



**REPUBLIC OF KENYA
THE NATIONAL TREASURY**

REGULATORY IMPACT STATEMENT

ON

THE PUBLIC PRIVATE PARTNERSHIPS (GENERAL) REGULATIONS, 2026

Prepared by the National Treasury pursuant to sections 6 and 7 of the Statutory Instruments Act, Cap. 2A.

JUNE, 2026

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CHAPTER ONE: BACKGROUND

1.0. INTRODUCTION

The Public Private Partnerships (PPP) framework has over the years enabled the Government of Kenya to implement high quality infrastructure projects particularly in the energy and road transport sectors. These infrastructure projects have helped strengthen and build resilience in the Kenyan economy, moving it towards achieving its full development potential, significantly contributing towards realisation of its envisaged potential.

1.1 Regulatory Impact Statement.

The Regulatory Impact Statement (RIS) is a systematic policy tool used to examine and measure the likely benefits, costs, and effects of a new or existing regulation. The RIS is an analytical report that assists policy makers to arrive at an informed policy decision. As an aid to decision making, the RIS includes an evaluation of possible alternative regulatory and non-regulatory approaches, with the overall aim of ensuring that the final selected regulatory approach provides the greatest net public benefit.

The RIS is conducted before a new government regulation is introduced to provide a detailed and systematic appraisal of the potential impact of the new regulation to assess whether the regulation is likely to achieve the desired objectives. The RIS promotes evidence-based policymaking as new Orders typically lead to numerous impacts that are often difficult to foresee.

From a societal viewpoint, the RIS should determine whether a proposed regulation increases societal welfare by ensuring that benefits exceed costs. The RIS therefore has objectives of improving understanding of the real-world impact of regulatory action, including both the benefits and the costs of action, integrating multiple policy objectives, improving transparency, consultation and enhancing governmental accountability.

1.2 Requirement to prepare RIS under Statutory Instruments Act CAP. 2A

The Statutory Instruments Act, Cap.2A (SIA) is the legal framework governing the conduct of Regulatory Impact Statements (RIS) in Kenya. Sections 6 and 7 require that *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.*

The SIA further sets out certain key elements that must be contained in the RIS namely:

- (a) a statement of the objectives of the proposed legislation and the reasons;
- (b) a statement explaining the effect of the proposed legislation;
- (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; and
- (e) the reasons why the other means are not appropriate.

CHAPTER TWO: PURPOSE AND OBJECTS OF THE PROPOSED REGULATIONS

2.0. Objective of the regulations

The broad objective of the proposed Regulations is to provide a framework to operationalise the Public Private Partnerships Act, Cap 430 of the laws of Kenya (PPP Act) and provide detailed process in identification, preparation, procurement and implementation of public private partnership projects.

The regulations are intended to prescribe clarity on project identification, selection and procurement, implementation. Other areas the critical regulations include submissions, considerations and processes of a privately initiated proposal, information on Project companies, disclosure obligations and contract management in accordance with the Public Private Partnerships Act, Cap 430.

The provisions of the Regulations are reviewed taking into consideration of the Public Private Partnerships Regulations of 2014 and are developed to give effect to the PPP Act, Cap 430.

CHAPTER THREE: THE PUBLIC PRIVATE PARTNERSHIPS (PROJECT MANAGEMENT) REGULATIONS, 2026

3.0. Overview of the proposed regulations

The proposed Regulations are made pursuant to section 89 of the PPP Act, which empowers the Cabinet Secretary to make Regulations for the better carrying out of the provisions of the PPP Act.

3.1. Arrangement of the Regulations

The proposed Regulations contain eleven (11) Parts.

Part I of the Regulations provides for preliminary matters which include the citation, interpretation, objects, and scope of the Regulations.

Part II of the Regulations proposes inclusion of qualifications for members of the Public Private Partnerships Committee.

Part III of the Regulations provides for the how the projects shall be identified and appraised. Part IV provides clarity on the procurement of Transaction Advisors and the roles

Part V of the Regulations contains the provisions for Direct Procurement of Projects

Part VI of the Regulations provides for the provisions on Restricted Bidding which includes preliminary Assessment; criteria and procurement

Part VII provides for provisions on Competitive bidding contract management and monitoring after the signing of a project agreement. provide for a framework for contract management strategy, contract administration manual, contract management plan and a strategic governing structure.

Part VIII of the Regulations contain the Public private Partnerships by County Government

Part IX contain provisions on Government Support Measures; the application process; preapproval process

Part X Articulates provisions on Negotiations

Part XI of the Regulations revokes the Public Private Partnerships Regulations,2014.

3.2. Benefits of the proposed Regulations

This part seeks to evaluate the costs and benefits of the changes proposed to the regulations to fulfil the requirements under Section 7(d) of the Statutory Instruments Act.

The draft Public Private Partnerships (General) Regulations, 2026 are likely to attract no costs in its application since they are going to ride on the already existing PPP institutional framework.

The benefits to be realised from the Regulations include:

- Strengthened governance in PPPs,
- Efficiency and effectiveness of the intended interventions supported by the Regulations, and
- Clear road map and processes for private party investors.

CHAPTER FOUR: CONSULTATIONS IN DEVELOPMENT OF THE REGULATIONS

4.0. Introduction

Article 10 of the Constitution of Kenya, 2010 obligates State Organs to apply the national values and principles of governance while making or implementing policy decisions. The

national values and principles include non-discrimination, transparency and participation of the people.

With regard to the subsidiary legislation, the SIA, mandates the regulation making authority responsible for developing subsidiary law, to undertake consultations before making statutory instruments and in particular, where the proposed instrument is likely to have a direct or a substantial indirect effect on the community.

