 Making of the Regulations and Committal to the Select Committee on Delegated Legislation**

In exercise of powers conferred by Section 36 of the Parliamentary Service Act (No. 10 of 2000) the Parliamentary Service Commission made the Parliamentary Service (Senate Monitoring and Evaluation) (Procedures for Management of Funds) Regulations, 2016 on 27<sup>th</sup> of September, 2016.

After publication, the Regulations were tabled in the House on 6<sup>th</sup> of October, 2016 and immediately committed to the Select Committee on Delegated Legislation for review and scrutiny in line with section 12 of the Statutory Instruments Act, 2013 and Standing Order 210 of the National Assembly Standing Orders.

Part 1 of the Regulations is on preliminary matters. Part ii is on general provisions which include the objectives of the regulations which are in respect of the following monitoring and evaluation activities:-

- (i) Carrying out county expenditure survey;
- (ii) Facilitating consultation forums on issues affecting counties;
- (iii) Assessing public perception on service delivery on the counties;
- (iv) Research studies and surveys on various thematic areas affecting counties;
- (v) Social auditing of development projects being undertaken in the counties;
- (vi) Tracking of revenues being collected by county governments;
- (vii) Tracking and monitoring development activities in the counties; and
- (viii) Any other monitoring and evaluation activity relevant to the mandate of the Senate.

Part II (regulation 8) provides for the disbursement of monies under the Fund. The disbursement will be bi-annual with effect from the 2016/2017 financial year. The initial amount to be allocated by the Parliamentary Service Commission under its budget is Kshs. 1 billion shillings which will be reviewed from time to time.

The funds are earmarked for distribution are as illustrated in the table 1 below.

Table1: *Distribution of funds for monitoring and evaluation*

Item	% allocation	Allocation in 2016/17 PSC Budget (Kshs Millions)	Allocation in 2017/18 PSC Budget (Kshs Millions)	Allocation in 2018/19 PSC Budget (Kshs Millions)
Administration	1	10	10	10
Capacity Building	1	10	10	10
Nominated Senators	6	60	60	60
Elected Senators	92	920	920	920
Total	100	1,000	1,000	1,000

Source: *Estimates of recurrent and development expenditure of the Parliamentary Service Commission for the year ending 30<sup>th</sup> June, 2017 and projections for 2017/18-2019*

Furthermore, the first schedule of the Regulations gives the formula for allocating the 92% of the fund among elected Senators. Table 2 below illustrates the allocating formula.

Parameter	Weight (%)	Allocation in 2016/17 PSC Budget (Kshs. Millions)
Equal Share	47	432.4
Population	45	414
Size of County	8	73.6
Total	100	920

Part III is on administration of the Fund and sets out the functions of the Fund administrator. Part IV is on the establishment of the Senate Monitoring and Evaluation Committee and outlines the functions of the Committee. Part V is on financial procedures and provides for financial reports, procurement and bank accounts among others, Part VI is on offices and staffing for the purposes of monitoring and evaluation while Part VII is on miscellaneous provisions which include handing over and assets. The Regulations also have two schedules, the first one on the formula for allocating monies among the elected Senators and the Second schedule on conditions for disbursement of Funds.

The Regulations were accompanied by an Explanatory Memorandum as required by Section 11 of the Statutory Instruments Act, 2013.



## **5.0 CONSIDERATION OF THE REGULATIONS**

The Committee considered the Regulations at five (5) sittings held between 5<sup>th</sup> August, 2016 and 26<sup>th</sup> October, 2016 at the Voyager Hotel in Mombasa and within the precincts of Parliament. The Deputy Speaker of the Senate, Senator. Kembi Gitura and the Senate Chairperson of the Senate Monitoring and Evaluation Fund Committee, Senator. Kiraitu Murungi accompanied by a team of Parliamentary Staff from the Directorate of Finance and Accounting represented the Speaker of the National Assembly on behalf of the Parliamentary Service Commission, the regulation making authority in the second and third sittings. All minutes on sittings of the Committee are attached as appendix 1.

The Committee also met the Parliamentary Budget Office on 26<sup>th</sup> October, 2016 to get professional advice on the Regulations because they had financial implications on the Exchequer.

Initially, the regulation making authority published the Parliamentary Service (Senate Monitoring and Evaluation) Regulations, 2016 under Section 24 of the Public Finance Management Act, 2012 and submitted them to the House for scrutiny. After discussions between the Committee and the regulation making authority it was agreed that the Parliamentary Service did not have authority to make regulations under the Public Finance Management Act, 2012 and that proper Regulations be brought under the Section 18 of the Parliamentary Service Act. This culminated in the regulation making authority revoking the earlier regulations and submitting the Parliamentary Service (Senate Monitoring and Evaluation) (Procedures for Management of Funds) Regulations, 2016 which are the subject of scrutiny by the Committee.

## **6.0 OBSERVATIONS AND FINDINGS**

Arising from the sittings especially with the Parliamentary Budget Office, the Committee made the following observations and findings:-

### **6.1. Public Finance Management Regulations, 2015**

Regulation 207 of the Public Finance Management Regulations, 2015 provides for the criteria for establishment of Public Funds *inter-alia* as follows:-

- (i) The establishment of Fund shall be initiated through a proposal by the Cabinet Secretary responsible for the national government entity under which the functions of the Fund shall fall clearly setting out the justifications and submit to the cabinet secretary;



- (ii) The Cabinet Secretary shall certify in writing that the functions and the public services to be delivered through the Fund cannot be delivered through the structure of budget appropriations;
- (iii) The establishment of the Fund shall provide clear justification as to why a Fund structure is deemed appropriate for improved service delivery in light of the legislative and policy mandate of the national government entity;
- (iv) The administration costs of the Fund shall be a maximum of three (3) percent of the approved budgets of the Fund;
- (v) The Cabinet Secretary responsible for the national government entity functions shall confirm in writing that the establishment of the Fund and its continued existence will not depend on annual financing from the national exchequer.
- (vi) A Fund that has a lifespan of less than two years shall not be approved unless it is certified as unforeseen or urgent;
- (vii) The National Treasury Cabinet Secretary shall grant approval in writing for the establishment of any Fund;
- (viii) The National Treasury Cabinet Secretary shall demonstrate how the activities of the proposed public Fund shall fit in the overall Medium Term Plan and Budget Policy Statement;
- (ix) The initial approval for the establishment of a national public Fund shall be for a maximum of ten (10) years beyond which Cabinet and Parliament approvals shall be sought.

