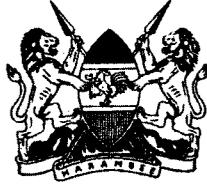


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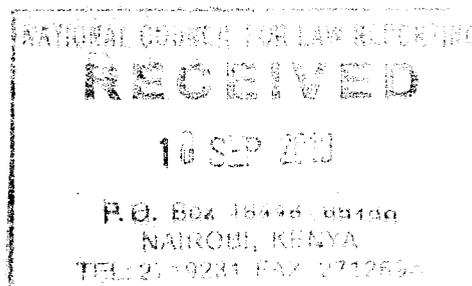
NAIROBI, 20th June, 2019

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**THE ESTABLISHMENT OF CHILDREN'S HOMES
BILL, 2019**

A Bill for

AN ACT of Parliament to provide a framework for the care and protection of neglected children within the Counties; to provide a legal framework for the registration and licensing of children's homes within the Counties; to give effect to Article 53 with regard to neglected children; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows —

PART I—PRELIMINARY

1. (1) This Act may be cited as the Establishment of Children's Homes Act, 2019.

Short title.

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

Interpretation.

“Cabinet Secretary” means the Cabinet Secretary responsible for matters related to children;

“child” has the meaning assigned to it under Article 260 of the Constitution;

“child abuse” has the meaning assigned to it under the Children Act;

“child care” means services that have as their primary purpose the care and supervision of neglected children;

“children's home” means facility that provides child care services, but does not include a family child care home;

“Council” means the National Council for Children's Services established under section 30 of the Children Act;

No. 8 of 2001.

“county executive committee member” means the county executive committee member responsible for health;

“neglected child” means any child in need of care and protection as defined under section 119 of the Children Act and includes a child -

(a) who is not receiving -

(i) the proper care necessary for his or her well-being, including adequate food, clothing and shelter;

- (ii) the necessary nourishment or medically indicated treatment including food;
- (b) whose care is not provided solely on the basis of the present or anticipated mental or physical impairment as determined by a physician or otherwise is not receiving the proper or necessary support or medical or other remedial care necessary for a child's well-being, or other or who is subjected to an environment which is injurious insofar as –
 - (i) the child's environment creates a likelihood of harm to the child's health, physical well-being, or welfare; and
 - (ii) the likely harm to the child is the result of a blatant disregard of parent or caretaker responsibilities; or
- (c) who is abandoned by his or her parents or other person responsible for the child's welfare without a proper plan of care; and

“rehabilitation” means the process by which a neglected child is enabled to reach and maintain the child’s optimal physical, sensory, intellectual, psychiatric or social functional levels, and includes measures to restore functions or compensate for the loss or absence of a function, but excludes medical care.

(2) A child shall not, for the purpose of this Act, be considered as a neglected child for the sole reason that the child’s parent or other person responsible for his or her welfare has left the child in the care of an adult relative for any period of time.

3. The objects of this Act are to—

- (a) provide a framework that promotes the rights of neglected children to protection from harm and to basic nutrition, shelter and healthcare as set out under Article 53(1)(c) and (d) of the Constitution;
- (b) promote and protect the status, well-being, safety and security of children who have no person to care for them;
- (c) provide a framework for the registration, establishment and management of service and the

Objects of the Act.

establishment and management of children's homes; and

- (d) provide a framework for the provision of quality care in children's homes established under this Act.

4. All persons under this Act shall, in the performance of their functions under this Act, be guided by the following principles—

Guiding principles.

- (a) the welfare of the child is the paramount consideration;
- (b) respect, protection, promotion and fulfilment of the rights of a child as enshrined under Article 53 of the Constitution;
- (c) the need to rehabilitate any child who has undergone abuse or neglect and to enable such child to manage the effects of such abuse or neglect;
- (d) the need to nurture each child as an individual with talents, strengths and capabilities that can develop over time;
- (e) accountability of duty bearers and transparency in the implementation of this Act;
- (f) coordinated public participation in the formulation and implementation of policies and plans related to care and protection of children; and
- (g) the need to ensure that interventions for the care and protection of neglected children are based on objective information and methods and monitoring mechanisms and regular evaluations are established, thus ensuring transparency in the management of facilities and care of neglected children.

5. This Act shall not apply to —

Non-application of Act.

- (a) persons providing care and supervision exclusively to children who are members of their immediate families;
- (b) child care services that are provided exclusively to a child in the child's home by a person other than a parent of the child; or

- (c) a home, premises or establishment that –
- (i) would, save for this Act, be a home merely because it is used to provide accommodation for children for the purpose of a holiday or for cultural, educational, recreational or sporting activities;
 - (ii) provides day care services to children;
 - (iii) is established as a rehabilitation or remand home under the Children Act; or
 - (iv) is established as a borstal institution under section 3 of the Borstal Institutions Act.

No. 8 of 2012.

Cap. 92

PART II – CARE AND PROTECTION OF NEGLECTED CHILDREN

6. Pursuant to Article 53 of the Constitution, every child has the right to —

Rights of a child.

- (a) free and compulsory basic education;
- (b) basic nutrition, shelter and health care;
- (c) protection from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment and hazardous or exploitative labour;
- (d) protection from any form of physical and mental abuse;
- (e) protection from discrimination and to be free from exploitation;
- (f) take part in activities that promote the child's social, physical, mental and emotional well-being; and
- (g) receive reasonable care, assistance and protection from the family and the State.

