

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 85 (National Assembly Bills No. 27)*



REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**NATIONAL ASSEMBLY BILLS, 2017**

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**NAIROBI, 30th May, 2017**

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**THE BASIC EDUCATION (AMENDMENT) BILL,  
2017**

**A Bill for**

**AN ACT of Parliament to amend the Basic Education  
Act and for connected purposes**

**ENACTED** by the Parliament of Kenya, as follows—

**1.** This Act may be cited as the Basic Education (Amendment) Act, 2017.

Short title.

**2.** The Basic Education Act is amended in section 2 by inserting the following words in their proper alphabetical sequence—

Amendment of  
section 2 of No.14  
of 2013.

“Public Private Partnership schools” means schools established and owned by private persons but managed by the Government or schools established and owned by the Government but managed by the private sector.

**3.** Section 43 of the Basic Education Act is amended—

Amendment of  
section 43 of No.14  
of 2013.

(a) in subsection (1) by inserting the following new paragraph immediately after paragraph (b)—

“(c) Public Private Partnership schools which are schools established and owned by—

(i) private persons but managed by the Government; or

(ii) the Government but managed by the private sector.

(b) in subsection (2) by inserting the words “Public Private Partnership schools” immediately after the words “private basic education institution”.

**4.** Section 95 of the Basic Education Act is amended in subsection (2) by inserting the following new paragraphs immediately after paragraph (f)—

Amendment of  
section 95 of No.14  
of 2013.

“(g) the management of the Public Private Partnership schools; and

(h) procedure for registration of new Public Private Partnership Schools.”

**MEMORANDUM OF OBJECTS AND REASONS**

The principal object of this Bill is to amend the Basic Education Act, No.14 of 2013 to provide for the establishment of Public Private Partnership schools, as a category of schools in Kenya apart from the public and private schools.

The proposed amendment is intended to improve the quality of education service delivery in Kenya since Public Private Partnership sponsored schools bring together the reach of the Government system with the innovation of the private sector so as to improve the quality of the education system as a whole.

The Bill is not a Bill concerning county governments.

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 30th May, 2017.

**CHRIS WAMALWA,**  
*Member of Parliament.*

*Section 2 of the principal Act which it is proposed to amend—*

## **2. Interpretation**

In this Act, unless the context otherwise requires—

“accreditation” means the procedure by which the accreditation agency formally recognizes the status of an institution offering basic education and confirms in writing by way of a documentation issued under this Act;

“adult” means an individual who has attained the age of eighteen years;

“adult and continuing education” means the learning processes within the perspective of lifelong learning in which an adult or out-of-school youth is granted an opportunity in an institution of basic education for purposes of developing abilities, enriching knowledge and improving skills;

“adult basic education” means basic education offered as a full-time or part-time course to a person who is above the age of eighteen years and includes education by correspondence, the media of mass communication and the use of libraries, museums, exhibitions or other means of visual or auditory communication for educational purposes and “Adult learning” shall be construed accordingly;

“basic education” means the educational programmes offered and imparted to a person in an institution of basic education and includes Adult basic education and education offered in pre-primary educational institutions and centres;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to Basic education and training;

“child” means an individual who has not attained the age of eighteen years;

“community” means persons residing in the neighbourhood of a basic education institution;

“County Director of Education” means a Director appointed under section 52;

“County Education Board” means a Board established as an agency of the national Government to serve the relevant county under section 17;

“curriculum” means all the approved subjects taught or programmes offered and includes all the activities provided at any institution of basic education;

“Director-General” means a person appointed under the Public Service Commission Act (Cap. 185) and responsible to the Cabinet Secretary;

“Duksi” means Islamic elementary institution that offers Quranic education and other related subjects;

“Education Appeals Tribunal” means the Appeals Tribunal established under section 92 ;

“EMIS” means Educational Management Information System;

“Education Standards and Quality Assurance Commission (ESQAC)” means the Commission established under section 62;”

“formal education” means the regular education provided in the system of schools, and other formal educational institutions;

“headteacher” has the meaning assigned to it under the Teachers Service Commission Act (Cap. 212);

“ICT Integration and Education” means the seamless incorporation of information communication technologies to support and enhance the attainment of curriculum objectives, to enhance the appropriate competencies including skills, knowledge, attitudes and values and to manage education effectively and efficiently at all levels;

“institution of basic education and training” means a public or private institution or facility used wholly or partly, regularly or periodically for conducting basic education and training and includes a school, a tuition facility, an educational centre, an academy, a research institution, a school correctional facility or a borstal institution;

“Madrasa” means the structural Muslim educational institutions or schools that offer Islamic and other subjects and are laddered from primary to secondary;

“manager” means a person who has been appointed by the Cabinet Secretary in consultation with the proprietor through regulations to coordinate and oversee implementation of education policies and guidelines in non-public basic education institutions and performs delegated teacher management functions;

“mobile school” means a formal flexible institution that allows for mobility of pupils and teachers and is specifically designed to suit the needs of migrant communities;

“National Council for Marginalized and Nomadic Education” means the council provided for under section 92;

“National Education Board” means the National Board for Education and Training established under section 5 of this Act;

“non-formal education” means any organized educational activity taking place outside the framework of the formal education system and targets specific groups/categories of persons with life skills, values and attitudes for personal and community development;

“out-of-school youth” means all persons who have attained the age of eighteen years but have not attained thirty five years and who are not engaged in learning in the formal education system;

