

**THE BUILT ENVIRONMENT BILL, 2019**

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**THE BUILT ENVIRONMENT BILL, 2019**

**An Act of Parliament to establish standards and practices in the built environment relating to building, maintenance and associated works and to make provisions for matters connected therewith; to establish the National Building Inspectorate; and to give legal effect to the National Building Regulations.**

**Enacted** by the Parliament of Kenya as follows: —

**PART I—PRELIMINARY**

Short title and commencement.

**1.** This Act may be cited as the Built Environment Act, 2019, and shall come into operation on such date as the Cabinet Secretary may, in the gazette appoint.

Application of the Act

**2.** This Act shall apply in all parts of Kenya and to all buildings and related works except from such areas as the Cabinet Secretary may by notice in the Gazette specify.

Interpretation

**3.** In this Act unless the context otherwise requires—

“Accredited Checker” means a third-party firm that is accredited by the National Buildings Inspectorate Certification and Accreditation Panel, following the process outlined in Section 16 through 32, to conduct either plan reviews, site-inspections or building audits. To qualify, the firm must include Qualified Persons.

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“agent” means a Qualified Person, an Accredited Checker or a Certified Checker;

“Appeal Tribunal” in relation to an appeal means a Tribunal constituted under section 94;

“Appeal Tribunal Panel” means the Appeal Tribunal Panel established by the Inspectorate under Section 94;

“approved” means approved by the Inspectorate; or approving authority;

Cap. 525

“architect” means a person registered as such under the Architects and Quantity Surveyors Act;

“Inspectorate” means the National Buildings Inspectorate established under Section 6;

Cap. 525.

“Board of Registration of Architects and Quantity Surveyors” means the Board established under the Architects and Quantity Surveyors Act;

“building” means any construction work that has the provision of shelter for its occupants or contents as one of its main purposes and is normally designed to stand in one place. This includes both public and private buildings;

“building control officer” refers to any person employed or designated by the County Government to ensure regulatory compliance and enforcement.

“built environment” refers to the human-made surroundings that provide the setting for individual dwelling and buildings to neighbourhoods and cities that can often include their supporting infrastructural services;

“building owner” includes the person for the time being receiving the rent of any building, whether on his own account or as agent or trustee or as receiver, or who would receive the same if the building were let to a tenant;

“building permit” means a building permit issued under section 62

Engineers Act 2011

“building services engineer” means a person who is registered as such under the Engineers Act in the electrical or mechanical disciplines;

“building works” includes any kind of building construction, site formation works, ground investigation, foundation works, repairs, demolition, alteration, addition and every kind of building operations and include installation of building services both electrical and mechanical;

“Cabinet Secretary” means the Cabinet Secretary for the time being

responsible for matters related to buildings;

“Certification and Accreditation Committee” means the Committee appointed under Section 23;

“certified checker” means an individual who is certified by the National Buildings Inspectorate Certification and Accreditation Committee, following the process outlined in Section 16 through 32, to conduct either plan reviews, site-inspections or building audits. To qualify, the individual must be a Qualified Person. The individual may be a third-party or a member of the Inspectorate.

“Chief Executive” means the Chief Executive Officer of the Inspectorate appointed under section 40

Engineers Act 2011

“civil or structural engineer” means a person registered as such under the Engineers Act, 2011;

“closure orders” means an order made under section 89;

National Construction Authority Act (2011)

“contractor” means a person who is registered as such under the National Construction Authority Act;

County Government Act (2012)

“county government” as, defined by the Constitution of Kenya (2010), for the purpose of this Act refers to the institutions in the county for the time being responsible for the implementation and enforcement of the National Building Regulations.

“dangerous building” means any building which poses a threat to the life, safety and health to the occupiers or users of any building or to the general public;

“development” means physical improvement on land including buildings and infrastructure;

Physical Planning Act (2012) [1996]

“development permission” refers to the planning permission granted to a building owner or agent by the County Government, as per the Physical Planning Act (2012) [1996].

“design professional” refers to a registered Engineer or Architect.

Engineers Act 2011

“Engineers Board of Kenya” means the Board established under the Engineers Act;

“fire prevention officer” refers to any person employed or designated by the County Government to ensure regulatory compliance and enforcement with the fire provisions of the National Building Regulations.

“enforcement order” refers to an order issued by the County Government, under Section 74 in circumstances where the development of land has been or is being carried out without obtaining the required development permission, or that any of the conditions of a development permission granted have not been complied with.



“foundation system” means a system of arrangement of foundation units such as footing, raft or pile through which the loads from a building or structure are transferred to the supporting soil or rock;

“Gross Floor Area” means the area contained within the outer walls of a building and in a building with more than one floors it is the summation of the areas of the individual floors;

“height of a building” means the vertical distance measured, in the case of flat roofs, from the average level of the ground and contiguous to the building to the highest point of the building and, in the case of pitched roofs, up to the point where the external surface of the outer wall intersects the finished surface of the sloping roof, and, in the case of gables facing the road, the mid-point between the eaves level and the ridge;

“Inspectorate” means the National Buildings Inspectorate established under Section 6;

Cap. 449A

“land surveyor” means a person registered as such under the Survey Act;

“panel” means the Appeal Tribunal Panel constituted under Section 94 of this Act;

“public buildings” means any building owned by the National or County Government.

“private building” means any building owned by a private building owner.

“certificate of compliance” refers to the certificate issued by the County Government under Section 70 to certify that a particular stage of construction has been completed in compliance with the National Building Regulations and the building owner or agent can continue to the subsequent stage of construction.

“certificate of occupation” refers to the certificate issued by the County Government under Section 70 to certify that the building is compliant with the National Building Regulations and is deemed safe for occupation and use.

Cap. 299

“qualified person” means any Architect, Civil and Structural Engineer, Quantity Surveyor, or Building Services Engineer, land surveyor , Physical Planner, Building Surveyor registered by their respective professional Boards.;

Cap. 449A

“quantity surveyor” means a person registered as such under the Architects and Quantity Surveyors Act;

Cap.525

“register of buildings” means the Register kept and maintained by the Authority under Section 10 through 15;

“registered contractor” means a person registered as such under the National Construction Authority Act;

No. 41 of 2011

“site supervisor” means person appointed under this Act to supervise structural works;

“significant modification” means changing the form and use of the building

“single storey vernacular residential buildings” refers to traditionally built houses without any or little intervention by Qualified persons in their design.

“stage of construction” means a stage of the building work as specified in the building permit.

Object of the Act

**4. The Object of this Act is to —**

- (a) establish the National Buildings Inspectorate and empower it to develop and maintain the National Building Regulations and to support and build the capacity of County Governments to enforce the National Building Regulations;
- (b) give legal effect to National Building Regulations to protect public safety and health. The National Building Regulations shall:
  - i. include provisions that account for local building materials that are appropriate, construction techniques and consider economic feasibility;
  - ii. reference an up-to-date understanding of building science;
  - iii. reference geologic, climatic and chronic hazards;
  - iv. include guidelines for small and residential houses, targeted at single storey vernacular construction in rural and urban areas;
  - v. promote the construction of resource (energy and water) efficient buildings;
  - vi. promote social inclusion, accessibility and usability with special reference for persons with disabilities;
  - vii. promote the preservation and restoration of cultural heritage buildings.
- (c) establish procedures to address dangerous buildings;

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County Government Act (2012)

(d) establish the responsibility of county governments for the implementation of the National Building Regulations through plan review, site-inspection, permitting and enforcement;

(e) promote an efficient and effective system for issuing development permission, building permits and certificates of occupation to reduce the cost of regulatory compliance and create a secure and attractive environment for economic investment;

Standards Act (2012)

(f) facilitate, with the Kenya Bureau of Standards, the testing and certification of building products, construction methods, building components and building systems;

(g) establish a regulatory appeals process;

(h) facilitate and promote curriculum development and training on the National Building Regulations;

(i) regulate the standard of training for certified checkers and accredited checkers, building control officers and fire prevention officers;

Collaboration of Government institutions for regulating the built environment.

**5.** (1) Subject to the Constitution (2010) and County Government Act (2012), this Act establishes the role of the county governments and the National Buildings Inspectorate in building control. They shall have the following functions:

Constitution of Kenya (2010)

Urban Areas and Cities Act (2011)

(a) Subject to the Urban Areas and Cities Act (2011), and Physical Planning Act (1996), county governments shall have primary operational responsibility for development and building control in their respective jurisdictions. County Governments institutions responsible for planning and development control shall have the following functions related to the regulation of the built environment:

Physical Planning Act (1996)

(i) facilitate the development and adoption of county physical development plans and local physical development plans;

(ii) granting development permission;

(iii) building permit approval and issuance – including review of structural and architectural plans;

(iv) on-site inspection during construction;

(v) monitoring of compliance with building materials and practice standards;

(vi) issuing occupation certificates ;

(vii) periodic post-construction inspections regarding building use and modification related to safety. This may result in the issuance of notices and closure orders for

dangerous buildings;

- (viii) establish and maintain a county regulatory appeal tribunal panel, as outlined in Part VI of this Act.

(b) The Inspectorate established under Part II of this Act shall have the following functions related to the regulation of the built environment:

- (i) develop and maintain the National Building Regulations. The Inspectorate shall lead a participatory process to develop and maintain the National Building Regulations, as detailed in Part V of this Act;
- (ii) develop and maintain guidelines for small and residential buildings. As detailed in Part V of this Act, these guidelines will be part of the National Building Regulations and applicable to and enforceable for single-story vernacular construction in urban rural areas;
- (iii) intervene in the case of dangerous existing buildings, in coordination with county governments;
- (iv) provide oversight for uniform enforcement of the National Building Regulations, building standards, and penalties across counties;
- (v) provide technical, administrative and advisory support to county building control authorities to enable them to effectively enforce the National Building Regulations. This support will include the provision of training and where necessary, seconding Inspectorate staff to reinforce their capacity;
- (vi) subject to the provisions of the National Museums and Heritage Act, the Inspectorate shall recommend reconstruction procedures for buildings of national architectural value or historic importance.
- (vii) Coordinate with other institutions including but not limited to the Kenya Bureau of Standards and the Kenya Building Research Centre in support of the operational activities of the county authorities responsible for development and building control;
- (viii) set the standards for certified checkers and accredited checkers;
- (ix) develop, promote, review and co-ordinate training programmes, organized by public and private training

centres for building officers and fire prevention officers;

- (x) evaluate the performance of county authorities responsible for building control and set standards for their accreditation;
- (xi) provide support to county governments to introduce technology to support the building control function;
- (xii) conduct built environment education and awareness campaigns;
- (xiii) maintain a national building registry – details of which are outline in Part II of this Act;
- (xiv) provide an advisory function for the Cabinet Secretary on matters of general policy related to the administration of this Act and any regulations made under this Act.