The Committee observed that the making of the Regulations did not adhere to the requirements of the Public Finance Management Regulations, 2015 as outlined. The Committee further observed that Section 13 (a) of the Statutory Instruments Act, 2013 provides that statutory instruments should be in accord with the constitution, the Act pursuant to which they are made and any other written law if they are to be acceded to.

## **6.2 Regulation 13 on establishment of the Senate Monitoring and Evaluation Committee**

Regulation 13 provides for the establishment of the Senate Monitoring and Evaluation Committee whose function is to oversight monies allocated to the Fund. The Committee observed that this would create conflict of interest since the membership of the Committee comprises the same members who would be directly responsible for the receiving and distribution of the Fund's monies.

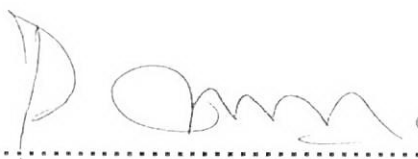
## **6.3 Regulation 21-26 on financial procedures**

The Regulations provide for the disbursement of the monies allocated to the Fund through the County Office. The Committee observed that this would be a duplication of a structure already put

in place by the Parliamentary Service Commission through the Parliamentary Service (Constituency Offices) Regulations, 2015.

**7.0 RECOMMENDATIONS**

Based on observations and findings under paragraphs 5 of this report, the Committee recommends to the House that the Parliamentary Service (Senate Monitoring and Evaluation) (Procedures for Management of Fund) Regulations, 2016 be annulled in entirety.

Signed..........Date.....27.10.16.....

**HON WILLIAM CHEPTUMO, M.P.  
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION**

# APENDIX 1

**MINUTES OF THE FORTY SECOND SITTING OF THE SELECT COMMITTEE  
ON DELEGATED LEGISLATION HELD ON THURSDAY, 27<sup>TH</sup> OCTOBER,  
2016 AT 10.30 A.M. IN THE MEMBERS' LOUNGE MAIN PARLIAMENT  
BUILDING**

**PRESENT:-**

Hon. William Cheptumo, M.P. – **Chairperson**  
Hon. Elisha Busienei, M.P.  
Hon. Bernard Shinali, M.P.  
Hon. Eusilah Jepkosgei, M.P.  
Hon. Daniel Maanzo, M.P.  
Hon. Simba Arati, M.P.  
Hon. Michael Kisoi Manthi, M.P.  
Hon. T. J. Kajwang', M.P.  
Hon. Neto Agostinho, M.P.  
Hon. Yusuf Hassan, M.P.  
Hon. Saney Abdi Ibrahim, M.P.  
Hon. George Theuri, M.P.  
Hon. Mohamed Aden Huka, M.P.  
Hon. Charles Gimose, M.P.  
Hon. Rachael A. Ameso, M.P.

**APOLOGIES:-**

Hon. Joseph Gitari, M.P. – **Vice Chairperson**  
Hon. Paul Bii, M.P.  
Hon. Kabando Wa Kabando, M.P.  
Hon. William Kisang', M.P.  
Hon. Nicholas Nixon, M.P.  
Hon. Paul Koinange, M.P.  
Hon. John Waiganjo, M.P.  
Hon. Hassan Aden, M.P.  
Hon. Alfred Keter, M.P.  
Hon. Timothy W. Wanyonyi, M.P.  
Hon. Junet Sheikh Nuh, MP.  
Hon. Vincent Musau, M.P.  
Hon. Shadrack Manga, M.P.

**IN ATTENDANCE**

**SECRETARIAT**

George Gazemba - Senior Clerk Assistant



Halima Hussein - Third Clerk Assistant

**MIN No. DL/134/2016: PRELIMINARIES**

The sitting commenced with a word of prayer from the chairperson.

**MIN No. DL.135/2016: CONSIDERATION AND ADOPTION OF REPORT ON PARLIAMENTARY SERVICE (SENATE MONITORING AND EVALUATION) (PROCEDURES FOR MANAGEMENT OF FUNDS), REGULATIONS, 2016**

The Committee considered and adopted its report on the Parliamentary Service (Senate Monitoring and Evaluation) (Procedures for Management of Funds) Regulations, 2016 with recommendations to the House that the entire regulations be annulled because they did not comply with Regulation 207 of the Public Finance Management Regulations, 2015. There were also issues with Regulation 13 and Regulation 21 to 26 of the Regulations.

The adoption of the report was propose by Hon Tom J. Kajwang' and seconded by Hon Michael Kiso. There was no dissenting voice to the adoption.

**MIN No. DL/136/2016: ADJOURNMENT**

There being no Other Business, the Chairperson adjourned the meeting at ten minutes past noon.

SIGNED.....