7. (1) The National and County Governments shall, to the extent of their constitutional mandate, promote the care and protection of neglected children.

Obligations of the National Government with respect to the rights of neglected children.

(2) In ensuring that the National Government fulfils its obligations under subsection (1), the Council shall —

- (a) adopt a comprehensive national strategy and plan of action and policies for the protection and care of neglected children;

- (b) collaborate with County Governments in the development of the necessary physical and technological infrastructure for the care, rehabilitation and provision of basic services to neglected children; and
 - (c) maintain a data base on neglected children in the Republic, on their status and their needs in order to put in place adequate mechanisms for the provision of services to meet such needs.
- (3) In performing its functions under subsection (1), the Council shall —
- (a) collaborate with the relevant public entities in establishing mechanisms that ensure that all neglected children have access to community and State based care support systems;
 - (b) collaborate with the County Governments and relevant State and private agencies in carrying out activities for the provision of such basic services to neglected children found within the respective Counties;
 - (c) carry out research, data collection, analysis and the sharing and dissemination of information on the welfare of children in the Republic; and
 - (d) collaborate with the County Governments in —
 - (i) establishing a mechanism for the care of neglected children to ensure that the rights conferred on a child under Article 53 of the Constitution are attained with respect to the neglected children; and
 - (ii) expanding and strengthening community and family based care and support systems for the care of neglected children; and
 - (e) perform such other functions as may be necessary for the implementation of this Act.
- (4) The Council may, for the purpose of subsection (3), conduct inquiries, including public inquiries, into any matter relating to the welfare, care and protection of neglected children within a County.

8. Each county executive committee member shall, in ensuring that the County Government fulfils its obligation under section 7(1), —

- (a) implement the national policy and strategies relating to the care and protection of neglected children within the County;
- (b) formulate and implement county specific programmes for the care and protection of neglected children within the respective County;
- (c) deliver, in collaboration with the Council, such social services for the care and protection of neglected children within the respective County as may be considered appropriate;
- (d) provide the necessary social services essential for the welfare of families and in particular, children within the respective County;
- (e) approve and oversee the proper implementation of child welfare programmes proposed by children's homes established under this Act;
- (f) design, in collaboration with the Council, County specific programmes for the care, protection and alleviation of the plight of children —
 - (i) with special needs or requiring special care and attention within the County; and
 - (ii) living in conditions of acute hardship including street children and children who abuse drugs or who suffer any form of child abuse;
- (g) monitor and supervise children's homes and such other persons involved in the delivery of social services to neglected children in the County and coordinate the delivery of such services within the County; and
- (h) collaborate with the Council in the provision of such technical assistance, information and facilities as may be necessary to ensure the efficient delivery of social services to in children's homes established within the county.

Obligations of a County Government with respect to the care of neglected children.

PART III – ESTABLISHMENT OF CHILDREN'S HOMES

9. (1) A County Government may establish and maintain a children's home for the care and protection of neglected children within the county.

Establishment of children's homes.

(2) A person shall not establish or manage a children's home unless the home is registered and a licence issued in accordance with this Act.

(3) Subsection (2) shall not apply with respect to a children's home that is established by a County Government.

10. (1) A person shall not own or operate a children's home unless –

Requirement for registration and licensing.

- (a) the home is registered in accordance with this Act; and
- (b) such person is issued with a licence to operate the home under this Act.

(2) A person who contravenes the provisions of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

11. (1) A person who intends to establish a children's home shall make an application to the county executive committee member in the form prescribed by the county executive committee member for the registration of the home and the issuance of a licence to an applicant to operate the home.

Registration and licencing of a children's home.

(2) Each County Government may enact county specific legislation setting out the –

- (a) criteria for the registration of a children's home within the respective county;
- (b) information required to be submitted by an applicant for registration;
- (c) process of determination of an application for registration of a children's home;
- (d) the conditions for the issuance or renewal of a licence under this Act;
- (e) the grounds for the rejection of an application or cancellation of a licence issued under this Act;
- (f) the process of issuance of a licence to an applicant for the management of a home; and
- (g) process of application for the renewal of licences, de-registration and revocation of a licence issued to an applicant under this Act.

(3) Where county legislation has not been enacted, the requirements under the Schedule shall apply.

12. (1) An applicant for registration and licencing shall undertake and submit, together with the application for registration under section 11, a location assessment report setting out evidence of the steps taken to ensure that the premises used for the purposes of the children's home are appropriately and suitably located.

Location
assessment of
intended home.

(2) A location assessment report shall contain the following information –

- (a) whether the premises are suitably located so that children cared for in the home are –
 - (i) effectively safeguarded, and
 - (ii) able to access services to meet the needs identified for their care;
- (b) whether the location of the home influences the potential for an already vulnerable child to be a victim of crime;
- (c) whether there is a likelihood of children placed in the home becoming drawn into gang crime or anti-social behaviour in the local area;
- (d) the suitability of the local neighbourhood as a location to care for children who may have already been victims of abuse and neglect;
- (e) whether there are environmental factors that would represent a hazard to children within the home; and
- (f) such other criteria as the county executive committee member shall determine.

(3) A person who is licensed under this Act shall undertake a location assessment to review the appropriateness and suitability of the location of the premises at least once in every four calendar years.

13. (1) The county executive committee member may refuse to register a children's home where—

Refusal to register
a home.

- (a) the applicant fails to meet the conditions for registration specified in county legislation enacted pursuant to section 11; or
- (b) the application does not comply with the requirements imposed under this Act or prescribed under the specific county legislation.