(2) The following, but not limited to, list of institutions have an existing mandate relevant to the regulation of the built environment and building industry more generally. The following institutions, as well as the Inspectorate and County Governments, shall collaborate for the purpose of ensuring the safety, quality and sustainability of the built environment.

Standards Act (2012)

- (a) subject to the Standards Act (2012), The Bureau of Standards develops standards for building products, construction methods, building components, building systems and standards required for reference in the National Building Regulations.

The National Construction Authority Act (2011)

- (b) subject to the National Construction Authority Act (2011), The National Construction Authority has responsibility for the accreditation of construction firms, certification of construction workers and construction site supervisors, the registration of construction projects and the training and certification of construction workers.

Engineers Act (2011)

- (c) The Kenya Building Research Centre maintains literature and material references on building materials and techniques and conduct and disseminate research on affordable, sustainable and resilient building materials and techniques.
- (d) Subject to the Engineers Act (2011), The Board of Engineers manages the examination and registration of engineers and reviews professional engineering educational programs based on the National Building Regulations.

Architects and Quantity Surveyors Act (2012)

- (e) Subject to the Architects and Quantity Surveyors Act (2012), the Board of Architects and Quantity Surveyors registers qualified architects and quantity surveyors and reviews professional educational programs based on the National Building Regulations.

- (f) Subject to The Physical Planners Registration Act (1996), the Physical Planners Registration Board manages the examination and

Physical Planners  
Registration Act (1996)

registration of eligible persons to practice physical planning.

National Management  
and Coordination Act  
(1996)

- (g) Subject to the Environmental Management and Coordination Act (1996), The National Environmental Agency requires environmental impact assessments for new buildings, issues certificates for qualified environmental impact experts and approves and issues environmental impact assessment licenses.

Occupational Safety and  
Health Act (2007)

- (h) Subject to the Occupational Safety and Health Act (2007), The National Council for Occupational Health and Safety regulates workplaces to ensure the health and safety of buildings, including cleanliness, fire prevention, overcrowding, ventilation, lighting, drainage of floors, sanitary conveniences. On successful inspection a certificate of registration is issued by the Council.

## **PART II – THE NATIONAL BUILDINGS INSPECTORATE**

### *Establishment of the Inspectorate*

Establishment of the  
National Buildings  
Inspectorate

6. (1) There is established an Inspectorate to be known as the National Buildings Inspectorate.
- (2) The Inspectorate shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of-
- (a) suing and being sued;
  - (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
  - (c) borrowing money;
  - (d) entering into contracts; and
  - doing or performing all other things or acts for the proper performance of its functions under this Act which may be lawfully done or performed by a body corporate.

Offices of the  
Inspectorate

7. (1) The headquarters of the Inspectorate shall be in the Capital City of Kenya or its environs, but the Inspectorate shall ensure representation in all the counties in the country.
- (2) The Inspectorate may establish other offices in such locations as the Board may determine.

Functions of the  
Inspectorate

8. The functions of the Inspectorate are outlined in section 5b of this Act and select functions are further elaborated below in sections 9 to 30.

***Dangerous Buildings and Facilities***

Functions of the  
Inspectorate for  
Dangerous Buildings

- 9.** (1) If the county government requests support from the Inspectorate, or where the Inspectorate has evidence to suggest that a building or facility poses any immediate hazard or danger to any person, the Inspectorate shall take such steps as may be necessary, including:
- (a) Leading a coordinated response involving the county government and relevant institutions;
  - (b) Taking such steps as may be necessary to remove the danger, including ordering closure of the building or facility.
- (2) If further action is required after (1), including more remedial measures such as continued closure of a building or facility, significant remedial work or demolition, the Inspectorate shall designate an accredited checker or certified checker to conduct an audit to provide reasonable grounds for taking such measures.
- (3) Before exercising its powers under this section, the Inspectorate shall, if it is reasonably practical, give notice of its intention to the owner and every occupier of the building or facility.

***Registration of Buildings***

Functions of the  
Inspectorate for the  
Registration of  
Buildings

- 10.** (1) The Inspectorate shall, for the purposes of inspection, maintenance, evacuation and accessibility, keep and maintain a register referred to as the "Register of Buildings" in which the prescribed particulars of all buildings which comply with the requirements of this Act and which have been issued with a certificate of occupation shall be entered.
- (2) The absence of the particulars of a building from the Register shall be *prima facie* evidence that the building is not registered and, does not comply with the requirements of this Act.

Access to Register of  
Buildings

- 11.** (1) The Register of Buildings shall be a public document and any person may, upon payment of a fee to be prescribed by the Inspectorate, apply for a certificate of search of any registered building.
- (2) The Register of Buildings shall be available to county governments for reference.

Particulars of Register  
of Buildings

- 12.** The Register of Buildings shall contain the following particulars:
- (a) registration number allocated by the Inspectorate;
  - (b) Land Registration Number

- (c) physical location of the building;
- (d) size of the land on which the building is situated;
- (e) limitation of use;
- (f) last inspection date;
- (g) next inspection date;
- (h) building's plan approval number;
- (i) name of the owner;
- (j) area of the building in square metres;
- (k) height of the building in storey's or floors;
- (l) date of registration, and
- (m) any other particulars that the Inspectorate may by notice require to be contained in the Register

Registration of new buildings

- 13.** (1) County governments shall register all private buildings under their jurisdictions when an occupation certificate is issued. The particulars to be included in the registration of a building are outlined in Section 12.
- (2) The Chief Architect for the time being in charge of public works shall register all public buildings when an occupation certificate is issued. The particulars to be included in the registration of a building are outlined in Section 12.
- (3) County governments and the Chief Architect shall submit the stipulated registration particulars to the Inspectorate, including any changes to the particulars of a registered building, at set intervals every year – intervals shall be stipulated by the Inspectorate.

Registration of existing buildings

- 14.** (1) When available, county governments and the Chief Architect shall also submit any archived records of occupation certificates to the Inspectorate.

Archiving audit reports

- 15.** Certified checkers and accredited checkers shall submit their audit reports, to the respective county government and the Inspectorate in order that it can be added to the building registry.

### ***Certified Checkers and Accredited Checkers***

Role of the Inspectorate for certifying and accrediting checkers

- 16.** (1) The Inspectorate will have oversight over certified checkers and accredited checkers.
- (2) The Inspectorate will have the following functions:

- (i) establish criteria and standards for certification and



accreditation;

- (ii) establish a certification and accreditation committee following the provisions of Section 23;
- (iii) chair an inquiry panel to address cases of negligence or misconduct;
- (iv) maintain a listing of certified checkers and accredited checkers.

**17.** Both individuals and firms shall be eligible for certification and accreditation respectively.

Qualification for certification and accreditation

- (a) Eligible individuals for certification shall be Qualified Persons registered by their respective professional registration Boards and can include:

- (i) Staff of the Inspectorate
- (ii) Third parties

- (b) Eligible firms for accreditation shall include Qualified Persons registered by their respective professional registration Boards.

**18.** (1) There shall be three categories of certified checkers and accredited checkers, including:

Duties of certified checkers and accredited checkers

- (i) Plan Reviewers in support of the building permitting process;
- (ii) Building Site Inspectors in support of the building construction process;
- (iii) Building Auditors in support of inspections and audits of existing buildings.

(2) The duties of a Plan Reviewer shall be:

- (a) Evaluating, analysing and reviewing the structural design in the plans of any building works of the prescribed category and perform such original calculations with the view to determining the adequacy of the key structural elements of the building to be erected or affected by building works carried out in accordance with those plans.
- (b) Verifying that key structural elements designed are in compliance with the National Building Regulations, including:
  - (i) checking the design loading and, where applicable, wind loading;
  - (ii) checking the standards and specifications of materials to be used in the building works;
  - (iii) ascertaining the structural design concept used and identify the key structural elements;
  - (iv) analysing all key structural elements and the foundation

system of the building to be erected or affected by buildings works carried out in accordance with those plans

- (v) determining the stability of the structural frame;
- (vi) checking structural detailing; and
- (vii) determining the adequacy of other aspects of the design which are peculiar to the building to be erected or affected by the building works and which are essential to the structural integrity of the building.

(3) The duties of a Building Site Inspector shall be:

- (a) checking excavation works;
- (b) checking placement of rebar;
- (c) checking the quality of concrete by taking materials samples for testing;
- (d) checking structural connections;
- (e) checking plumbing, mechanical systems installations;
- (f) carrying out basic check in terms of fire safety system and egress;
- (g) checking accessibility.

(4) The duties of a Building Auditor shall be:

- (a) checking for structural safety;
- (b) carrying out checks for fire safety, including checks of storage of hazardous materials and obstruction of means of egress;
- (c) checking floor loads;
- (d) checking the functions of plumbing and mechanical systems;
- (e) checking for materials deterioration that would affect safety of occupants.

**19.** (1) The services of certified checkers and accredited checkers may be engaged by the following entities or individuals:

- (a) The Inspectorate
- (b) County governments
- (c) Building owners

(2) The entities and individuals referred to in (1) may engage the services of the following certified checkers and accredited checkers:

- (a) The Inspectorate may engage the services of:
  - (i) Plan Reviewers in the case of public buildings and in circumstances as detailed in Section 61(3);
  - (ii) Building Site Inspectors in the case of public buildings and in circumstances as detailed in Section 69(3) and 78(3);

Engaging certified  
checkers and accredited  
checkers

(iii) Building Auditors in the case of the periodic audits of existing buildings as detailed in Section 79 and inspections of dangerous buildings as detailed in Section 84 and 85.

(b) County governments may engage the services of:

- (i) Plan Reviewers, for the functions outlined in Section 61;
- (ii) Building Site Inspectors, for the functions outlined in Section 69;
- (iii) Building Auditors in the case of the periodic audits of existing buildings as detailed in Section 79 and inspections of dangerous buildings as detailed in Section 84 and 85.

(c) Building owners may engage the services of:

- (i) Building Auditors in the case of the periodic audits of existing buildings as detailed in Section 80.