(CHAIRPERSON)

DATE..... 27.10.16

**MINUTES OF THE FORTY FIRST SITTING OF THE SELECT COMMITTEE ON DELEGATED LEGISLATION HELD ON WEDNESDAY, 26<sup>TH</sup> OCTOBER, 2016 AT 10.30 A.M. IN THE COMMONWEALTH PARLIAMENTARY ASSOCIATION (CPA) ROOM, MAIN PARLIAMENT BUILDING**

**PRESENT:-**

Hon. William Cheptumo, M.P.	–	<b>Chairperson</b>
Hon. Joseph Gitari, M.P.	–	<b>Vice Chairperson</b>
Hon. Elisha Busienei, M.P.		
Hon. Paul Bii, M.P.		
Hon. Bernard Shinali, M.P.		
Hon. Charles Gimose, M.P.		
Hon. George Theuri, M.P.		
Hon. Kabando Wa Kabando, M.P.		
Hon. Eusilah Jepkosgei, M.P.		
Hon. William Kisang', M.P.		
Hon. Daniel Maanzo, M.P.		
Hon. Simba Arati, M.P.		
Hon. Michael Kisoi Manthi, M.P.		
Hon. Saney Abdi Ibrahim, M.P.		
Hon. T. J. Kajwang', M.P.		
Hon. Neto Agostinho, M.P.		
Hon. Mohamed Aden Huka, MP.		

**APOLOGIES:-**

Hon. Nicholas Nixon, M.P.  
Hon. Yusuf Hassan, M.P.  
Hon. Paul Koinange, M.P.  
Hon. John Waiganjo, M.P.  
Hon. Hassan Aden, M.P.  
Hon. Alfred Keter, M.P.  
Hon. Rachael A. Ameso, M.P.  
Hon. Timothy W. Wanyonyi, M.P.  
Hon. Junet Sheikh Nuh, MP.  
Hon. Vincent Musau, M.P.  
Hon. Shadrack Manga, M.P.

## IN ATTENDANCE

### NATIONAL ASSEMBLY

#### SECRETARIAT

George Gazemba - Senior Clerk Assistant  
Abdullahi Aden - First Clerk Assistant  
Halima Hussein - Third Clerk Assistant

### PARLIAMENTARY BUDGET OFFICE (PBO)

Ms. Phyllis Makau - Director  
Martin Masinjo - Senior Deputy Director  
Joseph Ndirangu - Fiscal Analyst  
Eric Kanyi - Fiscal Analyst

## MIN No. DL/131/2016: PRELIMINARIES

The sitting commenced with a word of prayer from Hon Mohamed Huka. The Chair welcomed Parliamentary Budget Office team to the meeting and informed them that the Regulations had been discussed in previous meetings where the Committee felt it was important to get professional advice from the Parliamentary Budget Office before making its final decision on them.

## MIN No. DL.132/2016: MEETING WITH THE PARLIAMENTARY BUDGET OFFICE TO CONSIDER THE PARLIAMENTARY SERVICE (SENATE MONITORING AND EVALUATION) (PROCEDURES FOR MANAGEMENT OF FUNDS), REGULATIONS, 2016

The Director, Parliamentary Budget Office, Mrs. Phyllis Makau, briefed the Committee on the Regulations (see the attached brief) the highlights of which were as follows:-

- (i) Preamble;
- (ii) Legal issues underpinning the establishment of a Fund; and
- (iii) Purpose and administration of the Fund.

Arising from the brief, the Committee made the following observations:-

(i) **Issues underpinning the establishment of the Fund**

The Committee observed that the making of the Regulations did not adhere to the requirements of Regulation 207 of the Public Finance Management Regulations, 2015 as outlined under issues underpinning the establishment of the Fund. For instance, the Regulation making authority did not confirm that the establishment of the Fund and its continued existence will not depend on the annual financing from the Exchequer neither was there evidence of approval of the establishment of the Fund by the Treasury Cabinet Secretary.

(ii) **Regulation 13 on establishment of the Senate Monitoring and Evaluation Committee**

Regulation 13 provides for the establishment of the Senate Monitoring and Evaluation Committee whose function is to oversight monies allocated to the Fund. The Committee observed that this would create conflict of interest since the membership of the Committee would comprise the same members who would be directly responsible for the receipt and distribution of the Fund's monies.

(iii) **Regulation 21-26 on financial procedures**

The Regulations provide for the disbursement of the monies allocated to the Fund through the County Office. The Committee observed that this would be a duplication of a structure already put in place by the Parliamentary Service Commission vide the Parliamentary Service (Constituency Offices) Regulations, 2005.

In light of the foregoing, the Committee resolved to recommend to the House to annul the Regulations in entirety. In this regard, the Committee scheduled a second sitting on the same day and 4.00 pm to adopt its report on the Regulations. This was because the 28 days timeline within which the Committee was required to make a decision on the Regulations were to lapse on 3<sup>rd</sup> of November, 2016 when the House is on recess.

**MIN No. DL/133/2016: ADJOURNMENT**

There being no Other Business, the Chairperson adjourned the meeting at Twelve O'clock.



SIGNED.....

Pamela

(CHAIRPERSON)

DATE.....

27-10-16



PARLIAMENT OF KENYA  
PARLIAMENTARY BUDGET OFFICE

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**Title:** The Parliamentary Service (Senate Monitoring and Evaluation)  
(Procedures for Management of Funds) Regulations, 2016

**Source:** Parliamentary Budget Office

**Telephone:** +254 020 2133074

**Email:** [pbo@parliament.go.ke](mailto:pbo@parliament.go.ke)

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## 1. Key Highlights of the Regulations

### 1.1 Preamble

These Regulations were tabled in the National Assembly on 6<sup>th</sup> October, 2016. They are been proposed by the Parliamentary Service Commission (PSC). The purpose of the regulations is to give a guideline for management of funds meant for the Senate monitoring and evaluation activities in exercise of the Senate's oversight function over county governments in accordance with Article 96 of the Constitution.

These regulations are thus setting up a fund and therefore under section 13(g) of the Statutory Instruments Act of 2013, the regulation involves expenditure from the Consolidated Fund.