(2) The county executive committee member shall notify the applicant of the decision within fourteen days of such refusal.

14. (1) The county executive committee member may, subject to the provisions of section 15, cancel the licence issued to a person under this Act in accordance with legislation enacted pursuant to subsection (4).

Cancellation of a licence.

(2) The county executive committee member shall not cancel a licence under subsection (1) unless the Committee Member—

- (a) issues to the licensee, a notice of at least fourteen days of the intention to revoke the licence in accordance with section 15; and
- (a) grants the licensee, an opportunity to be heard on the revocation.

(3) The county executive committee member shall cancel the licence issued to an applicant in relation to, and de-register, a home which has ceased to be a home or which has been closed down.

(4) A county government may enact county legislation prescribing the grounds for, and the process of, cancelling a licence issued to a person to manage a home under this Act.

(5) Where county legislation has not been enacted, the provisions of the Schedule shall apply.

15. (1) A county executive committee member shall, before cancelling the licence issued to a person to manage a home under this Act, issue to the licensee a compliance notice in the prescribed form.

Notice of non-compliance.

(2) A compliance notice issued under subsection (1) shall—

- (a) be in writing;
- (b) notify the licensee of the non-compliance and the steps required to be undertaken in order to comply; and
- (c) inform the licensee of the time period within which the manager is required to comply with the notice.

(3) The county executive committee member may, upon request by the licensee and, where there are sufficient grounds shown by the licensee, extend the period of compliance for such period as the committee member may consider necessary to ensure compliance.

16. (1) Where a licensee who receives a notice under section 15 fails to comply with such notice, the county executive committee member shall —

Effect of
cancellation of
licence.

- (a) cancel the licence issued to such person;
- (b) notify the licensee in writing of—
 - (i) the cancellation and the reasons for it; and
 - (ii) the date on which the licence was cancelled;
- (c) remove the name of the licensee from the register of licenced persons; and
- (d) cause the name of the licensee whose licence has been revoked to be published in the *County Gazette* within seven days from the date of the revocation.

(2) Where the licence of a home has been cancelled, all the rights and benefits that accrue to the home by virtue of being registered under this Act shall cease to accrue to it.

(3) For purposes of this Act, a cancellation of registration takes effect on the date on which the licence is cancelled by the county executive committee member.

17. (1) Where the licence of a children's home is cancelled under section 14, the licensee shall ensure that on the closing down of the home, the children residing in the home are accommodated in another registered children's home.

Closure of a
home.

(2) Where a licensee intends to close down a children's home for any other reason other than the de-registration of the home, the licensee shall —

- (a) inform the county executive committee member of the intention to close down the home and submit a report to the committee member containing information regarding—
 - (i) the children residing in the home;

- (ii) the management and persons employed in the home;
 - (iii) any investigations or cases that may have been carried out or instituted against the home or that are pending in relation to the home;
 - (iv) the steps taken regarding the future accommodation of the children residing in the home; and
 - (v) such other information as the county executive committee member may require;
- (b) at least six months before the closing down of that home notify the children of such closure; and
 - (c) ensure that prior to closing down of the home, the children residing in the home have been accommodated in another registered home.

(3) A licensee under subsection (2) shall not close down the home unless the licensee has applied for and obtained the approval of the county executive committee member in the prescribed form.

(4) The county executive committee member shall, upon receipt of an application to close down a home under subsection (3), consider the application within thirty days from the date of receipt of the application and approve the application for such closure except where -

- (a) the manager fails to comply with subsection (2); or
- (b) such closure would be against public interest.

18. (1) The manager of a children's home under this Act shall, within three months from the end of each financial year, submit to the county executive committee member and the Council, a report regarding the management of the home.

Submission of reports on the management of a home.

(2) A report under subsection (1) shall contain the following information-

- (a) compliance with the standards for service delivery, prescribed in this Act or any other law;

- (b) the number of children residing in the home including the date of their admission into, and discharge from the home;
- (c) compliance with principles of sound management systems;
- (d) compliance with the conditions for continued registration; and
- (e) such other information as the county executive committee member may require.

(2) If the manager of a children's home fails to submit a report in accordance with subsection (1), the county executive committee member may revoke the licence issued to the licensee and de-register the home or take such action as the county executive committee member may consider necessary to ensure compliance.

19. A county executive committee member may establish a committee and appoint such authorized officers as may be necessary for the implementation of this Act.

Establishment of committees and appointment of authorised officers.

PART IV - CARE OF CHILDREN WITHIN A CHILDREN'S HOME

20. A licensee shall, in respect of a home to which a licence is issued, ensure that –

Welfare of children in a home.

- (a) each child is provided with sufficient and nutritious food to keep the child in good health;
- (b) in the case of children of four or more years of age, children of different gender do not sleep in the same room;
- (c) the daily routine of the home, including the hours appointed for rising, school instruction, practical training, chores, meals, recreation, study and retiring to bed, are in accordance with the standards and conditions that may be prescribed by the county executive committee member;
- (d) a child who resides in the home does not engage in the solicitation of money or other aid for the maintenance of the home from any member of the public; and
- (e) no child who resides, or is, at the home is employed in any work that is likely to-

- (i) impair that child's health or capacity for benefiting from instruction; or
- (ii) deprive the child of reasonable recreation or leisure.

21. (1) A licensee shall arrange for the proper education of every child who resides at the children's home.

Right to education of children residing in a home.