**20.** It shall be the duty of certified checkers and accredited checkers to notify the county government or the Inspectorate in respect of any such contravention or non-compliance with the provisions of the Act:

Provided that nothing in this Act shall impose any such duty on a certified checker or accredited checker in respect of any such contravention or non-compliance with the accredited checker did not know and could not have reasonably discovered.

Reporting Duty

**21.** (2) The Inspectorate shall keep and maintain a list referred to as the “Certified Checkers and Accredited Checkers List” in which shall be entered the names and prescribed particulars of all persons and firms certified and accredited in accordance with this Act, and the absence of the name of any person from the list shall be prima facie evidence that the person is not accredited.

Certified checkers and  
accredited checkers List

(3) The list shall be kept and maintained at the offices of the Inspectorate and shall be available for inspection without charge by any person during office hours.

(3) The list shall be available to the County Governments.

**22.** (1) In order to engage the services of a certified checker or an accredited checker, the individual or firm shall be required to have no professional or financial interest in the building works shown in the plans described or in the existing building.

Independence of  
certified checkers and  
accredited checkers

(4) A certified checker or accredited checker shall be regarded as having a professional or financial interest in any building works or existing building if-

- (a) he, or his firm, is or has been responsible for the design, construction or maintenance of any of the building works in any capacity;
- (b) he or his nominee is a member, officer or employee of a company or other body which has a professional or financial interest in the building works or existing building;
- (c) he is a partner or is in the employment of a person who has a professional or financial interest in the building works or existing building;

(5) For purposes of this Act-

- (a) a person or firm shall be treated as having a professional or financial interest in the building works even if he has that interest only as trustee for the benefit of some other person; and
- (b) in the case of married people, the interest of one spouse shall, if known to the other be deemed to be also an interest of the other.

(6) For the purpose of this Act –

- (a) involvement in the building works or existing building as an accredited checker; and
- (b) entitlement to any fee paid for his function as an accredited checker

shall not be regarded as constituting a professional or financial interest

**23.** The Inspectorate shall appoint a committee to be referred to as the Certification and Accreditation Committee to assist it in considering applications for accreditation of building officers and third-party checkers.

**24.** (1) The Certification and Accreditation Committee shall consist of –

- (a) the Director, building inspection and audit of the Inspectorate as Chairperson of the Committee;
- (b) one Architect nominated by architectural association of Kenya;
- (c) one Engineers nominated by Institution of Engineers of Kenya

Certification and  
accreditation committee

Composition of  
accreditation committee

- (d) one Quantity surveyor nominated by Institution of quantity surveyors of Kenya
  - (e) two Building Services Engineers Institution of Engineers of Kenya
  - (f) one physical planner nominated by Kenya Institute of Planners
  - (g) one building surveyor nominated by surveyors of Kenya
  - (h) one interior designer nominated by Kenya Building Research Centre
  - (i) an officer of the Inspectorate who shall be the Secretary to the Committee; and
  - (j) one person nominated by association of persons living with disability of Kenya
- (2) The person appointed under sub section(1)(b)-(h) shall be approved by the Board of the Inspectorate;
- (3) The Certification and Accreditation Committee shall consider the applications for inclusion in the certified and accredited checkers' list, by—
- (a) examining the qualifications of applicants;
  - (b) making such inquiries as it may consider necessary to ascertain whether an applicant has the prescribed experience; and
  - (c) advising the Inspectorate as to the acceptance or rejection of applications for inclusion in such lists.
- (4) The certification and accreditation committee shall meet at least twice a year at such times and places as the Inspectorate may appoint.
- (5) The quorum for a meeting of the certification and accreditation committee shall be two thirds of the members.
- (6) The chairperson shall preside at every meeting of the accreditation committee at which he is present, and in his absence, the committee shall elect from amongst those present, a member to act as chairperson.
- 25.** (1) Every applicant for certification or accreditation shall submit an application to the Secretary of the Certification and Accreditation Committee, and every such application shall be accompanied by such documents and particulars as may be relevant.
- (2) A person or firm shall qualify as a certified checker or accredited checker if they -
- (a) are a Qualified Person registered under their respective Acts or

includes these professionals in the firm; and

- (b) have at least ten years post registration experience in the relevant profession.
- (3) Unless that person or firm satisfies the Inspectorate that he or they possess the prescribed qualifications and practical experience under the relevant Acts.
- (4) The Inspectorate may refuse to accredit any applicant who is, in its opinion, not suitable and shall provide reason for refusal in writing.
- (5) Where the Inspectorate has certified a person or accredits a firm, shall issue to the person or firm a certificate.
- (6) The Inspectorate may cancel the certification or accreditation of –
  - (a) a person who:
    - (i) who is deceased;
    - (ii) who has been deregistered by his relevant professional body
  - (b) a person or firm:
    - (i) who are convicted of an offence involving fraud or dishonesty or an offence under this Act;
    - (ii) who, in the opinion of the Inspectorate is no longer in a position to carry out the duties in accordance with this Act;
    - (iii) whose name has been included in the list through fraud or misrepresentation
    - (iv) who has contravened or failed to comply with Section 19:

Provided that the Inspectorate shall not exercise its powers under this sub-section unless an opportunity of being heard has been given to the certified or accredited checker against whom the Inspectorate intends to exercise its powers.

- (7) Where the Inspectorate cancels the certification or accreditation under subsection (6), it shall remove the name and particulars of the person or firm from the list and cancel any certificate issued to the person or firm pursuant to subsection (5) and the person or firm shall, within fourteen days of being notified of the removal, surrender to the Inspectorate, the said certificate and, if the person or firm wilfully fails to do so, he shall be guilty of an offence.
- (8) Any person or firm whose application for certification or accreditation under sub-section (1) is rejected or deferred, or who is dissatisfied with the decision of the Inspectorate made under sub-section (4), may within fourteen days of being notified in writing of the refusal or the decision, appeal under section 93, to the Appeal Tribunal, against such refusal or decision:

Provided that if the appeal is against a decision made under subsection (6) the name of the appellant shall remain in the relevant

list pending the determination of the appeal.

**26.** In respect of every application, the Inspectorate shall within three months from the date of the meeting of the certification and accreditation committee at which the application was considered-

- (a) on payment by the applicant of the prescribed fee, publish and enter in the appropriate list, as the case may be, the name of the applicant;
- (b) inform the applicant that the application is deferred and the reasons thereof for a period not exceeding twelve months; or
- (c) refuse the application and furnish the applicant with the reasons thereof.

Consideration of application

**27.** An application that has been deferred under section 26 (b) may, when under reconsideration-

- (a) be accepted, so that the applicant is scheduled in the appropriate list, as the case may be, upon payment-of the prescribed fee; or
- (b) be refused.

**28.** The Inspectorate shall in each year, publish the names of the certified checkers and accredited checkers in the Gazette.

**29.** (1) A person or firm whose name is removed under Section 25 may apply to the Inspectorate in the prescribed form for the restoration of their name:

Deferred applications

(2) On receipt of an application under sub-section (1) the Inspectorate may—

- (a) restore the name of the applicant as requested;
- (b) require that the applicant pay any penalty that the Inspectorate may impose for failure by the applicant to pay the prescribed fees on time;

Publication

(c) defer the consideration of the application to the next meeting of the Inspectorate called to consider such applications; or

Restoration to the list

(d) refuse to restore the name of the applicant in any of the lists.

Complaints Inquiry Panel

**30.** (1) The Inspectorate may, from time to time, appoint a panel to inquire into complaints made against any certified checkers and accredited checker.

(2) Every panel appointed under subsection (1) shall consist of—

- (a) One person nominated by the Board of Engineers;
- (b) One person nominated by the Board of Architects and Quantity Surveyors.

(c) One person nominated by the Inspectorate.

(3) Each panel appointed under this section shall be chaired by a member of the Board of the Inspectorate.

(4) The members of any panel appointed under this section shall be remunerated at such rate as the Inspectorate may with the advice of Salaries and Remuneration Commission determine from time to time.

Powers of the Inquiry  
Panel

**31.** (1) For purposes of any inquiry under sub-section (1), a panel appointed under this section shall have powers to—

- (a) enforce the attendance of witnesses and examine them on oath or otherwise;
- (b) compel the production of documents;
- (c) order the inspection of premises; and
- (d) enter and view any premises as per need.

(2) Where it is established by the Inspectorate that a certified checker or accredited checker has been convicted by a court of law of such offence or has been guilty of such negligence or misconduct as to—

- (a) render such person or firm unfit;
- (b) make the further inclusion of such person in the relevant Professionals' list prejudicial to the due administration of this Act; or
- (c) render such person deserving of censure, the Inspectorate may notify the panel appointed under section 30.

(3) Where, after due inquiry, the panel is satisfied that a certified checker or accredited checker is guilty of negligence or misconduct, the panel may—

- (a) suspend the person or firm from the relevant list until such person or firm has been cleared by the relevant professional registration board; or
- (b) recommend that such person or firm be reprimanded by the board of the Inspectorate.

(4) On an inquiry under this section, a panel may make such order as it deems fit with regard to the payment of the costs of the inquiry.

Appeals

**32.** (1) Any certified checker or accredited checker aggrieved by any order made against them under this section may appeal to the Appeal Tribunal, described in Part VI and upon any such appeal the Tribunal



may confirm, reverse or vary the order of the panel:

Provided that if the appellant's name has been ordered removed from any list, the name shall remain in the list pending the determination of the appeal.

(2) The decision of the Tribunal on any appeal under subsection (1) shall be final.

### **PART III – MANAGEMENT OF THE NATIONAL BUILDINGS INSPECTORATE**

Board of the  
Inspectorate

**33.** (1) The Management of the Inspectorate shall vest in a Board which shall consist of;

- (a) a non – executive Chairperson who shall be appointed by the President;
- (b) the Principal Secretary in the Ministry for the time being responsible for the Public Works;
- (c) the Principal Secretary to the Treasury;
- (d) the Attorney General;
- (e) the Principal Secretary in the Ministry for the time being responsible for devolved government;
- (f) three distinguished professionals in the built environment sector, appointed by the Cabinet Secretary from a list of nominees submitted by each of the professional Institutions related to the built environment, of whom-
  - (i) one shall be an Engineer nominated by Institution of Engineers of Kenya;
  - (ii) one shall be an Architect nominated by Architectural Association of Kenya; and
  - (iii) one shall be a Planner nominated by Association of Physical Planners of Kenya.
- (g) the Chief-Executive shall be an *ex-officio* member.

(2) The Chairperson and members of a Board, other than *ex-officio* members shall hold office for a period of three years and shall be eligible for re-appointment for one further term.