“parent” means a mother, father or guardian of a child and includes any person who is responsible under the law to maintain a child or is entitled to a child’s custody;

“parent’s association” means an association as prescribed in subsection 53(2);

“pastoral programmes” means the curriculum designed by different Christian churches;

“pre-primary education” means education offered to a child of four or five years before joining level one in a primary school;

“primary education” means education imparted to a child who has completed pre-primary education;

“Principal” has the meaning assigned to it under the Teachers Service Commission Act (Cap. 212);

“private school” means a school established, owned or operated by private individuals, entrepreneurs and institutions;

“Salaries and Remuneration Commission” has the meaning assigned to it under the Salaries and Remuneration Act (Cap. 5F);

“school” means an institution registered under this Act that meets the basic prescribed standards and includes institutions offering alternative approaches of multi-grade, double-shift, mobile schooling, out of school programmes, adult and continuing education, distance or correspondence instruction, or accelerated learning and talent based institutions, but does not include—

- (a) any institution or assembly for which a Cabinet Secretary other than the Cabinet Secretary responsible for matters relating to basic education and training, is responsible;
- (b) any institution or assembly in which the instruction is, in the opinion of the Cabinet Secretary, wholly or mainly of a religious character; or

(c) an institution mainly or wholly of a religious character;

“special education needs” means conditions, physical, mental or intellectual conditions with substantial and long term adverse effects on the learning ability (other than exposure) or the needs of those who learn differently or have disabilities that prevent or hinder or make it harder for them to access education or educational facilities of a kind generally provided for learners of the same age in the formal education system;

“special needs education” includes education for gifted or talented learners as well as learners with disability and includes education which provides appropriate curriculum differentiation in terms of content, pedagogy, instructional materials, alternative media of communication or duration to address the special needs of learners and to eliminate social, mental, intellectual, physical or environmental barriers to learners;

“special school” means a school established for the benefit of a particular class of children who require some special form of education, treatment or care;

“sponsor” means a person or institution who makes a significant contribution and impact on the academic, financial, infrastructural and spiritual development of an institution of basic education;

“stakeholder” means a person, a public or private institution or organization involved in an education institution and with vested interests for the benefit of such an institution;

“statutory structural adjustment” means a systematic multi-disciplinary process of collecting information about learners for the purpose of identifying and confirming the substantial and long-term impact on the learning process, abilities or educational progress so as to provide educational support based on the assessment or findings;

“teacher” has the meaning assigned to it under the Teachers Service Commission Act (Cap. 212) ;

“tuition fees” means fees charged to cater for instruction or instructional materials.



*Section 43 of the principal Act which it is proposed to amend—*

**43. Categories of schools**

(1) Basic educational institutions shall be categorised as—

- (a) public schools which are schools established, owned or operated by the Government and includes sponsored schools;
- (b) private schools as those established, owned or operated by private individuals, entrepreneurs and institutions.

(2) A public basic education institution shall not be converted to a private basic education institution or to any other private status without consultation with the National Education Board and approval by the Cabinet Secretary.

*Section 95 of the principal Act which it is proposed to amend—*

**95. Regulations**

(1) The Cabinet Secretary may upon consultation with the Board make regulations—

- (a) prescribing anything that may be prescribed under this Act; and
- (b) generally for the better carrying out of provisions of this Act; (c) on the establishment of Boards of Management for primary schools.

(2) Without prejudice to the generality of subsection (1) the Cabinet Secretary may make regulations to provide for—

- (a) an appropriate structure for education and training
- (b) incentives to learners, teachers and non teaching staff;
- (c) discipline, corrective measures and expulsion to facilitate compliance;
- (d) admission, progression and transfer of learner;
- (e) integration of the madrassa, Duksi and pastoral programmes of instructions into the formal education system as appropriate to improve access and retention;
- (f) to secure appropriate institutional linkages and relative autonomy for the Kenya National Commission for United Nations Educational Scientific and Cultural Organization to enable it to promote education through culture, natural science, social and human sciences, and information and communication technology.

(3) The Cabinet Secretary may make regulations with respect to the conduct and management of schools and such regulations may—

- (a) prescribe standards with regards to the numbers and qualifications of staff, the size of classes and the expenditure on educational standards in accordance with international best practices;
- (b) provide for the preparation or approval of curricula, syllabuses, books and other educational materials;
- (c) prescribe minimum standards for the health and safety of pupils and for a satisfactory environment for education;
- (d) provide for the keeping of registers and records and the submission of returns, including EMIS data;
- (e) provide for incentives for submission of reports, returns and related EMIS data;
- (f) provide for sanctions and penalties for non submission and falsification of records, reports, returns, and related EMIS data;
- (g) provide for admission, suspension, discipline, punishment and expulsion of pupils;
- (h) provide for educational calendar;
- (i) prescribe how schools shall be classified;
- (j) make different provisions with respect to different classes or kinds of schools, impose conditions and make exemptions;
- (k) provide for the promotion, development, management and governance of education through ICT Integration and Education, and EMIS, and statutory structural adjustment;
- (l) provide for religious instruction and religious education in basic education having regard to the national values and principles under Article 10 and Chapter Six of the Constitution;
- (m) provide for teacher education and development;
- (n) provide for the implementation of international instruments on education and child rights to which Kenya is a party; and
- (o) provide for or prescribe such other matters as the Cabinet Secretary considers necessary or desirable to provide for or prescribe.

(7) The Cabinet Secretary may make regulations prescribing the duties and rights of students.