(2) Where educational programmes are provided at the home, the licensee shall ensure that –

- (a) the educational programmes are in accordance with a curriculum approved by the Cabinet Secretary responsible for matters relating to education in the case primary and secondary education and the county executive committee member responsible for education in the case of early childhood education and vocational training; and
- (b) the attendance of each child who resides at the home for educational and practical training classes is recorded in a register provided by the licensee for that purpose.

22. (1) A licensee shall-

Medical care of children in a home.

- (a) appoint a medical officer, who is a qualified medical practitioner, for the home; or
- (b) make suitable arrangements for the treatment of the children of the home at a health facility located at reasonably accessible proximity to the home.

(2) The county executive committee member shall, in consultation with the county executive committee member responsible for matters relating to health, make regulations for the medical care of children residing in a children's home.

23. The delivery of child care in a children's home under this Act shall ensure–

Delivery of child care in a home.

- (a) the protection and promotion of the welfare of each child in the home;
- (b) that every child is treated with dignity and respect;

- (c) that as far as possible, that every child received personalised care that meets the child's needs;
- (d) the support of each child to manage the consequences of any abuse or neglect;
- (e) the support of each child to develop resilience and skills that prepare them to live in a new place or live independently as an adult; and
- (f) that each child is –
 - (i) provided with the necessary physical necessities including personal items; and
 - (ii) enabled to provide feedback to, and raise issues with, the relevant persons in the home regarding the support, services and care received by that child in the home.

24. A licensee shall ensure that-

Management of a children's home.

- (a) the home commences operation as a children's home not later than six months after the grant of the licence;
- (b) the number of children resident in the home at any time shall not exceed the number specified in the licence;
- (c) a child who is not within the age limits specified in the licence is not allowed to reside in the home;
- (d) the standards set out in -
 - (i) legislation enacted by the respective County Assembly; or
 - (ii) any other legislation applicable to a children's home, issued are observed in relation to the home; and
- (e) the licence is displayed in a conspicuous place in the home.

25. (1) Every children's home shall have such number of qualified personnel including social or community workers as shall be determined by the county executive committee member in accordance with subsection (2).

Personnel in a children's home.

(2) The number of personnel in a children's home shall be based on the number of children cared for or

housed in the home and on such other factors as the county executive committee member may, by notice in the *Gazette*, determine.

26. The licensee shall—

- (a) where the licensee is not the manager of the registered children's home, employ a qualified person to manage the home;
- (b) employ such qualified personnel who meet the criteria specified under county legislation;
- (c) ensure that each employee completes an appropriate induction; and
- (d) provide each employee with a job description outlining the employee's responsibilities.

Qualification of
personnel in a
home.

27. (1) The manager of a children's home which is established by a County Government shall not refuse to admit into the home, a neglected child.

Admission of a
child into a
children's home.

(2) The manager of a children's home shall admit a child where such child is not a neglected child but who is—

- (a) in urgent need of care and protection and who is delivered to the children's home; or
- (b) referred to the institution by way of an order of the court for the care and protection of the child in a children's home.

(3) The manager of a children's home shall, upon admitting a child into the home, explain and inform the child regarding —

- (a) the available facilities and services within the home and the entitlements to such child in the home;
- (b) the manner in which access to such facilities can be obtained;
- (c) the personnel in the home and the persons whom the child may consult in the home; and
- (d) the complaints procedure including the person to whom a complaint may be lodged or any issue raised.

(4) A child shall be admitted into a children's home in accordance with legislation enacted by the respective County Assembly.

28. The manager of a home shall keep or cause to be kept, in respect of each child in the home, a register containing –

Records relating to children in a home.

- (a) all available information on the status, health and welfare of the child, including demographic data, physical and mental health status, educational profile, socio-economic status, guardianship, and closest family relation, and, for that purpose, information may be received from a social inquiry report and any data available from the Council;
- (b) a health record containing the following details-
 - (i) every visit to a medical practitioner or health care provider, with the dates and times of such visits and the names of the persons who accompanied the child on such visits;
 - (ii) illnesses, presenting symptoms, treatment and drugs prescribed or administered, accompanied by a health card indicating diseases against which the child has been immunized; and
- (c) the school record with respect to a child.

29. The manager of a home registered under this Act shall ensure that the following services are provided in the home –

Services rendered within a home.

- (a) twenty-four hour care and support services to children in the home;
- (b) care and supervision services to children in the home who may have special needs and those in need of special care and attention;
- (c) counselling and rehabilitation to a child who may have undergone any form of abuse or neglect;
- (d) outreach programmes; and
- (e) recreational activities.

30. (1) The manager of a children's home shall —

Role of management of a home.

- (a) ensure that the premises used for the purposes of the home are designed and furnished so as to —
 - (i) meet the needs of each child; and

- (ii) enable each child to participate in the daily life of the home;
 - (b) ensure that any care that is arranged or provided for a child that relates to the child's development;
 - (c) seek to develop and maintain effective professional relationships with such persons, bodies or organizations as may be appropriate having regard to the range of needs of children who the children's home provide care and accommodation;
 - (d) ensure the provision of quality service to the home;
 - (e) ensure the continuous training of the personnel in the home;
 - (f) apply principles of sound financial management and submit quarterly financial reports to the residents or the family members of the residents of the home;
 - (g) monitor activities at the home in order to deal speedily with any incidents of abuse of the children in the home and takes steps to report such incidents to the appropriate authority; and
 - (h) meet the conditions set out under subsection (2) with respect to the home.
- (2) A manager in a children's home shall ensure that –
- (a) the standard of care provided in the children's home is reviewed from time to time to ensure that the obligations with respect to the provision of care is of children in the home under this Act are met;
 - (b) the care is delivered by a person who –
 - (i) has the experience, knowledge and skills to deliver that care; and
 - (ii) is under the supervision of a person who is appropriately skilled and qualified to supervise that care; and
 - (c) there is in place medical facilities within the vicinity of the children's home.