(3) The appointment of a Chairperson appointed under subsection (1) or a member appointed under subsection (1) (f) shall cease if the member-

- (a) is absent from three consecutive meetings of the Board without

leave or reasonable cause;

- (b) is convicted of a criminal offence;
- (c) is incapacitated by mental or physical illness or is otherwise unable or unfit to discharge the functions of chairperson or member;
- (d) is adjudged bankrupt;
- (e) is removed by the Cabinet Secretary as per section 34
- (f) resigns by notice in writing, in the case of the chairperson to the President, or in the case of a member to the Cabinet Secretary.

(4) The Chief Executive Officer shall be the Secretary of the Board.

Removal from Office of  
a Board Member

**34.** (1) A Board Member, other than an ex-officio member or the holder of an independent office, may be removed from office for the following reasons-

- (a) serious violation of the constitution or any other law;
- (b) gross misconduct;
- (c) physical or mental incapacity to perform the functions of office;
- (d) incompetence;
- (e) bankruptcy

(2) The Cabinet Secretary shall constitute a tribunal to investigate a recommendation or petition to remove a Board member from Office

(3) The Cabinet Secretary, on considering the recommendation of the tribunal, may in writing remove the Board Member from Office or retain the Board Member.

Remuneration of Board  
Member

**35.** There shall be paid to the members of the Board, such remuneration and allowances as determined by the Salaries and Remuneration Commission.

Powers of the Board

**36.** The Board shall have all the powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to-

- (a) set and implement the National Building Regulations;
- (b) audit any building and order maintenance, sealing off,

evacuation, demolition of dilapidated or dangerous buildings and buildings not conforming to this Act;

- (c) take such other action as may be necessary in the furtherance of the objectives of this Act;
- (d) enter into contracts;
- (e) determine, and impose charges, for any services performed by the Inspectorate;
- (f) manage, control and administer the assets of the Inspectorate in such manner and for such purposes as best promotes the purpose for which the Inspectorate is established;
- (g) receive gifts, grants, donations or endowments made to the Inspectorate and make disbursement there from in accordance with the provisions of this Act;
- (h) subject to the approval of the Cabinet Secretary for the time being responsible for matters relating to finance, invest any of the Inspectorate funds not immediately required for the purposes of this Act, as it may determine;
- (i) open a bank account for the funds of the Inspectorate into which all moneys received by the Inspectorate shall be paid in the first instance and out of which all payments made by the Inspectorate shall be made.

Committees of the Board

**37.** (1) The Board may establish such committees as it may consider necessary for the performance of its functions and the exercise of its powers under this Act.

(2) The Board may select a person to sit on any committee established under subsection (1), whose knowledge and skills are found necessary for the performance of the functions of the Board.

Delegation by the Board

**38.** The Board may by resolution either generally or in any particular case, delegate in writing any of its functions under this Act or any other written law, to any committee of the Board or to any member, officer, employee or agent of the Inspectorate and may at any time revoke or vary such delegation:

Provided that no such delegation shall be deemed to divest the Inspectorate of all or any of its functions, and it may, if it deems fit,

perform such function notwithstanding the delegation:

Conduct of Business  
and Affairs of the Board

**39.** The Second Schedule shall apply with respect to the conduct of the affairs of the Board.

Chief Executive Officer

**40.** (1) There shall be a Chief Executive Officer of the Inspectorate who shall be competitively recruited and appointed by the Board, on such terms and conditions as the Board shall determine.

(2) Subject to Article 232 of the constitution, a person shall not be qualified for appointment as a Chief Executive Officer under subsection (1) unless the person –

- (a) holds a degree from a university recognized in Kenya in a field related to the built environment;
- (b) has practised as a professional in the built environment for not less than fifteen years;
- (c) has proven experience of not less than five years in administration or management; and
- (d) is compliant with Chapter Six of the Constitution.

(3) The Chief Executive Officer shall be an *ex-officio* member of the Board and shall have no power to vote at any meeting of the Board.

Duties of Chief  
Executive Officer

**41.** (1) The Chief Executive Officer shall be the chief executive officer of the Inspectorate and responsible to the Board for the day-to-day management of the affairs of the Inspectorate.

(2) In the performance of the functions specified under this Act, the Chief-Executive Officer shall, subject to the direction of the Board-

- (a) manage the funds and property of the Inspectorate;
- (b) be responsible for the management of the staff of the Inspectorate;
- (c) implement the policies, programmes and objectives of the Inspectorate;
- (d) ensure full implementation of the decisions of the Board
- (e) cause to be prepared for the approval of the Board-
  - (i) the strategic plan and annual plan of the Inspectorate; and

- (ii) the annual budget and audited accounts of the Inspectorate;  
and
- (g) perform such other duties as may be assigned by the  
Board.

Removal of a Chief  
Executive Officer

**42.** The board shall establish procedures for the removal of a Chief Executive Officer

Staff of the Inspectorate

**43.** (1) The Board may appoint such other officers, agents, and staff as may be necessary for the proper and efficient discharge of the functions of the Inspectorate.

(2) The staff appointed under sub-section (1) shall serve on such terms and conditions as the Board may, in consultation with the Salaries and Remuneration Commission, determine.

(3) The officers, staff and agents appointed under sub-section (1) shall, subject to this Act exercise such powers and perform the duties assigned to them from time to time by the Director General.

#### **PART IV – FINANCIAL PROVISIONS OF THE NATIONAL BUILDINGS INSPECTORATE**

Funds of the Inspectorate

**44.** The funds of the Inspectorate shall comprise of-

- (a) such moneys as may accrue to, or vest in the Inspectorate in the course of the exercise of its powers or the performance of its functions under this Act;
- (b) such moneys as may be payable to the Inspectorate pursuant to this Act or any other written law;
- (c) such gifts as may be donated to the Inspectorate;
- (d) such moneys as may be appropriated by Parliament for the purposes of the Inspectorate; and
- (e) moneys from any other source granted, donated or lent to the Inspectorate.

The National Building  
Inspectorate Fund

**45.** (1) There is to be established a Fund to be known as the National Buildings Inspectorate Fund which shall vest in the Inspectorate.

- (2) There shall be paid into the Fund-
  - (a) moneys appropriated by Parliament;
  - (b) the levy imposed under section 107;
  - (c) grants and donations made to the Inspectorate; and
  - (d) moneys from a source approved by the Inspectorate.
  
- (3) The Inspectorate shall apply the moneys received into the Fund to-
  - (a) carry out the operations of the Inspectorate,
  - (b) conduct research activities and audits on the built environment;
  - (c) conduct built environment education and awareness campaigns;
  - (d) implement built environment strategies;
  - (e) conduct training and capacity building for county governments.
  
- (4) All receipts, savings and accruals for the Fund and the balance of the Fund at the end of the financial year shall be retained for the purposes for which the Fund is established.
  
- (5) There shall be paid out of the Fund any expenditure incurred by the Inspectorate in the exercise of its powers or the performance of its functions under this Act.

Investment of funds

**46.** (1) The Inspectorate may invest any of its funds in securities in which for the time being trustees may by law invest in trust funds, or in any other securities which the Treasury may, from time to time, approve for that purpose.

(2) The financial year of the Inspectorate shall be the period of twelve months ending on the thirtieth June in each year.

Financial year

**47.** (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Inspectorate for that year.

Annual estimate

(2) The annual estimates shall make provision for all estimated expenditure for the Inspectorate for the financial year concerned.

(3) The annual estimates prepared by the Board under subsection (2) shall be submitted to the Cabinet Secretary for tabling in the National Assembly.

Annual reports

**48.** The Board shall, within a period of three months after the end of each

financial year, submit –

- (a) to the Auditor-General, the accounts of the Inspectorate from that financial year, together with:
  - (i) a statement of the income and expenditure of the Inspectorate during that year; and
  - (ii) a statement of the assets and liabilities of the Inspectorate on the last day of that financial year.
  
- (b) to the Cabinet Secretary, an annual report for that financial year, containing:
  - (i) the accounts of the Inspectorate and statements referred to under paragraph (a);
  - (ii) the Inspectorate performance indicators and any other related information;
  - (iii) a report on the operations of the Inspectorate during that year; and;
  - (iv) such other information as the Cabinet Secretary may request.

Accounts and audit

**49.** (1) The Inspectorate shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Inspectorate.

(2) The annual accounts of the Inspectorate shall be prepared, audited and reported upon in accordance with the provisions of the Public Audit Act.

## **PART V— NATIONAL BUILDING REGULATIONS**

National Building  
Regulations

**50.** (1) For the purposes of this Act, there shall be National Building Regulations comprised of a series of regulations for different categories of building work, which shall be called the “National Building Regulations.”

(2) Except as otherwise provided in this Regulation, no person shall commence or carry out, permit or authorize the commencement or carrying out of any building works and associated civil works unless all the architectural and structural plans and other relevant documents have complied to the standards set in the regulations under this Act and any other applicable laws.

(3) Each of the following persons shall comply with the National Building Regulations in respect of building work being executed by the person or otherwise under the responsibility of the person, namely-

- (a) the builder;
- (b) the owner or occupier of the land where building work has been carried out, is being carried out or is to be carried out;
- (c) a person who carries out or takes steps to carry out the building work on any land and any other person concerned in the management of the building work on the land;
- (d) a building professional who prepares plans and specifications for the building work.

(4) Any person who contravenes or fails to comply with sub-section (2) commits an offence and shall be liable on conviction to a fine not exceeding One million shillings or to imprisonment for a term not exceeding six months or both.

Supplementary Standards  
for Public Buildings

**51.** Supplementary building standards may apply to public buildings, including but not limited to schools and health facilities.