The Regulations have been arranged in seven (7) parts, has two (2) schedules and an explanatory memorandum.

Article 93 of the 2010 Constitution establishes the Parliament of Kenya which consists of the National Assembly and the Senate. Furthermore, Article 96 defines

setting out the justifications and submit to the Cabinet Secretary.		
The Cabinet Secretary shall certify in writing that the functions and the public services to be delivered through the Fund cannot be delivered through the structure of budget appropriations		
Provide a clear justification as to why a fund structure is deemed appropriate for improved service delivery in light of the legislative and policy mandate of the national government entity		
The administration costs of the Fund shall be a maximum of three (3%) percent of the approved budgets of the fund.		
The Cabinet Secretary responsible for the National Government entity functions shall confirm in writing that the establishment of the Fund and its continued existence will not depend on annual financing from the National exchequer		
A fund that has a lifespan of less two years shall not be approved unless it is for unforeseen and urgent need		
The cabinet secretary shall grant approval in writing before establishment of fund		
The Cabinet Secretary responsible for the National Government entity shall demonstrate how the activities of the proposed Public fund shall fit in the overall Medium Term Plan and Budget Policy Statement		
The initial approval for establishment of a national Public fund shall be for a maximum period of ten (10) years, beyond which Cabinet and Parliament approvals shall be sought.		

Table 1: Distribution of funds for monitoring and evaluation

Item	% allocation	Allocation in 2016/17 PSC Budget (Kshs Millions)	Allocation in 2017/18 PSC Budget (Kshs Millions)	Allocation in 2018/19 PSC Budget (Kshs Millions)
Administration	1	10	10	10
Capacity Building	1	10	10	10
Nominated Senators	6	60	60	60
Elected Senators	92	920	920	920
Total	100	1,000	1,000	1,000

Source: Estimates of recurrent and development expenditure of the Parliamentary Service Commission for the year ending 30<sup>th</sup> June, 2017 and projections for 2017/18-2019

Furthermore, the first schedule of the Regulations gives the formula for allocating the 92% of the fund among elected Senators. Table 2 below illustrates the allocating formula.

Table 2: Formula for allocating of the fund among elected Senators

Parameter	Weight (%)	Allocation in 2016/17 PSC Budget (Kshs. Millions)
Equal Share	47	432.4
Population	45	414
Size of County	8	73.6
Total	100	920

## 2. Issues of concern

1. Regulation 21- 26 provides for operationalization of disbursement of the monies through the County Office this is a duplication of an existing structure provided by the Parliamentary Service (Constituency Offices) regulation 2005.



**MINUTES OF THE THIRTY FOURTH SITTING OF THE SELECT COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 16<sup>TH</sup> AUGUST, 2016 AT 10.00 A.M. IN SENATE COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDING**

**PRESENT:-**

Hon. Joseph Gitari, M.P. – Vice Chairperson  
Hon. Hassan Aden, M.P.  
Hon. Elisha Busienei, M.P.  
Hon. Charles Gimose, M.P.  
Hon. T. J. Kajwang, M.P.  
Hon. Neto Agostinho, M.P.  
Hon. Simba Arati, M.P.  
Hon. Timothy Wetangula Wanyonyi, M.P.  
Hon. Kabando Wa Kabando, M.P.

**ABSENT WITH APOLOGIES:-**

Hon. William Cheptumo, M.P. – Chairperson  
Hon. William Kisang, M.  
Hon. Michael Kisoi Manthi, M.P.  
Hon. George Theuri, M.P.  
Hon. Rachael Ameso, M.P.  
Hon. Mohamed Aden Huka, M.P.

**ABSENT:-**

Hon. John Waiganjo, M.P.  
Hon. Vincent Musau, M.P.  
Hon. Bernard Shinali, M.P.  
Hon. Nicholas Nixon, M.P.  
Hon. Paul Koinange, M.P.  
Hon. Eusilah Jepkosgei, M.P.  
Hon. Alfred Keter, M.P.  
Hon. Paul Bii, M.P.  
Hon. Shadrack Manga, M.P.  
Hon. Saney Abdi Ibrahim, M.P.  
Hon. Yusuf Hassan, M.P.  
Hon. Daniel Maanzo, M.P.  
Hon. Junet Nuh Sheikh, M.P.

Hon. John Waluke, M.P.

**IN ATTENDANCE:-**

**NATIONAL ASSEMBLY**

Wilson Dima - Senior Legal Counsel  
Halima Hussein - Third Class Assistant

**THE SENATE**

Hon. Karaitu Murungi - Chairperson, Senate Monitoring and  
Evaluation Fund Committee  
Dr. Johnson Okello - Deputy Director, Legal Services  
Ibrahim Leruk - First Clerk Assistant

**MIN No. DL/105/2016: PRELIMINARIES**

The sitting commenced at twenty minutes past ten in the morning with a word of prayer from Hon Simba Arati.

**MIN No. DL/106/2016: CONSIDERATION OF THE PUBLIC  
FINANCE MANAGEMENT (SENATE  
MONITORING AND EVALUATION)  
REGULATIONS, 2016**

This sitting followed another one of 11<sup>th</sup> August, 2016 where it was agreed that the Regulations be revoked and be republished under the correct provisions of the law. The meeting was informed that the Regulations had indeed been revoked and the revocation notice tabled before the Committee.

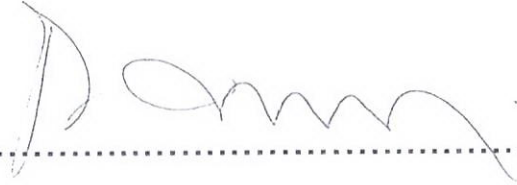
The meeting instructed the Legal Counsels from the National Assembly and Senate to draft the regulations as amended for the Committee's approval for publication at five o'clock in the evening of the following day, the 17<sup>th</sup> of August, 2016.