Additionally, the SIA requires the regulation-making authority to conduct public consultations drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument and to ensure that persons likely to be affected by the proposed statutory instrument are given adequate opportunity to comment on its proposed content.

An evaluation of the public consultation process is necessary to ascertain whether the relevant stakeholders were given an opportunity to present their views.

4.1. Approach to public participation

To fulfil the requirements of the Constitution and the Statutory Instruments Act, Cap. 2A, in relation to public participation, the National Treasury (Ministry) will adopt various approaches to publicise the draft Regulations and receive input from its stakeholders. Specifically, the Ministry will—

- (a) issue a notice inviting for submissions on the draft Regulations and the Regulatory Impact Statement from members of the public through an advertisement in a newspaper of nation-wide circulation;
- (b) hold physical meetings with selected stakeholders;
- (c) publish the Notification of the Regulatory Impact Statement in the *Gazette*;
- (d) write letters and emails to MDAs and other stakeholders requesting for input on the draft Regulations and the Regulatory Impact Statement within a specified time; and
- (e) publicize the draft Regulations and the draft Regulatory Impact Statement on the website and other platforms.

4.2. Internal Consultations.

The development of the Regulations was spearheaded by the Public Private Partnerships Directorate. The PPP Directorate adopted the draft Regulations and presented the proposed Regulations to the National Treasury, for approval and dissemination to stakeholders.

4.3. Conclusion

Section 5 and 6 of the Statutory Instruments Act, Cap. 2A obligates a regulation-making authority to make appropriate consultations with persons who are likely to be affected by a proposed statutory instrument.

The Act calls for prioritisation of persons with knowledge and expertise in the field relevant to the proposed statutory instrument and allocation of adequate time for submission of input.

By publicizing the proposed Regulations in different media and affording adequate opportunity to all stakeholders, government entities and the general public to give input, the National Treasury seek to meet this requirement.

CHAPTER FIVE: COST BENEFIT ANALYSIS

5.0. Introduction

Section 7(2) of the Statutory Instruments Act requires that an assessment of the costs and benefits of a proposed statutory instrument is undertaken. The assessment should include the economic, environmental and social impact and the likely administration and compliance costs including resource allocation costs.

This chapter examines the anticipated impact of the proposed Regulations against the expected cost of implementation. The Chapter additionally explores other alternatives to the adoption of the proposed Regulations and the effect of adopting the alternatives.

5.1. The Impact of the proposed Regulations

Generally, the proposed Regulations are neither in contravention of any constitutional provisions nor does it have any retrospective effect on any constitutional provisions.

Additionally, the Regulations do not infringe on the public's fundamental rights and freedoms but to facilitate development of various infrastructures.

5.2. Financial Cost

The Regulations are not likely to attract extra financial costs as this is an amendment to the existing regulations and therefore the draft regulations seek to align with the Public Private Partnerships Act, 2021 and is necessary for implementation of projects under the PPP Act.

5.3. Consideration of Alternatives to adoption of the proposed Regulations

The Statutory Instruments Act requires a Regulation Making Authority to carry out an informed evaluation of a variety of regulatory and non-regulatory policy measures by considering relevant issues such as costs, benefits, distributional effects and administrative requirements. Statutory instruments should be the last resort in realizing any policy objectives. The options considered under this part are: maintenance of the status quo, administrative measures and adoption of the proposed Regulations.

(a) Maintenance of the *Status Quo*

Maintenance of the status quo means retaining the situation as is and taking no further action in relation to management of the Fund.

Maintenance of the *status quo* will lead to various challenges including the continued use of the 2014 Regulations which are not aligned to the provisions of the PPP Act of 2021.

(b) Option two: Administrative Measures

The second option that may be used to implement section 24(4) of the Act is through administrative measures. This usually takes the form of issuance of ministerial orders, circulars and administrative measures to address the identified challenges. The issuance of such measures is not only cheap but also time saving. However, the implementation of administrative measures is dependent on the good will of those concerned, may lead to partiality and may not be sustainable since they do not have the force of law and may lead This presents a major risk in terms of enforcement and the possibility of not getting implemented at all. The non-binding nature of administrative measures suggests that it cannot be a reliable avenue to give full effect to the salient provisions contained in the Constitution and the Act of Parliament.

(c) Option three: Formulating the Proposed Regulations

An evaluation of the legal and policy frameworks related to the proposed Regulations are intended to bring out the context and legal environment within which the proposed Regulations are being developed. Regulatory processes should be structured so that all regulatory decisions rigorously respect the principles of 'rule of law'. This means that there should be explicit responsibility for ensuring that all Regulations are authorised by higher-level statutes and are consistent with the supreme law. In addition, they should complement other legal requirements and ensure statutory harmony of the Laws of Kenya

The Regulations are premised on the tenets of Article 227 of the Constitution which outlines openness and accountability in procurement of goods and services by public entities, further emphasis is placed on value for money and reporting mechanisms.

The Regulations identify with requirements outlined in sections 89 of the PPP Act. The Regulations spell out the identification selection of projects as outlined in the National Development Agenda, the development of concept notes, submission of privately initiated proposals.

The assessment of the cost and benefits, therefore, indicates that the benefits of formulating the Regulations outweigh the costs. Therefore, option three was selected as the preferred option.

5.4. Conclusion Recommendation.

Based on the analysis in this chapter, it is clear the third option (development and adoption of the proposed Regulations) is the preferred option. The other two options have minimal impact in addressing the challenges in financing of the Public Private Partnerships.

In view of the above conclusion, it is recommended that the Public Private Partnerships (General) Regulations, 2026, be adopted for public participation.



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