Content of the National  
Building Regulations

**52.** The National Building Regulations shall include regulatory provisions related to the following areas-

- (a) Administrative provisions related to-
  - (i) applications for approval of development plans;
  - (ii) applications for approval of building plans;
  - (iii) qualifications and certificates of identity for building control officers and third-party accredited checkers;
  - (iv) classification and designation of occupancies
  - (v) notices and orders;
  - (vi) site inspections;
  - (vii) certificates of occupation
  - (viii) fees
- (b) structure and materials-
  - (i) structure, foundations and excavations
  - (ii) materials and workmanship
  - (iii) floors
  - (iv) walls
  - (v) roofs
  - (vi) glazing and cladding
- (c) building services-



- (i) stairways, ramps, guards, lifts
  - (ii) lighting, ventilation, condensation, heating, energy efficiency and thermal comfort
  - (iii) water services, drainage, waste disposal and storm water
  - (iv) non-water-borne means of sanitary disposal
  - (v) electrical installations
  - (vi) refuse disposal
- (d) safety, disaster risk management, and management-
- (i) fire safety, fire installations
  - (ii) inspections of buildings and maintenance
  - (iii) disaster risk management on construction sites and the built environment. In relation to natural hazards, seismic, wind and any other hazard maps deemed appropriate will be referenced and integrated into the Kenya Building Regulation provisions.
- (e) residential and small building guidelines targeted at and enforceable for single storey vernacular residential buildings constructed traditionally by persons in rural and urban areas –
- (i) specific administrative provisions, including a prominent advisory role for building control officers.
- (f) resource efficiency (water and energy)
- (i) water conservation and management and in particular, rain water harvesting
  - (ii) energy conservation
  - (iii) renewable energy.
- (g) Accessibility and usability, with special attention to the elderly and persons disabilities;
- (h) any additional area that the National Building Regulations Council, established in Section 55 b deems appropriate.

**53.** The Inspectorate shall be responsible for:

- (a) preparing a draft of the National Building Regulations;
- (b) establishing the National Building Regulations Council;
- (c) convening a National Building Regulations Council who will be responsible for reviewing and approving the National Building Regulations. The National Building Regulations Council shall include representatives from, but not limited to:
  - (i) the Board of Engineers;

- (ii) the Board of Architects;
  - (iii) the Board of Physical Planners;
  - (iv) the Board of Quantity Surveyors;
  - (v) the National Construction Authority;
  - (vi) Kenya Building Research Centre;
  - (vii) The National Disaster Management Unit;
  - (viii) The Kenya Bureau of Standards;
  - (ix) county government authorities responsible for development control;
  - (x) county government authorities responsible for building control;
  - (xi) county government authorities responsible for fire prevention;
  - (xii) county government authorities responsible for disaster management;
  - (xiii) The Council of Governors, including the urban committee of the Council of Governors;
  - (xiv) Institution of Engineers of Kenya;
  - (xv) Architectural Association of Kenya;
  - (xvi) Urban and County Planners Association of Kenya;
  - (xvii) Kenya Association of Building and Civil Engineering Contractors;
  - (xviii) Kenya Federation of Master Builders;
  - (xix) Association of Kenya Insurers;
  - (xx) Mortgage Bankers Association
  - (xxi) Landlords and Tenants Association of Kenya;
  - (xxii) Academic institutions related to building and real estate industries.
- (d) advising the Cabinet Secretary on all matters related to the National Building Regulations.

**54.** Affording the public an opportunity to make comments and representations on the initial draft of the National Building Regulations, and subsequent updates and modifications, within sixty days, including by –

- (a) displaying a notice in a conspicuous place at the office at the offices of every county government; and,

- (b) arrange for such publicity as the Cabinet Secretary thinks appropriate in relation to the proposal.

National Building  
Regulations promulgation  
process

**55.** (1) The Cabinet Secretary shall be responsible for promulgating the National Building Regulations.

(2) The National Building Regulations will be legally binding for all new construction after the promulgation of the National Building Regulations at a date to be specified by the Cabinet Secretary.

National Building  
Regulations update process

**56.** (1) The Inspectorate shall be responsible for the update of the National Building Regulations at a period specified by the Board. All modifications must be reviewed and approved by the National Building Regulations Council.

Access to National Building  
Regulations

**57.** (1) The National Building Regulations and any amendment or replacement shall be published in the Gazette.

(2) The National Building Regulations shall be made available online and for sale by the Inspectorate.

## **PART VI—REGULATORY COMPLIANCE AND ENFORCEMENT**

Development and Building  
Control Functions

**58.** (1) County governments will establish and maintain the necessary organization to execute the functions outlined in Section 6 and elaborated throughout Part VI.

(2) The county government may establish a contract with certified checkers or accredited checkers in order to supplement staff capacity for building plan review and inspection. The certified or accredited checker must be accredited by the Inspectorate through the prescribed process outlined in Sections 16 through 32;

(3) The Inspectorate will provide technical and administrative support to county governments in delivering these functions, as outlined in Section 7 of this Act.

### ***Development Permission and Building Permits***

Land use plans and  
development permission

**59.** Subject to the provisions of the Physical Planning Act (1996), Urban Areas and Cities Act (2011), and the County Government Act (2012), authorities responsible for planning and development control shall:

Physical Planning Act  
(1996)

(a) facilitate the development and adoption of county physical development plans and local physical development plans. Both

plans should be designed to enable the safe and environmentally friendly siting of building works, taking into account areas vulnerable to natural hazards;

- (b) review and make determinations on development applications in respect to all proposed buildings within its area of jurisdiction and issue development permission, as provided for under the Physical Planning Act (1996).

**60.** (1) Subject to the provisions of the Urban Areas and Cities Act (2011) and the County Government Act (2012), the county government shall review and make determinations on building permit applications in respect to all proposed building works, including new construction, change of use, and significant modification, within its area of jurisdiction to ensure compliance with the National Building Regulations.

(2) This review will be conducted in coordination with other institutions responsible for health, environment, fire safety and disaster management.

(3) When requested and when feasible, the Inspectorate may provide assistance to the county government to conduct this function.

**61.** (1) A person who proposes to carry out building work shall apply for the appropriate building permit, in the prescribed form and manner, from the county government.

(2) An application under subsection (1) shall be accompanied by –

- (a) the building designs and plans in relation to the proposed building work;
- (b) evidence of the required development permission;
- (c) evidence of certification of the building designs and plans by a registered design professional who carried out or supervised the preparation of the buildings designs and plans for the proposed building work;
- (d) the prescribed application fee;

(3) Where the county government thinks necessary, the county government may require an applicant to provide such additional information or documentation as it may specify. Other documents that may be required are listed in Schedule II.

**62.** (1) A county government may, in relation to an application for a building permit made under section 62 –

- (i) issue the building permit, subject to such terms and conditions as the county government may specify in the building permit; or

Building plan review and building permits

Application for Building Permit

Issue or refusal of building permit.

(ii) subject to subsection (4), refuse to issue the building permit.

(2) A building permit may be issued for –

- (a) the whole of the proposed building work; or
- (b) any stage of the proposed building work.

(3) Where the county government refuses to issue a building permit, it shall so inform the applicant in writing, stating the reasons for the refusal and advising the applicant of his right to appeal the decision.

(4) If additional information, or a document, or an amendment to the application is required from an applicant is not supplied within the time specified in subsection (2), the application may be refused.

**63.** A permit holder may apply to the county government for the variation or modification of the building permit, stating clearly the reasons for the request. The county government shall review the amended plans in the same manner as described in Section 70.

Variation or modification of building permit

**64.** (1) An owner or occupier of a building shall not undertake or allow a change of building use, as defined in the National Building Regulations, except in accordance with a change of building permit issued by the county government.

Restrictions on Change of Building Use

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding two hundred thousand and must comply with the laid regulations failure to which the county government may specify such other penalties and actions to remedy.

**65.** (1) Subject to subsection (2), the county government, may suspend a building permit if-

Suspension of building permits

(i) the permit holder failed to pay any fee or other charge required by this Act, the National Building Regulations or any other regulations made under this Act;

(ii) the permit holder is in breach of –

(i) Any provision of this Act, the National Building Regulations or any other regulations made under this Act;

(ii) Any term or condition subject to which the building permit is issued.

(iii) it is satisfied that it is not possible to carry out a proper inspection of the building work.

(2) If the county government deems that the building works pose a risk to public safety or other public interest concern it may –

(a) suspend a building permit with immediate effect;

(b) notify the permit holder in writing of the suspension.

(3) The suspension shall continue until the county government is satisfied the circumstances that warranted the suspension have come to an end.

Revocation of building permit

**66.** (1) The county government may revoke a building permit if it is satisfied that a permit holder has failed to comply with this Act, the National Building Regulations, other regulations made under this Act, and other applicable laws, any term of condition specified in the permit in relation to the building work, and the failure is deemed by the county government to be sufficiently serious that the building permit ought to be revoked.

Restoration of building permit

**67.** The county government may restore the building permit when they are satisfied that the permit holder:

(i) took reasonable steps to remedy the breach which gave rise to the suspension of the building permit within the timeframe specified by the county government, and

(ii) is compliant with this Act, the National Building Regulations and any other regulations made under this Act or any terms and conditions specified in the building permit in relation to the building work.

### *Inspections and Enforcement*

Site Inspections

**68.** (1) The county government shall monitor the progress of all building work permitted under this Act in their jurisdiction.

(2) County governments shall:

(i) conduct site inspections of any building of building work under its jurisdiction in order to confirm compliance with the approved building plans and compliance with standards specified for building materials and installation practices within the National Building Regulations;

(ii) as further detailed in Section 71 of this Act, issue certificates of stage of construction compliance at stages of building work to be defined in the National Building Regulations;

(iii) in the event that a permit-holders fails to comply with the approved plans and or material standards, issue an enforcement order.

(iv) As further detailed in Section 71, issue certificates of occupation;

(3) when requested, and when feasible, the Inspectorate may provide assistance to the county government to conduct this function.

Certification of compliance and occupation

**69.** (1) A permit holder or his agent shall not proceed from one stage to the next stage of the building work unless he has been issued with a certificate of stage of construction compliance by the county government. These stages of building works shall be defined in the National Building Regulations;

(2) A permit holder or his agent who seeks the issuance of a certificate of stage of construction compliance in respect of any stage of the building work shall give the county government a notice of compliance in the form prescribed by the county government and await the certificate of stage of construction compliance before proceeding to the next stage.

(3) The county government shall issue a certificate of occupation in relation to building work if, on an application by the owner, the county government is satisfied that—

(a) the building work has been completed in accordance with this Act, the National Building Regulations or any other regulations made under this Act; and

(b) the whole or part of the building, as the case may be, is suitable, safe and ready for occupation.

(4) The whole or part of a building, as the case may be, shall not be occupied until the county government has issued a certificate of occupation in relation to the whole or part of the Building.

**70.** A permit holder or his agent who –

Civil penalty for failure to give notice

(i) fails to give any notice required to be given by that person under this Act; or

(ii) carries out building work or causes or permits building work to be carried out before giving the required notice,

Shall be liable to pay a penalty as may be prescribed by the county government.

Power to enter and inspect building work

(1) A county government building officer may, at all reasonable times, upon production of his authority if so required, at any stage of building work, enter any land and premises and inspect a building or building work for the purpose of ensuring compliance with this Act, the National Building Regulations or any other regulations made under this Act, or any term or condition subject to which the building permit was issued.