MIN No. DL/107/2016:

ADJOURNMENT

There being no Any Other Business to transact, the Chairperson adjourned the meeting at twelve minutes past noon to Wednesday, the 17<sup>th</sup> of August, 2016 at five o'clock in the evening.

SIGNED.....



(CHAIRPERSON)

DATE.....

27-10-16

**MINUTES OF THE THIRTY THIRD SITTING OF THE SELECT COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 11<sup>TH</sup> AUGUST, 2016 AT 11.00 A.M. IN THE SENATE COMMITTEE ROOM 4, MAIN PARLIAMENT BUILDING**

**PRESENT:-**

Hon. William Cheptumo, M.P.            –        **Chairperson**  
Hon. Tom J. Kajwang', M.P.  
Hon. Daniel Maanzo, M.P.  
Hon. Neto Agostinho, M.P.  
Hon. Kabando Wa Kabando, M.P.  
Hon. William Kisang', M.P.  
Hon. Simba Arati, M.P.  
Hon. Mohamed Aden Huka, M.P.  
Hon. Paul Bii, M.P.  
Hon. John Waluke, M.P.  
Hon. Yusuf Hassan Abdi, M.P.  
Hon. Charles Gimose, M.P.

**ABSENT:-**

Hon. Joseph Gitari, M.P.            –        **Vice Chairperson**  
Hon. George Theuri, M.P.  
Hon. Elisha Busienei, M.P.  
Hon. Vincent Musau, M.P.  
Hon. Michael Kisoi Manthi, M.P.  
Hon. Saney Abdi Ibrahim, M.P.  
Hon. Timothy W. Wanyonyi, M.P.  
Hon. Eusilah Jepkosgei, M.P.  
Hon. Rachael Ameso, M.P.  
Hon. Hassan Aden Osman, M.P.  
Hon. John Waiganjo, M.P.  
Hon. Paul Koinange, M.P.  
Hon. Nicholas Nixon, M.P.  
Hon. Alfred Keter, M.P.  
Hon. Shadrack Manga, M.P.  
Hon. Junet Nuh Sheikh  
Hon. Bernard Shinali, M.P.



**IN ATTENDANCE:-**

**NATIONAL ASSEMBLY**

George Gazemba - Senior Clerk Assistant  
Migure Gituto - Legal Counsel I

**SENATE AND JOINT SERVICES DIRECTORATE OF PARLIAMENT**

Sen. Kembi Gitura, M.P. - Deputy Speaker  
Sen. Kiraitu Murungi, M.P. - Chairperson, Senate Monitoring and Evaluation Fund Committee  
Mohamed Ali Abdi - Senior Deputy Clerk  
Dr. Johnson Okello - Deputy Director, Legal Services  
George Wakah - Ag. Director, Finance and Accounting  
Mary Chesire - Deputy Director, Committee Services  
Irungu Kigondu - Principal Finance Officer  
Daniel Ngumbau - Principal Accountant,  
Ibrahim Leruk - Clerk Assistant I

**MIN.NO. DL/102/2016: PRELIMINARIES**

The Chairperson called the meeting to order at twenty seven minutes past eleven in the morning with a word of prayer from Hon. Neto Agostinho.

**MIN.NO. DL/103 /2016: CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (SENATE MONITORING AND EVALUATION) REGULATIONS, 2016**

The meeting discussed the Public Finance Management (Senate Monitoring and Evaluation) Regulations and agreed as follows:-

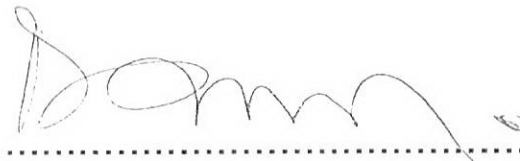
- (i) The Regulations were published under Section 24 of the Public Finance Management Act of 2012 instead of Section 18 of the Parliamentary Service Act. Only the Treasury Cabinet Secretary

was empowered to make regulations under the Public Finance Management Act, 2012.

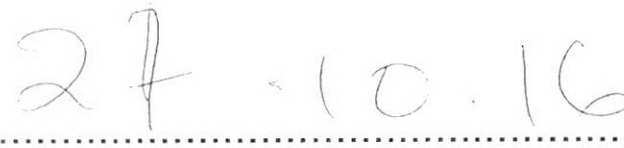
- (ii) The Senate revokes the Regulations as a matter of urgency and republishes them under the correct Act for approval by the Committee. This was to happen before 24<sup>th</sup> August, 2016 when the timeline within which the Committee is required to report to the House on the Regulations would have lapsed.

**MIN No. DL/104/2016:            ADJOURNMENT**

There being no other business to transact, the meeting was adjourned at thirty five minutes past one o'clock in the afternoon.

SIGNED.....

**(CHAIRPERSON)**

DATE.....

MINUTES OF THE THIRTY SECOND SITTING OF THE SELECT COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 9<sup>TH</sup> AUGUST, 2016 AT 11.00 A.M. IN THE MEMBERS LOUNGE, MAIN PARLIAMENT BUILDING

PRESENT:-

Hon. William Cheptumo, M.P.	–	<b>Chairperson</b>
Hon. Joseph Gitari, M.P.	–	<b>Vice Chairperson</b>
Hon. George Theuri, M.P.		
Hon. Kabando Wa Kabando, M.P.		
Hon. Elisha Busienei, M.P.		
Hon. William Kisang', M.P.		
Hon. Vincent Musau, M.P.		
Hon. Michael Kiso Manthi, M.P.		
Hon. Saney Abdi Ibrahim, M.P.		
Hon. Simba Arati, M.P.		
Hon. Timothy W. Wanyonyi, M.P.		
Hon. Tom J. Kajwang', M.P.		
Hon. Daniel Maanzo, M.P.		
Hon. Neto Agostinho, M.P.		

