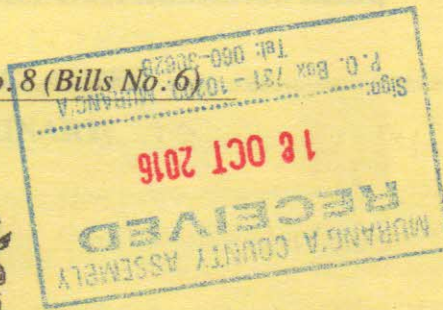


SPECIAL ISSUE

Murang'a County Gazette Supplement No. 8 (Bills No. 6)



REPUBLIC OF KENYA

**MURANG'A COUNTY GAZETTE
SUPPLEMENT**

BILLS, 2016

NAIROBI, 14th October, 2016

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**THE MURANG'A COUNTY STATUTORY INSTRUMENTS
BILL, 2016**

A Bill for

AN ACT of the County Assembly of Murang'a to provide for the making, scrutiny, publication and operation of Murang'a County statutory instruments and for matters connected therewith.

ENACTED by the County Assembly of Murang'a, as follows—

PART I — PRELIMINARY

Short title

1. This Act may be cited as the Murang'a County Statutory Instruments Act, 2016.

Interpretation

2. In this Act, unless the context otherwise requires—

“Committee” means the Committee on Delegated Legislation established under the Standing Orders of the County Assembly or any other Committee that may be established by the County Assembly for the purpose of reviewing and scrutinizing statutory instruments;

“explanatory memorandum” in relation to a statutory instrument, means a statement that—

- (a) is prepared by a regulation-making authority;
- (b) explains the purpose and operation of the statutory instrument;
- (c) if any documents are incorporated in the statutory instrument by reference, contains a description of the documents so incorporated and indicates how they may be obtained;
- (d) if consultation was undertaken before the statutory instrument was made, contains—
 - (i) a brief statement of the way the consultation was carried out;
 - (ii) an outline of the results of the consultation; and
 - (iii) a brief explanation of any changes made to the legislation as a result of the consultation;
- (e) if no such consultation was undertaken, explains why no such consultation was undertaken;
- (f) contains such other information as is prescribed on the notes as set out in the Schedule; and

- (g) is accompanied by the regulatory impact statement prepared for the statutory instrument;

“regulation-making authority” means any authority authorized by an Act of a County Assembly to make statutory instruments;

“responsible county executive committee member” means the county executive committee member 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; and

“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 the County Assembly under which that statutory instrument or subsidiary legislation is expressly authorized to be issued.

Application

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

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

Object of the Act

4. 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 the County Assembly's 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

Consultation before making statutory instruments

5. (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.

PART III — REGULATORY IMPACT STATEMENTS

Regulatory impact statements

6. 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.

Contents of regulatory impact statements

7. (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 statutory instrument; and
 - (g) a summary of the provisions of the statutory instruments.
- (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 Executive Committee Member 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 Executive Committee Member 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 opinion of the Executive Committee Member, the regulatory impact statement adequately assesses the likely impact of the proposed statutory instrument.
- (5) The responsible Executive Committee Member shall submit to the clerk of the County Assembly, a copy of the regulatory impact statement and the compliance certificate for tabling before the County Assembly with the statutory instrument.

Notification of regulatory impact statements

8. (1) Preparation of a regulatory impact statement for proposed statutory instrument shall be notified in the County *Gazette* and or the

Kenya 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 or in the county website.

(6) The regulation making authority 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 County Assembly or when requested by the Committee.

Where regulatory impact statements may be unnecessary

9. 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) saving or transitional provisions;
- (g) a matter arising under legislation that is substantially uniform or complementary with legislation of the county government;
- (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 — SCRUTINY OF STATUTORY INSTRUMENTS

Laying of statutory instruments before the County Assembly

10. (1) Every regulation-making authority shall within seven sitting days after the publication of a statutory instrument, ensure that a copy of the statutory instrument is transmitted to the Clerk of the County Assembly for tabling before the county assembly.

(2) An explanatory memorandum in the manner prescribed in the Schedule shall be attached to any statutory instrument laid or tabled under subsection (1).

(3) The Clerk to the county assembly shall register or cause to be registered every statutory instrument transmitted to the county assembly under this Part.

(4) If a copy of a statutory instrument that is required to be laid before the county assembly is not so laid in accordance with this section —

- (a) the statutory instrument shall cease to have effect immediately after the last day for it to be so laid; and
- (b) any act done under the statutory instrument before it ceases to have effect, shall not be prejudiced.

Referral to the Committee

11. (1) Every statutory instrument issued, made or established after the commencement of this Act shall 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.

Relevant considerations

12. The Committee shall, in scrutinizing a statutory instrument, be guided by the principles of good governance, rule of law and shall in particular consider whether the statutory instrument—

- (a) accords 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 or an Act of the County Assembly;
- (d) imposes taxes;
- (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 County Revenue 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 the county assembly;
- (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 county assembly scrutiny; and
- (q) accords to any other reason that the committee considers fit to examine.

Exemptions

13. The Committee may exempt certain statutory instruments or class of statutory instruments from scrutiny if the Committee, upon consulting the relevant regulation-making authority, is satisfied that the scrutiny is not reasonably practical due to the number of regulations in that class.

Report to the County Assembly

14. The committee shall table a report to the county assembly —

- (a) containing only a resolution that the statutory instrument that stands referred to the committee is void.
- (b) indicating the manner in an identified portion of the statutory instrument offends the criteria set out in section 12 and the recommendations thereof.

Notice to the regulation-making authority

15. In so far as it's practically possible, the Committee shall confer with the regulation-making authority which has made the statutory instrument that is before the Committee for scrutiny, before tabling the report to the county assembly for their information and modification where necessary.

Tabling the Report

16. Upon tabling of a report regarding a statutory instrument before the County Assembly, the statutory instrument shall, if the County Assembly passes a resolution that the statutory is void, stand revoked.

Revocation

17. Where the county assembly adopts a report or a resolution that a statutory instrument is void, under section 16, the instrument shall stand

revoked and the regulation making authority shall publish the revocation within fourteen days.

PART V — AUTOMATIC REVOCATIONS

Automatic revocation of statutory instruments

18. (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 county executive Committee Member 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).

PART VI — GENERAL PROVISIONS

Publication of instruments

19. (1) Subject to subsection (2), every statutory instrument shall be published in the Kenya Gazette and or the County 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 county executive committee member for the time being responsible for legal affairs may, by certificate in writing, decide the matter.

(3) Every certificate issued under subsection (2) shall be published in the Kenya Gazette and or the County Gazette.

Commencement of statutory instrument

20. (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 Kenya Gazette and or 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 a statutory instrument required to be published in the *Kenya Gazette* and or the *County 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.

Exercise of powers

21. (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 which the regulation making authority may think fit.

Fees and charges

22. (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.

Forms

23. (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

Transition and saving

27. 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 the County Assembly under which it is made.

SCHEDULE**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.

Purpose of the statutory instrument

1. 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.

Legislative Context

2. 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.

Policy Background

3. 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.

Consultation outcome

4. 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").

Guidance

5. 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.

Impact

6. 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.

Monitoring and review

7. 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 2017, 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 2018.

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).

Contact

8. 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.

Dated the 12th July, 2016.

BERNARD WANYOIKE KARIUKI,
Chairman, Committee on Delegated County legislation.