(2) The building officer may do all such things as are reasonably necessary for the purpose of the inspection under subsection (1).

(3) A certified checker or accredited checker from or appointed by the Inspectorate may, in case of dangerous or hazardous building works, enter any land and premises and inspect the building works.

Offence or failure to admit  
building official

**71.** A person commits an offence if the person—

- (i) unreasonably refuses to admit a building officer, certified checker or accredited checker to inspect the land or any building or building work under section 65; or
- (ii) wilfully obstructs a building officer, certified checker or accredited checker acting in the exercise of his functions under Section 65.

and shall be liable on conviction to pay a penalty as may be prescribed by the county government.

Enforcement orders

**72.** (1) When it comes to the notice of the county government after the commencement of this Act that the development of land has been or is being carried out without obtaining the required development permission, or that any of the conditions of a development permission granted by county governments have not been complied with, the county government may serve an enforcement notice on the owner, occupier or developer of the land.

(2) An enforcement notice shall specify the development alleged to have been carried out without development permission, or the conditions of the development permission alleged to have been contravened and such measures as may be required to be taken within the period specified in the notice to restore the land to its original condition before the development took place, or for securing compliance with those conditions, as the case may be, and in particular such enforcement notice may require the demolition or alteration of any building or works or the discontinuance of any use of land or the construction of any building or the carrying out of any other activities.

(3) Unless an appeal has been lodged under subsection (4) an enforcement notice shall take effect after the expiration of such period as may be specified in the notice.

(4) If a person on whom an enforcement notice has been served under subsection (1) is aggrieved by the order, he may within the period specified in the order appeal to the National appeals Board.

Supplementary provisions  
on enforcement

**73.** (1) If, within the period specified in the enforcement notice or within such further period as the county government may determine any measures required to be taken other than discontinuance of any use of land have not been taken, county government may enter on the land and take those measures and may, without prejudice to any penalties that may be imposed, or any other action that may be taken under this Act, recover from the person on whom the enforcement notice is served, any



expenses reasonably incurred by it in connection with the taking of those measures.

(2) Where a county government has taken action under subsection (1) any material removed by it from the land in pursuance of such action shall, unless the owner claims and removes such material within thirty days, be sold and the proceeds thereof, after deduction of any expenses reasonably incurred by the county government in connection with such action and sale, be paid to the owner.

(3) Any person who obstructs, or otherwise interferes with the county government in the execution of its functions under subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding five hundred thousand shillings or to an imprisonment not exceeding three months or both.

(4) The county government shall take such appropriate action to ensure that the provisions of this Part are complied with without undue delay on the part of any person or entity.

**74. (1) Where—**

- (a) person to whom an enforcement order is directed under section 68 fails to comply with the order within the period specified in the enforcement order; or
- (b) the county government considers it necessary or expedient for any perceived or apprehended breach of this Act, the National Building Regulations, or any other regulation made under this Act to be restrained,

the county government may apply to the court for an injunction.

(2) the county government may apply to the court for an injunction under subsection (1) whether or not the county government has exercised any other powers under this Act.

(3) On an application under subsection (1), the court may—

- (a) issue a summons requiring the person to appear before the court; and
- (b) if upon appearance of the person, or in absence upon proof of the service of the summons it appears that –
  - (i) the step required by the enforcement notice, or any steps that may in the opinion of the court be authorized by this Act, should be taken; or
  - (ii) any perceived or apprehended breach of this Act, the National Building Regulations or any other regulation made under this Act should be restrained,

the court may make an order under subsection (4)

Court Injunction

(4) The court may for the purposes of this section make an order against a person whose identity is unknown.

(5) An order made under this section may require the builder, the owner or the occupier of the land where the building work has been carried out or is being carried out, a person who carries out or takes steps to carry out the building work on the land and any other person concerned in the management of the building work on the land, as the case may be to –

- (a) comply with the steps, or remedy the breach, within the time specified in the order;
- (b) demolish or alter building work, in such manner as the county government shall direct;
- (c) discontinue any use of the land for building work;
- (d) carrying out on the land building work, in such manners as the county government shall direct;
- (e) pay the costs and expenses associated with the application;
- (f) perform such other act as the court considers appropriate in the circumstances.

Emergency Building Orders

**75.** (1) Where a county government is of the opinion that the condition or the use of land on which the building work has been carried out, is being carried out, or is proposed to be being carried out is hazardous or dangerous to any person, the county government may issue an emergency order and serve or cause it to be served on–

- (a) the owner or occupier of the land; and
- (b) any builder carrying out building work on the land.

(2) If the county government requests support from the Inspectorate, or where the Inspectorate is of the opinion that the condition or the use of land on which the building works has been carried out, is being carried out, or is proposed to be carried out is hazardous or dangerous to any person, the Inspectorate may also issue an emergency order.

(3) An emergency order may –

- (a) require the owner or occupier of the land, and the builder carrying out building work on the land to
  - (i) evacuate the building or land;
  - (ii) cease the carrying out of building work; or
  - (iii) carry out building work or other work necessary to make the land safe, including specifying steps to be taken for this purpose; or
- (b) prohibit the occupation or use of the building or land, or any

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part of the building or land for a specified period.

(4) A person who is subject of an emergency order may apply to the court for an order to set aside or modify the emergency order.

(5) A county government—

(a) may cancel an emergency order if the circumstances giving rise to making of the order have changed; and

(b) Shall give notice forthwith of the cancellation to the persons on whom it was required to be served.

Supplementary provisions  
for Emergency Building  
Orders

**76. (1) Where—**

(a) an emergency order is not complied with; or

(b) the owner of the land is not known to the county government; or

(c) there is no builder carrying out building work on the land,

(2) The county government may authorize the entry upon the land and taking of any necessary steps to remedy the problem specified in the order.

(3) If the county government requests support from the Inspectorate, or where the Inspectorate is of the opinion that the condition or the use of land on which the building works has been carried out, is being carried out, or is proposed to be carried out is hazardous or dangerous to any person, the Inspectorate may also enter the land or premises and take any necessary steps to remedy the problem specified in the order.

(4) The county government or, in circumstances outlined in subsection 3, the Inspectorate, may recover the land from the person who is the owner of the land or the builder any expenses reasonably incurred by the county government in taking the remedial steps.

### ***Inspections and Audit for Existing Buildings***

Inspection and Audit of  
Buildings

**77. (1) All buildings shall be inspected after the fifth year commencing from the date the certificate of occupation was issued in respect of the building and thereafter at intervals of not more than five years from the completion of the last inspection of the building under this section. An audit report shall be issued.**

(a) For private buildings, building owners shall cause the building to be inspected as detailed in Section 84. County Governments shall be responsible for enforcing (1) for private buildings under their jurisdiction;

(b) The department, at the time being responsible for public works, shall be responsible for conducting and enforcing (1) for public buildings.

(2) The inspection in (1) shall be conducted by a certified checker or accredited checker.

(3) The Inspectorate is responsible for setting the standards for inspections and audit reports conducted by the certified checkers or accredited checkers.

(4) If the county government requests support from the Inspectorate or does not take the prescribed action, the Inspectorate may issue a notice of inspection, as detailed in Section 86.

(5) The audit report developed by the certified checker or accredited checker shall be submitted to the county government and Inspectorate who shall archived this for their records.

Inspection and Audit of  
Private Buildings

**78.** (1) An owner of a building shall cause the building to be inspected after the fifth year commencing from the date the certificate of occupation was issued in respect of the building and thereafter at intervals of not more than five years from the completion of the last inspection of the building under this section.

(2) The owner of a building shall engage a certified checker or accredited checker.

(3) A certified checker or accredited checker appointed to carry out an inspection of a building shall—

- (a) carry out the inspection in the manner prescribed in the National Building Regulations;
- (b) on completion of the inspection, prepare and sign an audit report on the inspection; and
- (c) serve a copy of the report to the county government and Inspectorate.

(2) Where the owner of a building fails to cause the building to be inspected in accordance to subsection (1) the county government shall, by notice served on the owner of the building require the building to be inspected.

(3) Any owner of a building who fails to cause the building to be inspected within the prescribed period shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term of not exceeding six months or both.

Connected Buildings

**79.** For the purpose of this Part, a building which is physically connected with another building—

- (i) shall, notwithstanding the connection, be treated as a separate

building constructed as to be capable of remaining in that position and used independent of the other building or require only minor modification to make it independent; and—

- (ii) shall not be treated as a separate building merely because it is so connected with the other building at or below ground level or by means of a bridge or similar structure whether affording access or accommodation to both.

Notice of Inspection

**80.** (1) Notwithstanding the provisions of section 81, the county government may by notice served on an owner of a building require an inspection to be carried out on the building.

(2) Every owner of a building to which this Part applies shall, on receipt of a notice under sub-section (1), cause the building to be inspected in the prescribed manner by a certified checker or accredited checker, appointed by the owner and if the notice is not complied with, the county government may inspect the building or cause the building to be inspected by a certified checker or accredited checker and may recover all expenses reasonably incurred by it in the exercise of its powers under this section from the owner of the building.

Provided that when necessary, the certified checker or accredited checker may engage other qualified persons as may be required to check on any defects and the registered professional shall personally attest their findings in the inspection report.

(3) Any certified checker, or accredited checker, or qualified person engaged by the certified accredited checker, appointed by the owner of a building or the county government under sub-section (2) to carry out an inspection of a building shall have at all reasonable times free access to the building or any part thereof that is required to be inspected.

(4) building owner or his agents who hinders, obstructs or delays the performance of his duty shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding three months or both.

(5) Any certified checker or accredited checker appointed under subsection (2) to carry out an inspection of the building shall follow the provisions under Section 81 subsection 3.

(6) Without prejudice to the right of the county government to exercise its powers under sub-section (1), any owner of a building who contravenes or fails to comply with a notice under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine of not exceeding one million shillings or to imprisonment for a term of not less than nine months or both.

(7) Any person who contravenes or fails to comply with subsection (4) shall be guilty of an offence and shall be liable on conviction to a fine

of not exceeding two hundred thousand shillings or to imprisonment for a term of not exceeding three months or both.

(8) The Cabinet Secretary may by order provide for the application of this section with such adaptations or modifications to buildings in respect of which no certificate of occupation had been issued.