ABSENT:-

Hon. Yusuf Hassan Abdi, M.P.  
Hon. Eusilah Jepkosgei, M.P.  
Hon. Rachael Ameso, M.P.  
Hon. Mohamed Aden Huka, M.P.  
Hon. Hassan Aden Osman, M.P.  
Hon. John Waiganjo, M.P.  
Hon. Paul Koinange, M.P.  
Hon. Nicholas Nixon, M.P.  
Hon. Alfred Keter, M.P.  
Hon. Shadrack Manga, M.P.  
Hon. Paul Bii, M.P.  
Hon. Junet Nuh Sheikh  
Hon. Charles Gimose, M.P.  
Hon. Bernard Shinali, M.P.  
Hon. John Waluke, M.P.

**IN ATTENDANCE:-**

**NATIONAL ASSEMBLY**

George Gazemba - Senior Clerk Assistant

**MIN No. DL/99/2016: PRELIMINARIES**

The Chairperson called the meeting to order at twenty minutes past eleven in the morning with a word of prayer from himself.

**MIN No. DL/100/2016: CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (SENATE MONITORING AND EVALUATION) REGULATIONS, 2016**

The Committee had considered the Regulations during a retreat held on 5<sup>th</sup> August, 2016 at Voyager Hotel in Mombasa and was scheduled to meet the Speaker of the National Assembly/Chairperson, Parliamentary Service Commission for further deliberations before making its final determination on the Regulations. The Speaker had instructed the Clerk of the Senate/Secretary, Parliamentary Service Commission to appear on his behalf. Apparently, the Clerk of the Senate/Secretary, Parliamentary Service Commission was out of the country on official duty culminating in the adjournment of the meeting to Thursday, 11<sup>th</sup> August, 2016 when the Deputy Speaker of Senate would appear on behalf of the Speaker.

**MIN No. DL/101/2016: ADJOURNMENT**

There being no other business to transact, the meeting was adjourned at forty minutes past eleven to Thursday, 11<sup>th</sup> August, 2016 at ten in the morning.

SIGNED.....

(CHAIRPERSON)

DATE.....27.10.16



**MINUTES OF THE THIRTY FIRST SITTING OF THE SELECT COMMITTEE ON DELEGATED LEGISLATION HELD ON FRIDAY, 5<sup>TH</sup> AUGUST, 2016 AT 5.10 P.M. IN ZIWANI ROOM, VOYAGER HOTEL, MOMBASA**

**PRESENT:-**

Hon. William Cheptumo, M.P. – **Chairperson**  
Hon. Joseph Gitari, M.P. – **Vice Chairperson**  
Hon. Rachael Ameso, MP  
Hon. Michael Kisoi Manthi, M.P.  
Hon. Vincent Musau, M.P.  
Hon. Tom. J. Kajwang, M.P.  
Hon. Kabando wa Kabando, M.P  
Hon. Simba Arati, M.  
Hon. Timothy Wanyonyi Wetangula, M.P.  
Hon. Yusuf Hassan, M.P.  
Hon. Eusilah Jepkosgei, M.P.  
Hon. Saney Abdi Ibrahim, M.P.  
Hon. George Theuri, M.P.  
Hon. Daniel Maanzo, MP  
Hon. Neto Agostinho, M.P.

**ABSENT WITH APOLOGIES:**

Hon. Paul Koinange, M.P.  
Hon. William Kisang', M.P.  
Hon. Alfred Keter, M.P.  
Hon. Mohamed Aden Huka, M.P.  
Hon. John Waiganjo, M.P.  
Hon. Alfred Keter, MP  
Hon. Charles Gimose, M.P.  
Hon. Elisha Busienei, M.P.  
Hon. Hassan Adan Osman, M.P.  
Hon. Shadrack Manga, M.P.  
Hon. Nicholas Nixon, M.P.  
Hon. Paul Bii, M.P.  
Hon. Bernard Shinali, M.P.  
Hon. Junet Nuh Sheikh, MP

**IN ATTENDANCE:-**

Mr. Peter Chemweno  
Mr. George Gazemba  
Mr. Wilson Dima  
Mr. Abdullahi Aden  
Ms. Mugure Gituto

**NATIONAL ASSEMBLY**

- Deputy Director, Committee Services  
- Senior Clerk Assistant  
- Senior Legal Counsel  
- First Clerk Assistant  
- Legal Counsel I

**MIN No. DL/96/2016:****CONSIDERATION OF THE PUBLIC  
FINANCE MANAGEMENT (SENATE  
MONITORING AND EVALUATION)  
REGULATIONS, 2016**

The Committee considered the Regulations and noted that they raised legal issues pursuant to Articles 225(1) (2) and 226 of the Constitution of Kenya as well as Section 2 and 24 of the Public Finance Management Act, 2012 read together with section 13(1) and 24 of the Statutory Instruments Act, 2013. Consequently, the Committee resolved to meet the Speaker of the National Assembly/Chairperson, Parliamentary Service Commission on 9<sup>th</sup> August, 2016 at Parliament Buildings to deliberate on the Regulations before making a determination on their fate.

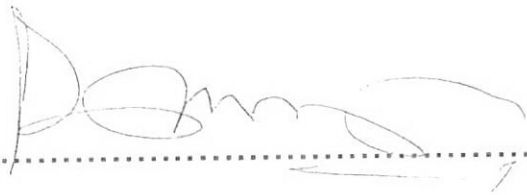
**MIN No. DL/97/2016:****CONSIDERATION AND ADOPTION OF  
REPORT ON THE COFFEE (GENERAL)  
REGULATIONS, 2016**

The Committee considered and adopted its report on the Coffee (General) Regulations, 2016. The adoption of the report was proposed by Hon. Daniel Maanzo and seconded by Hon. Timothy W. Wanyonyi. There was no dissenting voice to the adoption.