31. The manager of a children's home shall ensure that the employees of the home give quality care to children in the home and in particular, shall —

Conduct of
personnel in a
children's home.

- (a) deliver care that meets the needs of each child and supports each child to fulfil their potential
- (b) protect and promote each child's welfare;
- (c) treat each child with dignity and respect;
- (d) provide personalised care that meets each child's needs taking account of the background of the child;
- (e) help each child to understand and manage the impact of any experience of abuse or neglect;
- (f) help each child to develop resilience and skills that prepare the child to live in an adoption home or to live independently as an adult;
- (g) provide to children living in the home the physical necessities they need in order to live there comfortably;
- (h) provide to children personal items that are appropriate for their age and understanding;
- (i) make decisions about the day-to-day arrangements with respect to each child, in accordance with the child's relevant plans, which give the child an appropriate degree of freedom and choice; and
- (j) ensure that the premises used for the purposes of the home are designed and furnished so as to —
 - (i) meet the needs of each child; and
 - (ii) enable each child to participate in the daily life of the home.

32. (1) No measure of control or discipline which is excessive, unreasonable or contrary to subsection (2) may be used in relation to any child.

Discipline of
children in a
home.

(2) The following measures shall not be used to discipline any child—

- (a) any form of corporal punishment;
- (b) any punishment involving the consumption or deprivation of food or drink;

- (c) any restriction, other than one imposed by a court;
 - (d) the use or withholding of medication, or medical or dental treatment;
 - (e) the intentional deprivation of sleep;
 - (f) any inappropriate physical examination;
 - (g) withholding any aids or equipment needed by a disabled child;
 - (h) any measure involving a child imposing any measure against another child; or
 - (i) any measure involving punishing a group of children for the behaviour of an individual child.
- (3) Nothing in this section shall prohibit—
- (a) the taking of any action by, or in accordance with the instructions of, a registered medical practitioner or a registered dental practitioner which is necessary to protect the health of the child; or
 - (b) taking any action that is necessary to prevent injury to any person or serious damage to property.

33. (1) The manager of a children's home shall put in place such management strategies as the manager considers appropriate for the purpose of supporting children within the home to manage any safeguarding concerns and enabling the children to access the appropriate services within the county.

Risk management within a home.

- (2) The manager shall, for the purpose of subsection (1) –
- (a) collaborate with the relevant authorities and stakeholders in developing strategies for the management of, and the minimizing of risks that are likely to be faced by children within the home;
 - (b) involve the children in the development of strategies under paragraph (a);
 - (c) sensitise the children in the home about risks and support them in developing skills and strategies for managing those risks;

- (d) facilitate access, by children within the home to sources of confidential advice and advocacy so as to enable them feel safe to disclose any risks that they face; and
- (e) put in place the necessary infrastructure for the purpose of improving the security and securing the home from potential predators.

34. (1) The manager of a home may only use devices for the monitoring or surveillance of children in the home where—

Monitoring and surveillance.

- (a) such monitoring or surveillance is for the purpose of safeguarding and promoting the welfare of the children within the home;
- (b) so far as reasonably practicable in the light of the child's age and understanding, the child is informed in advance of the intention to do the monitoring or surveillance; and
- (c) the monitoring or surveillance is no more intrusive than necessary, having regard to the child's need for privacy.

(2) The county executive committee member may make regulations for the monitoring and surveillance of children's homes within the County.

35. (1) Every medical practitioner, social worker or any other person who examines, attends to or deals with a child in a children's home and who suspects that the child—

Notification of abuse of a child.

- (a) has been abused; or
- (b) suffers from any injury, shall notify the county executive committee member and the Director of Medical Services of the abuse or injury.

(2) Upon receipt of a notification under subsection (1), the Director of Medical Services shall conduct such investigation as the Director considers necessary and upon establishing that the child has been subjected to any form of abuse, the Director shall inform the Inspector General who shall take such action as is appropriate.

(3) On receipt of a notification under subsection (1), the Director of Medical Services in consultation with the

county executive committee member may, in addition to such action as may be taken by the Inspector General of Police —

- (a) remove of the child from the current home and place the child in a hospital, another children's or such other place as the Director may consider appropriate;
- (b) arrange, where necessary, that the child receives medical treatment;
- (c) arrange, where necessary, for the removal and transfer of the other children housed in the home to another children's home;

(4) Any medical practitioner, social worker or other person is not liable for any action or claim for damages in respect of any notification given in good faith in accordance with subsection (1).

(5) Any medical practitioner, nurse, social worker or other person who fails to comply with subsection (1) commits an offence and is liable, on conviction, to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred thousand shillings or to both such fine and such imprisonment.

36. (1) The county executive committee member shall keep a register of notifications received by it pursuant to section 14(1) containing —

- (a) information relating to the affected children;
- (b) information relating to the person alleged to have abused the children;
- (c) the date of the notification;
- (d) a description of the circumstances regarding each notification;
- (e) the action taken by the relevant authorities; and
- (f) such other information as the county executive committee member shall consider appropriate.