(9) A certified checker or accredited checker shall be personally liable for any injury, loss or damage occasioned to any person resulting from any defect in a building inspected by him and for which defect on reasonable examination of the building the qualified person ought to have detected.

Independence of certified  
checkers and accredited  
checkers

**81.** (1) A certified checker or accredited checker shall not be contracted by the county government, Inspectorate or owner of a building for the purpose of carrying out an inspection or audit of a building under section 79 if such a person has any professional or financial interest in the building.

(2) A certified checker or accredited checker shall be regarded as having a professional or financial interest in any building if the qualified person or firm-

- (a) was responsible for the design or construction of the building or any part thereof in any capacity;
- (b) is personally or through a nominee a member, director, officer or employee of a company or other body which has a professional or financial interest in the building or any part thereof;
- (c) is a partner, director or employee of a company that has professional or financial interest in the building or any part thereof;
- (d) holds any interest in the building or any part thereof; or
- (e) occupies or is a director in a company that occupies the building or any part thereof.

(3) For the purpose of this section—

- (a) a trustee for the benefit of other person shall be treated as having a professional or financial interest in a building; and
- (b) in the case of married couple, the interest of one spouse shall, if known to the other be deemed an interest of the other.

(4) For the purpose of this section—

- (a) involvement in the inspection of a building under section 79; and,
- (b) entitlement to any fee paid for carrying out any inspection under section 79, shall not be regarded as constituting a

***Dangerous Existing Buildings and Facilities***

Dangerous buildings and facilities

**82.** (1) The county government shall be responsible for taking actions prescribed in the following sections, if a building or facility:

- (i) does not comply with the National Building Regulations and is deemed to be dangerous to the occupants or surrounding population and buildings;
- (ii) does not comply with the fire provisions of the National Building Regulations and does not provide an appropriate means of escape for the building use and number of persons likely to be in the building at one time;
- (iii) is used to carry such loads, as to be dangerous;
- (iv) has any dilapidation or defect; or
- (v) produces dangerous or toxic waste on his premises without prior approval.

(2) If the county government requests support from the Inspectorate, or where the Inspectorate has evidence that the county government has not taken appropriate remedial actions, subject to the provisions in Sections 87 to 93, the Inspectorate may take action.

(3) An audit conducted by a certified checker or accredited checker shall provide evidence for qualification of the Inspectorate's intervention on the grounds that the building or premises is dangerous or hazardous.

Buildings and facilities that pose an immediate hazard or danger

**83.** (1) If the county government requests support from the Inspectorate, or where the Inspectorate has evidence to suggest that the building or facility poses any immediate hazard or danger to any person or surrounding property, the Inspectorate shall take such steps as may be necessary, including:

- (c) Leading a coordinated response involving the county government and relevant institutions.
- (d) Taking such steps as may be necessary to remove the danger, including ordering closure of the building or facility.

(2) If further action is required after (1), including more remedial measures such as continued closure of a building, significant remedial work or demolition, the Inspectorate shall designate a certified checker or accredited checker to conduct an audit to provide reasonable grounds for taking such measures.

(3) Before exercising its powers under this section, the Inspectorate shall, if it is reasonably practical, give notice of its intention to the owner and every occupier of the building.

Means of escape

**84.** (1) Where it appears to the county government that a building does not comply with the fire provisions of the National Building Regulations and is not provided with a means of escape in case of fire as the Inspectorate considers satisfactory with regard to the purposes for which the building is used and the number of persons likely to use the building at any one time, the county government may order the owner to make such provision as may be necessary to remedy the defect and if the owner fails to comply with the order, the Inspectorate may execute the order in such manner as it deems fit and may recover all expenses reasonably incurred by it from the owner. Where a building is a place of work, the National Council for Occupational Health and Safety will be responsible for ensuring a means of escape in case of fire is provided.

(2) If the county government is satisfied that the safety of the public requires that immediate action should be taken in the case of any building in respect of which it has given an order under subsection (1), it may by further order in writing served on the owner of the building require the closure of the building, or restriction of its use by the public and if the owner fails to comply with the order, the county governments may execute the order in such manner as it thinks fit and recover all expenses reasonably incurred from the owner.

(3) Without prejudice to the right of the county government to exercise its powers under sub-section (1) and (2), any person who, without reasonable excuse, fails to comply with the order shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term of not exceeding six months or both.

(4) An owner of a building shall take steps to ensure that the means of escape in case of fire or emergency are kept free and unobstructed and if he fails to do so, he shall be guilty of an offence and shall be liable on conviction to a fine of not exceeding five hundred thousand shillings or to imprisonment for a term of exceeding six months or both.

Loading dangerous building  
emergency measures

**85.** Where it appears to the county government that—

(iii) a building is in such a state or situation, or is used to carry such loads, as to be dangerous; and

(iv) immediate action needs to be taken to remove the danger; it may, if it considers it necessary, take such steps as may be necessary



for that purpose, including ordering the closure of the building.

(2) Before exercising its powers under this section, the county government shall, if it is reasonably practicable, give notice of its intention to the owner and every occupier of the building.

(3) The county government may recover from the owner of the building all expenses reasonably incurred by it under this section.

(4) So far as expenses incurred by the county government under this section consist of expenses of fencing off the building, or arranging for it to be secured, the expenses shall not be recoverable in respect of any period—

(a) after the danger has been removed by other steps under this section; or

(b) after an order made under sub-section (1) for the purpose of its removal has been complied with or has been executed.

(5) Without prejudice to the right of the county government to exercise its powers under sub-section (1), any person who, without reasonable cause, fails to comply with an order served on him under sub-section (1) shall be guilty of an offence and shall be liable on conviction to a fine of not exceeding three million shillings or to imprisonment for a term not exceeding twelve months or both:

Provided that where bodily injury or death is occasioned through failure to comply with an order issued under section 38 and this section, or a notice issued under subsection (1), the person charged shall, on conviction, be liable to a fine not exceeding three million shillings and to imprisonment for a term not exceeding twelve months or both.

Dilapidated buildings

**86.** (1) Where, on inspection, the county government finds any dilapidation or defect in a building it may by order in writing served on the owner of such building require—

(a) such works as may be specified in the order to be carried out;

(b) a certified or accredited checker to be appointed to carry out such investigation in relation to the building as may be so specified;

(c) the submission for approval by the county government of proposals for remedial work to be carried out as regards the dilapidation or defect, being proposals based on the findings of the investigation; or

(d) may order closure of the building or restrict the use of the building within such time or times as may be specified in the order.

(2) Where proposals for work are submitted pursuant to an order

under sub-section (1), the county government may—

- (a) approve the proposals;
- (b) require amendments to or substitution of the proposals; or
- (c) decline to approve the proposals.

(3) On approving any proposal for remedial works required to be submitted under subsection (1), the county government may by order in writing served on the owner require the carrying out of such approved work within such time as may be specified in the order.

(4) All work and investigations specified in an order under this section shall be carried out to such standard acceptable to the county government and in compliance with the National Building Regulations.

(5) Where the owner referred to in subsection (1) cannot be found or fails to comply with any requirement of an order served under this section or where there is a failure to comply with the requirement in subsection (4) or where approval is denied for proposals submitted under this section, county government may, without further notice, carry out or cause to be carried out—

- (a) all or any part of the work or investigation specified in the order;
- (b) such other investigations it considers necessary or expedient; and
- (c) such remedial work as it considers to be necessary or expedient as regards the dilapidation or defect, having had regard to the findings, whether such investigation in relation to the building is done by the owner referred to in subsection (1) or by the county government and the Inspectorate may recover the costs thereof from that owner provided that if the Inspectorate considers the building to be of immediate danger, it may; without any further notice to the owner, evacuate and close the said building.

(6) Without prejudice to the right of the county government to exercise its powers under this section, any person who, without reasonable excuse, fails to comply with an order served on him under this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term of not exceeding six months or both.

Closure Orders

**87.** (1) Where the county government makes any order under this Act requiring the closure of any building, a closure order shall be served on the owner and every occupier of the building.

(2) Except with the permission in writing of the county government no other person except an employee of the county government in the

course of his duty shall enter or be in a building at any time while a closure order is in force in respect of the building and any person who contravenes or fails to comply with this sub-section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred thousand or to imprisonment for a term of not exceeding three months or both.

(3) The county government may, where it deems fit subject to such conditions as it may impose, by notice in writing permit any person to enter temporarily into the building while a closure order is in force for the purposes of either carrying out remedial work or removing belongings from the said building.

(4) Any permission granted under subsection (3) may be cancelled by the county government at any time.

Remedial Action and  
Demolition

**88.** (1) Where in the opinion of the county government any building has been erected, or any building works are or have been carried out, in contravention of the provisions of this Act the county government may by order in writing require—

- (a) the cessation of the building works until the order is withdrawn;
- (b) the demolition of the building; or
- (c) such work or alteration to the building or building works to be carried out as may be necessary to cause the same to comply with the provisions of this Act and, in every case, the order shall give notice to the person to whom it is directed that if he fails to comply with the said order, the county government may carry out the works specified in the order and the person may forfeit any materials resulting from the carrying out of such works, and the order shall specify—
  - (i) the manner in which the demolition work or alteration specified in the order is to be carried out;
  - (ii) the time within which the demolition, work or alteration shall commence;
  - (iii) the time within which the demolition, work or alteration shall be completed; and
  - (iv) that the demolition, work or alteration shall be carried out with due diligence and to the satisfaction of the county government.

(2) An order made under sub-section (1) shall be served—

- (a) where a building has been erected, on the owner of the building personally or through registered post to his last known address or by affixing the notice on the building; or
- (b) where building works are being carried out, on the person for whom the works are carried out and the contractor or person

carrying out the building works.

(3) If an order made under subsection (1) is not complied with, the county government may demolish, remove or alter, or cause to be demolished, removed or altered, such building or building works and may recover all expenses reasonably incurred by it in the exercise of its powers under this section from the person in default and the person may forfeit any materials resulting from the carrying out of any works under this sub-section.

(4) Without prejudice to the right of the county government to exercise its powers under subsection (3), if any person on whom an order made under subsection (1) is served fails to comply with the order, that person shall be guilty of an offence and shall be liable on conviction to a fine of not exceeding three hundred thousand shillings or to imprisonment for a term of not exceeding twelve months or both.

- Dangerous toxic waster
- 89.** Any person who produces dangerous or toxic waste on his premises, shall—
- (a) notify the county government in writing of the nature of such waste; and
  - (b) if he intends to dispose of the dangerous or toxic waste, apply to the county government for approval of the means of disposal.