**MIN No. DL/98/2016: ADJOURNMENT**


There being no other business to transact, the Chairperson adjourned the meeting at twenty minutes past five O'clock in the evening.

SIGNED.....

A handwritten signature in black ink, appearing to read "Dennis", written over a horizontal dotted line.

(CHAIRPERSON)

DATE.....

A handwritten date "27.10.16" in black ink, written over a horizontal dotted line.

# APENDIX 2



PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

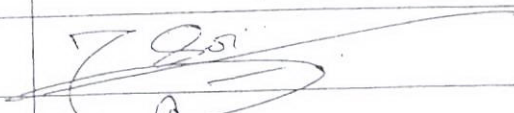
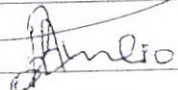
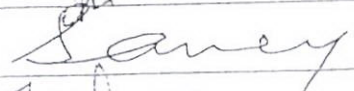

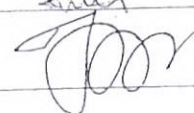
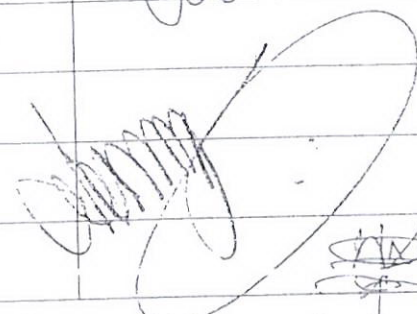

COMMITTEE ON DELEGATED LEGISLATION

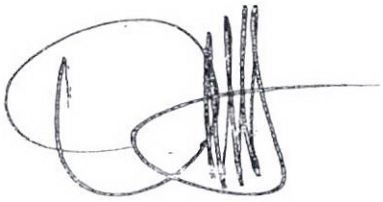
ATTENDANCE REGISTER FOR MEMBERS

Adoption of Report  
on PSC Senate  
Monitoring & Review  
Regulations, etc  
Members  
Lange  
10am

DATE... 27/10/2016 .....

NO	NAME	SIGNATURE
1.	Hon. William Cheptumo, M.P. - Chairperson	
2.	Hon. Joseph Gitari, M.P. - Vice Chairperson	
3.	Hon. John Waiganjo, M.P.	
4.	Hon. Yusuf Hassan, M.P.	
5.	Hon. Paul Koinange, M.P.	
6.	Hon. George Theuri, M.P.	
7.	Hon. Kabando wa Kabando, M.P.	
8.	Hon. Elisha Busienei, M.P.	
9.	Hon. Alfred Keter, M.P.	
10.	Hon. Eusilah Jepkosgei, M.P.	
11.	Hon. Hassan Osman Aden, M.P.	
12.	Hon. Paul Bii, M.P.	
13.	Hon. Mohamed Aden Huka, M.P.	
14.	Hon. William Kisang, M.P.	
15.	Hon. Benard Shinali, M.P.	
16.	Hon. Shadrack Manga, M.P.	
17.	Hon. Charles Gimose, M.P.	
18.	Hon. Vincent Musau, M.P.	

9.	Hon. Nicholas Nixon, M.P.	
20.	Hon. Michael Kisoi Manthi, M.P.	
21.	Hon. Rachael Ameso, M.P.	
22..	Hon. Saney Abdi Ibrahim, M.P.	
23.	Hon. Simba Arati, M.P.	
24.	Hon. Neto Agostinho, M.P.	
25.	Hon. Wetangula Timothy Wanyonyi, M.P.	
26.	Hon. Junet Sheikh Nuh, MP.	
27.	Hon. T. J. Kajwang, M.P.	
28	Hon. Danial Maanzo, MP	



GEORGE GAZEMBA  
 Clerk of the National Assembly

# **APENDIX 3**



(Legislative Supplement No. 69)

LEGAL NOTICE NO. 177

## THE PARLIAMENTARY SERVICE ACT

(No. 10 of 2000)

IN EXERCISE of the powers conferred by section 36 of the Parliamentary Service Act, 2000 the Parliamentary Service Commission makes the following Regulations:—

THE PARLIAMENTARY SERVICE (SENATE MONITORING AND EVALUATION) (PROCEDURES FOR MANAGEMENT OF FUNDS) REGULATIONS, 2016

## PART I—PRELIMINARY

1. These Regulations may be cited as the Parliamentary Service (Senate Monitoring and Evaluation) (Procedure for Management of Funds) Regulations, 2016.

Citation.

2. In these Regulations—

Interpretation.

“accounting officer” means the Clerk of the Senate;

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

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

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

“Committee” means Senate Monitoring and Evaluation Committee established by Regulation 13;

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

“county” has the meaning assigned to it under Article 6(1) of the Constitution;

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

“House” means the Senate;

“recipient” means a nominated or elected Senator;

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



“Speaker” means the Speaker of the Senate; and

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

3. The purpose of the Regulations is to guide the Senate Sessional Committee on Monitoring and Evaluation in the administration, disbursement and management of the fund to ensure efficiency and effectiveness.

Purpose.

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

Application.

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

## PART II—GENERAL PROVISIONS

5. (1) The funds to be utilized by the Senators for monitoring and evaluation shall be monies allocated by the commission for the purpose.

Monitoring and evaluation funds.

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

6. The funds shall consist of the following—

Source of the funds.

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

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

Objects of the Regulations.

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

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

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

(3) The nominated Senators shall, for the purpose of carrying out the monitoring and evaluation activities specified in paragraph (1) conduct activities in counties in respect of the interest that they represent in the Senate.

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

Initial allocation.

9. The funds shall be distributed as follows—

Distribution of the funds.

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

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

Disbursement of funds.