(2) A person who is found guilty of having abused a child in a children's home and whose name appears in the register kept under subsection (1) shall not —

Register of notifications on abuse of children in a home.

- (a) operate or be employed in any children's home;
or
- (b) provide any community-based care and services.

**PART V – INSPECTION AND EVALUATION OF
SAFETY IN A CHILDREN'S HOME**

37. A licenced person and manager in children's home under this Act shall –

Safety in a
children's home.

- (a) maintain premises that meet the requirements of the occupational health, safety regulations and building standards;
- (b) ensure the welfare and safety of the children within the home;
- (c) put in place fire fighting equipment, first aid and other emergency equipment and non-prescription medicine as the county executive committee member may prescribe; and
- (d) have a list of the contacts of emergency service providers including hospitals, readily available to all members of staff.

(2) In providing the equipment specified under subsection (1)(c), the manager shall ensure that such equipment is accessible during an emergency.

(3) The equipment and medicine under subsection (1) shall be maintained or kept by a centre in such manner as to ensure that it is out of the reach of children and ensures that the safety of the children is not compromised.

(4) The county executive committee member shall prescribe minimum standards for the health and safety of children and for a satisfactory environment for the housing of the children in the home.

38. (1) The county executive committee member shall, for purposes of monitoring and evaluating the provision of services by homes registered under this Act, designate such authorised officers or other county public officers as inspectors as the county executive committee member may consider appropriate.

Appointment of
inspectors.

(2) The County Public Service Board shall, in consultation with the county executive committee member,

issue to every inspector appointed under subsection (1) in writing or in such form as the County Public Service Board may determine, a certificate of appointment and authority to act as an inspector.

(3) A person appointed as an inspector under subsection (1) may, at all reasonable times, enter a children's home and -

- (a) enter the home and to have access to every part thereof;
- (b) interview any child of the home, either alone or in the presence and hearing of a member of staff of the home;
- (c) hear and make enquiries concerning any complaint made to them by a child of the home;
- (d) inspect, photocopy, print out, or copy onto disk any documents, whether held in electronic or paper form, that the person believes on reasonable grounds to be those of the home; or
- (e) remove any document specified in paragraph (b), whether in its original form or as an electronic or paper copy.

(4) Every person exercising any power under this section shall, at the time of inspection, possess the appropriate written authorisation and evidence of identity, and shall produce them to the person in charge of the home concerned or, as the case may be, the person having possession or control of the books, records, or accounts concerned—

- (a) on first entering the premises; and
- (b) whenever subsequently reasonably required to do so by the person in charge.

(5) For the purposes of this section, inspection, in relation to any home, includes meeting and talking with the children residing in the home.

(6) The County Executive Committee member shall make regulations for the conduct of inspections of children's homes under this Act.

39. (1) Every written authorisation issued to an inspector under section 37 shall contain—

Powers of an inspection officer.

- (a) a reference to this section;
- (b) the full name of the person authorised; and
- (c) a statement of the powers conferred on that person by this section.

PART VI - MISCELLANEOUS PROVISIONS

40. A person who is convicted of an offence under this Act for which no penalty is provided is liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding two years, or to both. General penalty

41. (1) The Cabinet Secretary may, in consultation with the Council, make regulations generally for the better carrying out of the provisions of this Act. Regulations.

(2) Notwithstanding the generality of subsection (1), the Cabinet Secretary may make Regulations –

- (a) setting out the standards required to be adhered to by County Governments in the establishment of children's homes;
- (b) prescribing the programmes that may be administered in a children's home; and
- (c) prescribing the qualifications required to be held by persons managing, employed in or rendering services in a children's home.

(3) Regulations made under subsection (2) may prescribe different standards and other requirements—

- (a) for services of different types or descriptions rendered in relation to neglected children; and
- (b) in respect of different kinds of licencing.

(4) For the purposes of Article 94(6) of the Constitution –

- (a) the authority of the county executive committee member to make Regulations shall be limited to bringing into effect the provisions of this Act and the fulfilment of the objectives specified under subsection (1); and
- (b) the principles and standards set out under the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013 in relation to

Cap. 2.
No. 23 of 2013.

subsidiary legislation shall apply to Regulations made under this Act.

PART VII - TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS

42. (1) Subject to subsections (2), (3), and (6), every home that, immediately before the commencement of this Act, was registered as a charitable children's institution under the Children Act or as a children's home under any other law shall be deemed to be registered as a children's home under this Act, and continues to be so licensed for the relevant period of registration subject to such conditions of registration as may be imposed under this Act.

Existing homes.

No. 8 of 2001.

(2) Despite subsection (1), the county executive committee member may give written notice to the registered owner of a home registered under subsection (1), requiring the manager who operates that home to apply for registration under section 11 within three months of the date of that notice, and—

- (a) if the manager fails to apply for registration within the specified period, the home ceases to be registered under subsection (1) at the end of that period; or
- (b) if the manager applies for registration within the required period, the centre shall continue to be a registered home under subsection (1) until that application has been determined.

(3) Despite subsection (1), if subsection (4) applies, the county executive committee member may, by written notice to the manager who operates a children's home that is deemed to be registered under subsection (1), declare that the home is no longer registered under subsection (1) and the notice has effect accordingly.

(4) The county executive committee member may give a notice under subsection (3) only if it is satisfied that the manager or the home—

- (a) has failed to comply with this Act on the requirements of registration; or
- (b) has failed to comply with any conditions for registration.

