

EXPLANATORY MEMORANDUM



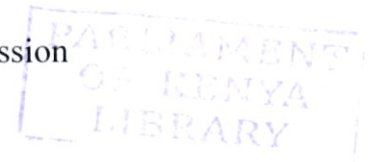
PART I

Name of Statutory Instrument: The Public Finance Management (Senate Monitoring and Evaluation) Regulations, 2018

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

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

Name of the Ministry/Authority: Parliamentary Service Commission



PART II

1. Purpose of the Statutory Instrument

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

2. Legislative Context

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

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

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

3. Policy Background

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

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

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

Regulation 5(1) establishes the Senate Monitoring and Evaluation Fund which is to be utilized to *“carry out monitoring and evaluation activities in the exercise of the Senate’s oversight function over county governments”*. The object of the Fund as set out in regulation 7 is to provide funds 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 and 9 provide for the initial allocation to the Fund and for the distribution of the Fund respectively.

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

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

Part VI sets out the offices and staffing for purposes of monitoring and evaluation. In particular, regulation 23 provides that a Senator shall utilize existing structures in the County Office for purposes of administrative activities in undertaking monitoring and evaluation. Regulation 24(1) provides that a Senator shall recruit a county monitoring and evaluation office manager and a monitoring and evaluation officer to serve in the county office. The county monitoring and evaluation office manager shall in charge of the administrative and institutional management of the finances allocated for monitoring and evaluation while the monitoring and evaluation officer shall be in charge of implementing, monitoring and evaluating programs in line with the objectives of the Fund.

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

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

4. Consultation Outcome

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

5. Impact

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

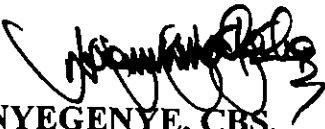
The Regulations will enable the Senate to effectively provide oversight over national revenue allocated to the county governments in the manner set out in regulation 7(2) by —

- (a) undertaking county expenditure tracking surveys;
- (b) promoting citizen engagement on issues affecting the counties by undertaking civic education and community sensitization;
- (c) initiating a partnership approach with stakeholders at the county level to ensure a strong and more strategic focus on community development;
- (d) undertaking research, studies and surveys on various thematic areas affecting counties;
- (e) undertaking social auditing of development projects being undertaken in the counties;
- (f) tracking and monitoring development activities in the counties; and
- (g) performing any other monitoring and evaluation activity relevant to the Senator'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.


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

- (c) initiating a partnership approach with stakeholders at the county level to ensure a strong and more strategic focus on community development,
- (d) undertaking research, studies and surveys on various thematic areas affecting counties,
- (e) undertaking social auditing of development projects being undertaken in the counties,
- (f) tracking and monitoring development activities in the counties, and
- (g) any other monitoring and evaluation activity relevant to the Senator's mandate

(3) A nominated Senator shall carry out the monitoring and evaluation activities in sub paragraph (2) at the national level in respect of the interest that the Senator represents in the Senate

(4) Despite sub paragraph (3), a nominated Senator may perform the following functions in the utilization of the Fund —

- (a) evaluate programmes that promote and protect the full enjoyment of human rights of women, youth and persons with disabilities by involving them in decision-making processes in all policies and programmes, and
- (b) initiate and maintain effective public awareness campaigns designed to promote greater social awareness towards women, youth and persons with disabilities

8 The minimum allocation to the Fund shall be one billion shillings provided under the Commission's budget for every financial year, provided that the allocation shall be reviewed upwards from time to time

Initial allocation

9 The allocation to the Fund shall be utilized as follows —

Allocation of the Fund

- (a) a one percent (1%) administration fee shall be charged on the total fund allocated and shall be retained by the Commission for purposes of facilitating administrative functions of the Fund,
- (b) a one percent (1%) of the total fund allocation shall be set aside by the Commission for capacity building of the Senators and their staff,
- (c) a six percent (6%) 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 provided for in Second Schedule of these regulations

PART III—ADMINISTRATION OF THE FUND

10 (1) The Fund shall be administered through the Senate Monitoring and Evaluation Office established by the Commission

Administration of the Fund

(2) The Accounting Officer shall in writing, appoint an employee of the Commission as the Administrator of the Fund.

11. (1) The Administrator of the Fund shall—

Functions of the
Administrator

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

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

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

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

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

(6) The Accounting Officer shall with the approval of the Committee established under Regulation 12, introduce additional administrative measures from time to time for effective operation of the Fund.

PART IV—ESTABLISHMENT OF A COMMITTEE

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

Establishment of
the Senate
Monitoring and
Evaluation
Committee

13. The Accounting Officer or the Accounting Officer's representative shall be the secretary to the Committee.

The Accounting
Officer

14. (1) The Committee shall—

Functions of the
Committee

- (a) consider the bi-annual disbursements out of the Fund,
- (b) receive reports on the performance of the Fund from the Administrator;
- (c) examine the monitoring programmes being undertaken by the recipients of the Fund;
- (d) prepare and submit an annual report on the operations and performance of the Fund to the Senate; and

(e) perform any other function as the Senate may approve

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

PART V—FINANCIAL PROVISIONS

15. The receipts, earnings, and accruals to the Fund and the balance of the Fund at the close of each financial year, shall be retained by the Fund for use for the purpose for which the Fund is established

Receipts and earnings to be retained

16. The Accounting Officer shall cause to be kept all proper books and records of accounts of the income, expenditure and liabilities associated with the Fund.