#### PART III—ADMINISTRATION OF THE FUND

11. (1) The funds shall be administered through the Senate Monitoring and Evaluation Office established by the Commission.

Administration of the funds.

(2) The accounting officer shall in writing, designate an employee of the Commission to administer the funds.

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

Functions of the administrator.

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

(2) The accounting officer shall ensure that the Senate Monitoring and Evaluation Office is resourced with requisite personnel

for purposes of the day to day operations and handling of matters related to the management of the fund.

(3) The accounting officer shall open, maintain and manage a separate account with a reputable bank where the monies due for Senate monitoring and evaluation shall be kept.

(4) The disbursement of monies to the recipients shall be bi-annual.

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

#### PART IV—ESTABLISHMENT OF A COMMITTEE

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

Establishment of the Senate Monitoring and Evaluation Committee.

14. (1) The Committee shall—

Functions of the Committee.

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

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

#### PART V—FINANCIAL PROCEDURES

15. The balances of the funds at the close of each financial year shall be retained for use for the purpose of monitoring and evaluation.

Receipts and earnings to be retained.  
Accounts and records.

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

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

Financial statements.

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

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

Report on operation.



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

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

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

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

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

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

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

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

- (a) The county office manager whose signature shall be mandatory; and
- (b) two signatories appointed by the Senator for that purpose.

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

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

27. (1) A Senator may set up an office at the county headquarter, for purposes of administrative activities in undertaking monitoring and evaluation.

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

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

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

Annual report.

Procurement services.

No. 33 of 2015.

Opening of bank account.

Authority to Incur Expenditure.

Equipment.

Conformity with Government financial regulations.

Signatories.

Bank statements.

Monitoring and evaluation staff.

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

County office manager.

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

#### PART VII—MISCELLANEOUS PROVISIONS

29. (1) Any cash balances from the funds shall be transferred to the Commission.

Cash balances

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

30. All assets acquired from the funds shall remain the property of the Commission and shall vest in the Commission.

Vesting of assets.

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

Handing over.

#### FIRST SCHEDULE

(reg. 9)

#### FORMULA FOR ALLOCATING MONIES AMONG THE ELECTED SENATORS

PARAMETER		WEIGHT (%)
Equal Share	q	47
Population	s	45
Size of County	r	8

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

Where:

CA- Allocation due to Individual Elected Senator

ES-Equal Share

CP-County population

TP-Total Population

SC-Size of the County

TS- Total Size

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



## SECOND SCHEDULE

(reg. 10)

## CONDITIONS FOR DISBURSEMENT

1. All disbursements to the respective recipients shall be approved and minuted by the committee.
2. All disbursements from the fund's main account shall be made through the recipient bank accounts maintained for every recipient by the fund administrator.
3. The record of the amounts received by each recipient shall be submitted to the committee within thirty days after the close of the financial year and no disbursements for the succeeding financial year shall be made into the accounts until the said records are duly received.
4. The committee shall set out general conditions and requirements for release of monies to ensure efficient and effective management of the funds released.
5. The committee may impose reasonable requirements including restrictions on a particular recipient and such restrictions or requirements shall be reported together with the monthly returns to be submitted to the Senate.
6. Returns from the first disbursement made to a recipient in any financial year must be filed with the administrator by a recipient or the staff two months before any subsequent disbursement.  
Returns from the second disbursement made to a recipient in any financial year must be filed with the administrator of the fund by individual recipients or their staff two months after the close of the financial year.
8. No disbursement to any recipient shall be processed and approved until the administrator is satisfied that the required returns have been filed in such manner as, shall be required by the administrator, filed within the timelines set.
9. The administrator shall develop a schedule showing documentation to be submitted when recipients or their staff are filing the returns.

Dated the 22nd September, 2016.

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



## EXPLANATORY MEMORANDUM

### PART I

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

**Name of the Parent Act:** The Parliamentary Service Act, No. 10 of 2000

**Enacted Pursuant to:** Section 36 of the Parliamentary Service Act, 2000

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

### PART II

#### 1. Purpose of the Statutory Instrument

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

#### 2. Legislative Context

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

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

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

### 3. Policy Background

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

The Parliamentary Service (Senate Monitoring and Evaluation) (Management of Funds) Regulations, 2016 are intended to provide this framework.

Part I of the Regulations provides for Preliminary matters. Part II provides for the general provisions relating to the allocation of funds for monitoring and evaluation.

Regulation 5 provides for the allocation of monies by the Parliamentary Service Commission to enable Senators "*carry out monitoring and evaluation activities in the exercise of the Senate's oversight function over county governments*". The object of the Regulations as set out in regulation 7 is to provide monies to Senators to carry out monitoring and evaluation activities in exercise of the Senate's oversight role over county governments in accordance with Article 96 of the Constitution.

Regulations 8, 9 and 10 provide for the initial allocation by the Commission, for the distribution and the disbursement of funds allocated, respectively.

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

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

Regulation 28 provides that the county office manager appointed by a Senator under the Parliamentary Service (Constituency Offices) Regulations, 2005, shall-



(a) be the officer incharge of management of the finances allocated for monitoring and evaluation; and

(b) keep the Senator informed about the transactions of the monitoring and evaluation bank account established under these Regulations.

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

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

#### 4. Consultation Outcome

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

#### 5. Impact

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

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

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



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

6. Monitoring and Evaluation

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

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

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

The Committee is further required under regulation 14(1)(d) to prepare and submit annual reports on the operations and performance on how the funds allocated have been utilized. The report is to be submitted to the Senate.

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Finally, the monies being budgetary allocation under the Commission budget, is subject to normal audit procedures by the National Assembly.

J. M. NYEGENYE, CBS,  
CLERK OF THE SENATE/ SECRETARY,  
PARLIAMENTARY SERVICE COMMISSION.