- Penalty
- 90.** Any person who contravenes the provisions of section 89, or who fails to dispose of the dangerous or toxic waste in the manner permitted by the county government under section 92(b) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand or to imprisonment for a term of not exceeding six months or both.

## **PART VII—APPEALS**

Establishment of  
County National  
Building Regulations  
Interpretation Panel

- 91.** (1) Each county shall establish a National Building Regulation Interpretation Panel.
- (2) The Panel shall play a technical function and will provide technical assistance for the interpretation of the National Building Regulations. The Panel shall hear and determine queries and disputes raised by building owners or their agents on the application of the National Building Regulations to plan reviews and site inspections.
- (2) Every such Panel shall consist of—
- (a) one registered Physical Planner;
  - (b) one registered Architect;
  - (c) one registered Civil /Structural Engineer;
  - (d) one registered Contractor nominated by National

Establishment of  
National Appeal  
Tribunal Panel

- 92.** (1) There shall be an Appeal Tribunal Panel to hear and determine appeals for complaints against the county governments and or the inspectorate action by aggrieved parties. The panel shall be appointed by the Cabinet Secretary.
- (2) Every such Panel shall consist of –
- (a) one registered Physical Planner nominated by Kenya Institute of physical planners
  - (b) one registered architect nominated by Architectural Association of Kenya
  - (c) one registered quantity surveyor nominated by institution of Quantity surveyors of Kenya
  - (d) one registered Civil /Structural Engineer nominated by Institution of Engineers of Kenya
  - (e) one Advocate of the High Court of Kenya nominated by the Law Society of Kenya
  - (f) any other relevant person as the Inspectorate may determine.
- (3) Members of the Appeal Tribunal Panel shall hold office for three years and shall be eligible for re-appointment for a further one term;

National Appeal  
Tribunal

- 93.** (1) For purposes of section 92, the Cabinet Secretary shall from time to time constitute an Appeal Tribunal for every region and for any other area.
- (2) Every such Tribunal shall consist of—
- (a) a Chairperson who shall be a qualified judge of the High Court of Kenya;
  - (b) a Secretary appointed by the Board of the Inspectorate for the purpose of providing administration services to the Tribunal who shall be a person other than a member of the Appeal Tribunal Panel;
  - (c) four persons selected from the appeal committee appointed under section 91 and whose profession is relevant to the determination of the issues raised in the appeal;
  - (d) where appropriate, one person from the locality where the appeal originates.
- (3) a unanimous or majority decision shall be the final decision of the Tribunal;
- (4) the chairperson shall be in charge of the procedure of the hearing of

the appeal:

Provided that, where necessary, a representative from the locality where the appeal originates shall be the sixth member of the Tribunal.

Appeal to the High Court.

**94.** (1) A person aggrieved by the decision of the county or national Appeal Tribunal, on a matter of law, except where this Act provides otherwise, may appeal to the High Court, against that decision

## **PART VIII— OFFENCES AND PENALTIES**

Offences and Penalties

**95.** (1) A person who:

- (i) without lawful excuse, contravenes any lawful direction issued by any member, officer, employee or agent of the Inspectorate in exercise of the powers or the performance of the functions of the Inspectorate under this Act; or
- (ii) wilfully obstructs any member, officer, employee or agent of the Inspectorate in the discharge of his lawful duties

commits an offence and shall be liable, on conviction, to a fine of at least one hundred thousand shillings, or to imprisonment for a term not exceeding one year.

(2) A person who, without lawful excuse, contravenes any direction stipulated in this Act commits an offence and shall be liable, on conviction, to the fines and sentences stipulated throughout this Act.

(3) An offence committed under this Act shall be a cognizable offence. The decision of the High Court in the matter shall be final and the Tribunal may regulate its own rules of procedure.

General Penalties

**96.** Any person who commits an offence for which no penalty has been prescribed under this act shall on conviction be liable to a fine of not exceeding one million shillings or imprisonment for a term not exceeding one year or both.

## **PART IX- TRANSITIONAL PROVISIONS**

National Building Regulations.

**97.** (1) Upon the commencement of this Act, the National Building Regulations shall be promulgated within six months.

(2) The Guidelines for Small and Residential Buildings shall be developed and integrated into the National Building Regulations within one year of the commencement of this Act.

Date of effect for the National Building Regulations

**98.** The Cabinet Secretary shall determine the date at which the National Building Regulations will come into effect by a gazette notice.

Building under construction on commencement of the Act

**99.** A building under construction upon commencement of this Act shall be considered to be within the terms and conditions of the time of approval.

Buildings without approval.

**100.** (1) An owner of any building to which this Act applies with the exception of building structures as may be specified by the Cabinet Secretary, and which were constructed without approved plans shall, within a period of six months from the commencement of this Act, submit to the county government for the registration and regularization process of the building and the submission shall disclose that the building was constructed without plans.

(2) Upon receipt of an application under sub-section (1) the county government may make such orders as it may deem appropriate.

(3) Any person who contravenes the provisions of this section shall be guilty of an offence and shall on conviction, be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term of not exceeding six months or both.

County Capacity for building control operations

**101.** At the commencement of this Act, the Inspectorate will facilitate county governments in the implementation of the Act and the National Building Regulations through capacity building and technical support.

## **PART X—MISCELLANEOUS PROVISIONS**

Vulnerable Groups

**102.** The provisions of this Act shall give consideration to the vulnerable groups, with special attention to:

Persons with Disabilities Act (2003)

(i) accessibility for persons with disabilities – consistent with the Persons with Disabilities Act (2003);  
affordability of housing for low-income groups.

Water management

**103.** The provisions of this Act shall give consideration to water conservation and management and in particular rain water harvesting.

Renewable energy

**104.** The provisions of this Act shall give consideration to renewable

energy.

**105.** (1) The Cabinet Secretary may make regulations for better carrying of the purposes of this Act.

(2) Without prejudice to subsection (1) such regulations and policies may provide-

- (a) for the forms to be used and fees to be charged under this Act; and
- (b) for the procedure for making applications to the Inspectorate, committees and county government.



**FIRST SCHEDULE (s.39)**

**Conduct of the business and affairs of the Board**

1. The Board shall meet at least four times in every financial year and not more than two months shall elapse between the date of one meeting and the date of the next meeting.
2. Notwithstanding paragraph 1, the chairperson may at any time, and shall, within one month of the receipt by him of a written request signed by at least seven members of the board, convene a special meeting of the Board.
3. The quorum for the conduct of the business of the Board shall be five members.
4. The chairperson shall preside at every meeting of the Board at which he is present, but in the absence of the chairperson the members present shall elect one from among their number to preside, and such member shall, as concerns that meeting, have all the powers of the chairperson.
5. The decisions of the Board shall be carried by the votes of the majority of the members present, but in the case of an equality of votes the chairperson or person presiding shall have a casting vote.
6. The members may appoint committees from among themselves or otherwise, to carry out such general or special functions as may be specified by the Board.
7. Any member who has a direct or indirect interest in any matter to be considered by the Board ,shall disclose the

nature of such interest at the meeting of the Board where such matter is to be considered, and the disclosure shall be recorded in the minutes of the meeting, and, if majority of the members of the Board believe that such member's interest in the matter is such as to influence judgment, such member shall not participate in the deliberation or the decision of the Board on such matter.

8. Except as provided in this Schedule, the Board may regulate its own procedure.

#### **SECOND SCHEDULE (s.60)**

Other documents that may be required where necessary for approval of building plans include:

- (a) layout drawings;
- (b) a site plan;
- (c) location plan;
- (d) fire protection plan; and
- (e) building services drawings

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**MEMORANDUM OF OBJECTS AND REASONS.**

The main object of this Bill is to make provision for the establishment of Standards and Practices in the Built Environment relating to building, maintenance and associated works. A new statutory regime is necessitated by the need to conform to the Constitution and more specifically the realization of the rights guaranteed in Article 43 and Vision 2030 which envisions an adequately and decently housed nation in a sustainable environment.

**PART I** of the Bill provides for the preliminary provisions. **Clause 2** provides for the application of the Bill and exceptions thereto.

Clause 3 the interpretation of the bill and clause 4 the objects of the Act

**PART II** of the Bill establishes the National Buildings Inspectorate as a body corporate. **8-30** provides for the functions of the Inspectorate which include auditing of buildings to ensure conformity with national building standards, preparing building manuals, maintaining a Register of buildings to monitor their inspection and audit, certifying and accrediting checkers and technical assistance and capacity building for counties.

**PART III** of the Bill vests the management of the Inspectorate. This part establishes the board, terms of service of the Board, removal from office of board members and remuneration of the board. **Clause 40** establishes the office of the Chief executive officer (CEO) of the inspectorate and sets out the procedure of recruiting and criteria of appointing the Chief Executive officer. **Clause 41** sets out the duties and functions of the chief executive officer. **Clause 43** provides for the employment of the other staff of the Inspectorate.

**PART IV** of the Bill sets out the financial provisions in relation in relation to the body corporate established in the Bill. **Clause 44** specifies what comprises the funds of the Inspectorate. **Clause 45** establishes the National Buildings Inspectorate Fund and vests it in the Inspectorate. It also sets out how moneys received into the Fund shall be applied by the Inspectorate.

**PART V** of the Bill provides for the National Building

Regulations. The regulations shall comprise of categories of building works. Clause 52 provides for supplementary standards for public buildings. Clause 54 provides for the process for the development of the National Building Regulations.

**PART VI** of the Bill sets out the provisions in relation to the procedures for regulatory compliance and enforcement. This part acknowledges the primary role of the county governments in development control. This is in line with the role of National Government in providing national standards. This part sets out the harmonised procedures for development and building control across the counties,

**PART VII** of the Bill provides for the establishment of the National buildings Regulations interpretation panel and the National appeals tribunal to hear and determine grievances on actions taken by the county governments or the inspectorate

**PART VIII** of the Bill specifies offences and penalties under the Act

**PART IX** of the Bill provides for transitional provisions

**PART X** of the Bill provides for the miscellaneous provisions.

**The First Schedule** contains provisions relating to the conduct of the business and affairs of the Board.

**The Second Schedule** provides a list of other documents that may be required for approvals

The enactment of this Bill will occasion additional expenditure of public funds which shall be provided for through the estimates.

Dated

the....., 2019

**Submitted in the National Assembly by**

**PETER KIHARA**  
**Attorney General**

**Assembly by**

**Introduced in the National**

**ADEN DUALE**  
**Leader of the Majority party**