(5) The county executive committee member may, despite the fact that the home concerned does not meet the minimum requirements for registration prescribed under this Act, issue to the manager operating the home a transitional certificate in such manner as the county executive committee member may prescribe and subject to such conditions as he or she may impose.

(6) Where the county executive committee member is not satisfied that the conditions specified in a certificate issued under subsection (5) are being complied with, the county executive committee member may, by written notice to the manager operating the home, cancel the certificate of registration.

(7) Every notice under subsection (3) or subsection (6) shall set out the reasons for the action taken.

(8) Subsections (1) to (6) shall not limit any powers to cancel or suspend the registration of a children's home in the manner prescribed by the county executive committee member.

43. The Children Act is amended –

Amendment to
No. 8 of 2012.

(a) in section 2 by –

- (i) deleting the definition of the word “appointed local authority”;
- (ii) deleting the definition of the word “Area Advisory Council”;
- (iii) deleting the definition of the word “authorised officer”;
- (iv) by deleting the definition of the word “home”;
- (v) by inserting the following new definitions in their proper alphabetical sequence -
 - (a) “authorised officer” means a person appointed by the county executive committee member under the Establishment of Children's Homes Act for the purposes of this Act;
 - (b) “children's home” has the meaning assigned to it under the Establishment of Children's Home Act”;

- (c) "county executive committee member" means the county executive committee member responsible for matters relating to child welfare services in the County;
- (b) In section 31 by deleting the words "Local Authorities" appearing immediately after the words "Ministry responsible for" and substituting therefor the words "devolution";
- (c) in section 32 by –
 - (i) deleting subsection (1) and substituting the following new subsection -
 - (1) The object and purpose for which the Council is established is to design and formulate policy and strategies in relation to the delivery of child welfare services and, in consultation with the county executive committee members in each County, co-ordinate and oversee the implementation of such policy and strategies in each County.
 - (ii) deleting the word "supervise" appearing in paragraph (b) of subsection (2);
 - (iii) inserting the words "County Governments and other" immediately after the words "support services to" in paragraph (f) of subsection (2); and
 - (iv) deleting paragraphs (k), (l) (n), and (o);
- (d) by deleting sections 40 to 46;
- (e) by deleting sections 58 to 72;
- (f) in section 120 by –
 - (i) deleting subsection (12) and substituting therefor the following new subsection -
 - (12) Where it appears to a children's home that a child in its area is in need of care and protection and that its intervention is necessary, the children's home shall -
 - (a) receive such child into its care and need not bring the child before a court immediately;

- (b) notify the county executive committee member within seven days of receiving the child into its care;
 - (c) ensure that the child is brought before a court within three months;
 - (d) hand over the child to the parent or guardian of the child where such parent or guardian seeks to assume the care of the child; and
 - (e) where it appears to be in the best interest of the child, endeavour to secure that the care of the child is assumed by a parent or guardian or a person who has parental responsibility for the child by a relative or a friend who should, if possible, be of the same religion, race, tribe or clan as the child.
- (ii) deleting the words “A local authority or charitable children’s institution” appearing in subsection (13) and substituting therefore the words “A children’s home”.
- (f) in section 122 by deleting the words “local authority” appearing immediately after the words “of a particular” and substituting therefor the words “County”;
 - (g) in section 125 by deleting the words “an appointed local authority, a charitable children’s institution ” appearing immediately after the words “custody of” in subsection (5) and substituting therefor the words “children’s home”;
 - (h) in section 126 by deleting the words “children’s voluntary institution or appointed local authority” appearing immediately after the words “to the person” in subsection (1) and substituting therefor the words

- “children’s home or county executive committee member”;
- (i) in section 132 by deleting the words “appointed local authority or an institution” appearing immediately after the words “child or to an” and substituting therefor the words “children’s home”;
 - (j) in section 138 by –
 - (i) deleting the words “charitable children’s institution or appointed local authority” appearing immediately after the words “fit person” in the opening paragraph and substituting therefore the words “children’s home”; and
 - (ii) deleting the words “charitable children’s institution” appearing in paragraph (ii) and substituting therefor the words “children’s home”;
 - (k) by deleting section 139 and substituting therefor the following new section –

139. (1) Whenever a child runs away from any person or home with whom or with which he has been placed by a children’s home aforesaid, it shall be the duty of the officer responsible for the management of the home or relevant authorised officer, within forty-eight hours of such occurrence coming to his or her knowledge, to notify the county executive committee member.

(2) A person who contravenes the provision of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand shillings or to

imprisonment for a term not exceeding six months or to both.

- (l) in section 141 by deleting the words "charitable children's institution" appearing in subparagraph (i) of paragraph (a) and substituting therefor the words "children's home";
- (m) in section 147 by deleting the words "charitable children's institution" appearing immediately after the words "or to a" in subsection (1) and substituting therefor the words "children's home";
- (n) in section 191 by deleting the words "charitable children's institution" appearing immediately after the words "or a" in paragraph (d) of subsection (1) and substituting therefor the words "children's home";
- (o) in section 199 by deleting the words "local authorities or charitable children's institution" appearing immediately after the words "in aid to" in subsection (1) and substituting therefor the words "children's home";
- (p) by deleting the Second Schedule; and
- (q) by deleting the Eighth Schedule.

SCHEDULE

S. 11(3), 14(5)

**LICENCING AND REGISTRATION PROVISIONS TO BE
APPLIED BY A COUNTY GOVERNMENT PENDING THE
ENACTMENT OF LEGISLATION**

Determination of an application for registration and licencing

1. A county executive committee member shall consider an application made for registration of a children's home and may, if satisfied that the applicant meets the requirements of this Act, register the applicant upon payment of the prescribed fee.