Accounts and records

17. Within a period of three months after the end of each financial year, the Accounting Officer shall submit to the Commission the accounts of the Fund showing —

Financial statements

(a) a statement of income and expenditure during that year, and

(b) a statement of the assets and liabilities of the Fund on the last day of the financial year.

18 (1) The Administrator of the Fund shall within two months after the end of each financial year, prepare and submit to the Accounting Officer a report of the operations of the Fund for the preceding year.

Report on operations of Fund

(2) The Accounting Officer shall submit the report under sub paragraph (1) to the Committee for information.

19. Procurement works and services relating to activities under these regulations shall be governed by the Public Procurement and Asset Disposal Act, 2015

Procurement services

20. An account approved by the Commission shall be opened with a reputable commercial bank at the nearest location from the county office.

Opening a bank account

21. At the commencement of every financial year, the county monitoring and evaluation office manager shall be issued with an Authority to Incur Expenditure by the Clerk in that financial year

Source of finance

22 The signatories to the account opened pursuant to regulation 20 shall be —

Signatories of cheques

(a) the county monitoring and evaluation office manager whose signature shall be mandatory, and

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

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

23 A Senator shall utilize existing structures in the County Office for purposes of administrative activities in undertaking monitoring and evaluation.

Monitoring and Evaluation offices

24 (1) A Senator shall recruit for purposes of monitoring and evaluation the following staff to serve in the county office —

Monitoring and
Evaluation staff

- (a) the county monitoring and evaluation office manager, and
- (b) the monitoring and evaluation officer

(2) A Senator may recruit additional staff as may be necessary but subject to the ceiling of staff salaries approved by the Commission

25 (1) A member of staff recruited under regulation 24 shall —

Terms of service

- (a) not hold any position in a political party, and
- (b) sign a contract of employment which shall be submitted to the Clerk

(2) A member of staff may at any time give one month's notice before resignation from employment or surrender one month's salary in lieu of notice

26 The county monitoring and evaluation office manager shall —

County
monitoring and
evaluation office
manager

- (a) be the officer in charge of the administrative and institutional management of the finances allocated for monitoring and evaluation,
- (b) avail to the Clerk bi-annually, copies of bank statements and any other financial records from the Senator's allocation,
- (c) make purchases as may be necessary to effectively enable monitoring and evaluation,
- (d) ensure that the money available is spent in conformity with existing government financial regulations to facilitate quick, efficient and effective delivery of services,
- (e) in writing, keep the Senator informed about the transactions of the monitoring and evaluation bank account, and
- (f) perform any other duties as may be assigned by the Senator from time to time

27 The monitoring and evaluation officer shall —

Monitoring and
evaluation officer

- (a) implement monitor and evaluate programs in line with the objectives of the Fund, and
- (b) perform any other duties as may be assigned by the Senator from time to time

PART VII—MISCELLANEOUS PROVISIONS

28 When the office of a Senator falls vacant pursuant to Article 103 of the Constitution, the —

Transition

- (a) contract signed between the Senator and the member of staff shall become void, and
- (b) the county monitoring and evaluation office manager shall be responsible for running the office until a new Senator is elected

29 (1) Upon the gazettelement of a new Senator, the county monitoring and evaluation office manager shall hand over the Commission's property to the Clerk or the Clerk's appointed representative within one month after the gazettelement.

Accounting for
Commission
property

(2) The Clerk shall confirm that all handing over procedures have been complied with before making the final payment of dues, if any.

30 Upon winding up of the Fund, the cash balances, assets and liabilities shall be transferred to the Commission.

Winding up of the
Fund

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

Vesting of assets

FIRST SCHEDULE

CONDITIONS FOR DISBURSEMENT

The funds shall be disbursed under the following conditions:-

1 All disbursements from the Fund to the respective recipients shall be approved and minuted by the Committee.

2 All disbursements from the Fund's main account shall be made through the recipient's bank accounts maintained for every recipient by the Fund administrator.

3 The record of the amounts received by a recipient and the record of the amounts so received shall be submitted to the Committee within 30 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 funds from the Fund to ensure efficient and effective management of the Fund.

5 The Committee may impose reasonable requirements including restrictions on a particular recipient and such restrictions or requirements shall be reported together with the returns to be submitted to the Senate.

6 Returns from the first tranche made to a recipient in any financial year must be filed with the administrator of the Fund by the county monitoring and evaluation office manager two months after the close of the first half of the financial year.

7 Returns from the second tranche made to a recipient in any financial year must be filed with the administrator of the Fund by the county monitoring and evaluation office manager two months after the close of the financial year.

8 No disbursement to any recipient will be processed and approved until the administrator of the Fund is satisfied that the required returns have been adequately filed within the timelines set; and

9 The administrator of the Fund shall develop a schedule showing documentation to be submitted upon filing the returns.

SECOND SCHEDULE

FORMULA FOR ALLOCATING MONIES AMONG THE ELECTED SENATORS

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

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

Where:

CA - Allocation due to 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%

Dated the 20th March, 2018.

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