2. The county executive committee member shall –

(a) communicate the decision under paragraph in writing;

(b) enter the name of the home into a register maintained for that purpose; and

(c) issue to the applicant a licence, within fourteen days of its decision to register the applicant.

3. The county executive committee member may, where the Committee Member considers it necessary, call for such further information or carry out such inspections as county executive committee member may consider necessary for the determination of the application.

4. The county executive committee member may, in registering and issuing a licence under paragraph 1, impose such terms and conditions on the applicant as maybe necessary and may, from time to time, vary such conditions.

5. The county executive committee member shall set out in the licence granted to an applicant under this section, any term or condition imposed under paragraph 4.

6. A licence issued to an applicant under paragraph 2 shall not be transferable to another person.

7. A licence issued under this Act shall, unless earlier revoked, be valid up to the 31st December of the year in which it is issued and may, on expiry, be renewed on application by the licensee.

8. Despite paragraph 7, where an application for the renewal of a licence is made, the licence shall be deemed to continue in force until the application is determined.

9. The county executive committee member may for the purpose of considering applications under this section constitute a committee

consisting of such public officers serving within the relevant department not exceeding three to consider such applications.

Renewal of a licence

10. An application for the renewal of a licence shall be made to the county executive committee member in the prescribed form and shall be—

- (a) made at least three months immediately preceding the expiry of the licence;
- (b) submitted to the county executive committee member together with the documents required for registration under the Act; and
- (c) be considered in the same manner as an application for registration.

11. Where an application for the renewal of a licence is not lodged within three months immediately preceding its expiry, the county executive committee member may consider such application upon payment of an additional fee of such an amount as the county executive committee member may, by notice in the Gazette, determine.

12. The county executive committee member shall consider an application made under paragraph 10 and may, if satisfied that the applicant meets the requirements of this Act, renew the licence of an applicant upon payment of the prescribed fee.

Refusal to register a home

13. The county executive committee member may refuse to register a children's home where—

- (a) the applicant has submitted false or misleading information in the application;
- (b) the application does not comply with the provisions of this Act;
- (c) the name of the home is identical to another registered home or so nearly resembles the name of another home as to be likely to mislead the public as to its nature or identity; or
- (d) the managers or personnel do not meet the qualifications required for the care and support of senior citizens prescribed under this Act or under any other written law.

14. The county executive committee member shall notify the applicant of the decision within fourteen days of such refusal.

Grounds for cancellation of a licence

15. The county executive committee member may, subject to the issuance of a notice in accordance with the Act, cancel the registration of a children's home where —

- (a) the county executive committee member has reasonable cause to believe that the home has among its objects or is likely to pursue an unlawful cause or purpose prejudicial to the peace, welfare or good order of the community;
- (b) the manager or employees of the home fail to comply with—
 - (i) any directive issued by the county executive committee member to ensure compliance with the provisions of the Act; or
 - (ii) a condition for registration and issuance of a licence under the Act;
- (c) the applicant fails to submit any information required under this Act or requested by the county executive committee member in order to ensure compliance with the Act; or
- (d) the county executive committee member determines that the applicant submitted false information or statements at the time of registration of the home.

16. The county executive committee member shall not revoke a licence under paragraph 15 unless the Committee Member—

- (a) issues to the licensee, a notice of at least fourteen days of its intention to revoke the licence; and
- (b) grants the licensee, an opportunity to be heard on the revocation.

17. The county executive committee member shall cancel the registration of any registered home which has ceased to be a home or which has been closed down.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principle object of the Bill is to provide a framework for the registration and licensing of children's homes so as to ensure the provision of care and protection to neglected children found in every County. This would therefore give effect to Article 53(1)(c) and (d) of the Constitution on the right of every child to –

(c) basic nutrition, shelter and healthcare; and

(d) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour.

The Bill recognises the fact that the function relating to the provision of children's facilities is a devolved function and while we have in place the Children Act which provides a framework through which existing institutions are established, it has become necessary to amend the Children Act in order to align it with the Constitution and to address any existing gaps in the care and protection of neglected children.

The Bill provides the overall framework and sets out the standards that are to be adhered to by the County Governments and leaves it to each County Government to establish the legal framework for the establishment and regulation of children's homes within the respective County.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill confers on the Cabinet Secretary the powers to make regulations under the Act for the purposes of operationalising the Act in order to implement the objectives set out in the Bill. The Bill does not limit any fundamental rights or freedoms.

Statement on how the Bill concerns county governments

This Bill is expected to provide a framework through which county governments are to put in place mechanisms for the implementation of policies and programmes necessary for the protection and care of neglected children in each County. In particular, the counties are expected to establish homes and implement programmes within the county for the care of neglected children. The County Governments, through the respective county executive committee members are responsible for the registration of homes and the licensing of persons responsible for the management of the homes.

Paragraph 9 in Part 2 of the Fourth Schedule to the Constitution confers on each County Government, a role with respect to the provision of childcare facilities. These include the establishment of homes particularly for the vulnerable children who have no one to care for them. The Bill sets out the overall framework with regards to the minimum standards required for the establishment of children's homes by each County. Each County is required to prepare county specific legislation for the regulation of such homes.

The Bill is therefore a Bill concerning county governments in terms of Article 110(1)(a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 18th January, 2019.

AGNES ZANI,
Senator.