

THE SUSTAINABLE WASTE MANAGEMENT BILL, 2020

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THE SUSTAINABLE WASTE MANAGEMENT BILL, 2020

A Bill for

AN ACT of Parliament to establish the legal and institutional framework for the sustainable management of waste; the realisation of the constitutional provision on the right to a clean and health environment; and for connected purposes

ENACTED by the Parliament of Kenya as follows

PART I—PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Sustainable Waste Management Act, 2020, and shall come into operation on such date as the Cabinet Secretary may, by notice in the *Gazette*, appoint.

Interpretation.

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

No. 8 of 1999.

“Authority” means the National environment Management Authority established under section 7 (1) of the Environmental Management and Co-ordination Act, 1999;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to waste management;

“National Environment Complaints Committee” means the National Environment Complaints Committee established under section 31 (1) of the Environmental Management and Co-ordination Act, 1999;

“Council” means the Waste Management Council established under section 6 (2);

“domestic waste” means waste, other than hazardous waste, generated from a domestic residence;

“extended producer responsibility measures” means measures that extend a person’s or a firm’s financial or physical responsibility over a product up to the consumer stage of the product including—

- (a) waste minimisation programmes;
- (b) deposit-refund and take-back schemes;
- (c) financial arrangements for any fund established for the promotion of reduction, reuse, recycling or recovery of waste;
- (d) awareness programmes to inform the public on the impacts of waste emanating from the product on health and the

environment; and

(e) any other measures to be undertaken for the reduction of the potential impact of the product on health and the environment;

“industrial waste” means waste arising from processing or manufacturing or any trade undertaking in the form of liquid, non-liquid, solid or gaseous substances;

“materials recovery facility” means a specialised facility that receives, separates and prepares recyclable material for marketing to end user manufacturers;

“National Environment Tribunal” means the National Environment Tribunal established under section 125 (1) of the Environmental Management and Co-ordination Act, 1999;

“payment for environmental services” and “payment for ecosystem services” mean payments to farmers or land users to encourage the conservation of natural resources;

“pollution” has the meaning assigned to it under section 2 of the Environmental Management and Co-ordination Act, 1999;

No. 18 of 2013.

“private sector entity” a person, firm or corporate entity with functions of a private nature including entities registered under the Public Benefits Organisations Act, 2013;

“public entity” means—

(a) the government including the national and county governments, or any State organ, department, agency, service or undertaking of a national or county government;

(b) Parliament or a county assembly;

(c) any corporation, council, board, committee or other body which has power to act under or for the purposes of any written law relating to undertakings of public utility or otherwise to administer funds belonging to or granted by the government or monies raised by rates, taxes or charges in accordance with such law; or

(d) a public body established under any written law;

“recovery” means the controlled extraction of a material or retrieval of energy from waste for the production of another product;

“recycle” means the process whereby waste is reclaimed for further use involving the separation of waste from a waste stream and

the processing of that waste as a product or raw material;

“re-use” means the action or practice of using something again whether for its original purpose or to fulfil a different function;

“sustainable waste management” means using material resources in order to reduce the amount of waste that is generated and managing the waste in a way that contributes to the environmental, social and economic goals of sustainable development;

“take-back scheme” means a scheme for the collection, transportation and return of products or packaging to end users;

“toxic substance” means any substance which, on entry into an organism through ingestion, inhalation or dermal contact, is injurious, causes physiological or biochemical disturbance, or otherwise causes deterioration of the functions of the organism in any way;

“waste” means—

- (a) any substance, material or object that is unwanted, rejected, abandoned, discarded or disposed of, or that is intended or required to be discarded or disposed of, by its holder, whether or not it can be reused, recycled or recovered and include municipal waste, domestic waste, waste from agriculture, horticulture, aquaculture and forestry, medical waste, chemical waste, hazardous waste, toxic waste, industrial waste, pesticides and toxic substances but does not include radioactive waste;
- (b) a substance, material or object that may be designated as waste by the Cabinet Secretary by notice in the *Gazette*,

Provided that waste or a portion of waste specified in paragraphs (a) and (b) shall cease to be waste—

- (i) once an application for reuse, recycling or recovery has been approved by the Authority or, after such approval, it has been reused, recycled or recovered;
- (ii) where approval for reuse, recycling or recovering is not required, it has been reused, recycled or recovered; or
- (iii) where the Cabinet Secretary has, by notice in the *Gazette* and in the prescribed manner, excluded any waste stream or portion of any waste stream from the definition of waste;

“waste management facility” means a site or premises licensed in accordance with this Act for the purposes of receiving, accumulation,

depositing, recovery, recycling, treatment, storage and disposal of waste and includes waste processing areas, transfer stations, reusing areas, materials recovery facilities, recycling plants, food waste treatment facilities, composting plants, waste disposal areas, waste-to-energy facilities and sanitary landfills;

“waste management activity” means any administrative or operation activity for the—

- (a) importation or exportation of waste;
- (b) segregation of waste including any activity or process that is likely to result in generation of waste;
- (c) accumulation and storage of waste;
- (d) collection and handling of waste;
- (e) reduction, reusing, recycling and recovery of waste;
- (f) trading in waste;
- (g) transportation of waste
- (h) transfer of waste;
- (i) treatment of waste; and
- (j) disposal of waste;

“waste minimisation programme” or “waste reduction programme” means a programme that is intended to promote reduction in generation and disposal of waste; and

“waste valorisation” means any activity aimed at converting waste, including materials, chemicals and sources of energy, into useful products by reusing, recycling or composting the waste.

Objectives of
the Act.

3. The objectives of this Act shall be to—

- (a) promote sustainable waste management;
- (b) improve the health of all Kenyans by ensuring a clean and healthy environment;
- (c) reduce air, land, fresh water and marine pollution;
- (d) promote and ensure the effective delivery of waste services;
- (e) create an enabling environment for employment in the green

economy in waste management, recycling and recovery;

- (f) establish an environmentally sound infrastructure and system for sustainable waste management;
- (g) promote sustainable procurement practices;
- (h) mainstream resource efficiency principles in sustainable consumption and production practices; and
- (i) inculcate responsible public behaviour on waste and environment.

General principles.

4. The general principles of this Act are—

- (a) promoting the right to a clean and healthy environment;
- (b) the precautionary principle where the lack of scientific certainty shall not be used to postpone measures to prevent environmental degradation where there are threats of damage to the environment;
- (c) the polluter pays principle in which the cost of cleaning up any element of the environment that has been damaged by pollution, the cost of the beneficial uses of the environment that have been lost as a result of the pollution, and any other costs associated with or incidental to the pollution shall be paid by the polluter;
- (d) payment for ecosystem services or payment for ecological services in which payments are made to farmers or landowners who have agreed to take certain actions to manage land or watersheds in order to provide ecological services as an incentive to conserve natural resources;
- (e) zero waste principle in which products and processes are designed and managed to reduce the volume and toxicity of waste and materials, and to conserve and recover all resources, and to prevent the burning or burying of resources, in order to treat waste as a resource that can be harnessed for wealth creation, employment and the reduction of pollution; and
- (f) achieving sustainable development goals.

PART II—POLICY, CO-ORDINATION AND OVERSIGHT OF WASTE MANAGEMENT

Role of the Cabinet

5. The Cabinet Secretary shall be responsible for—

Secretary.

- (a) policy on sustainable waste management in consultation with county governments;
- (b) the development of regulations in consultation with the Authority;
- (c) co-ordinating adherence to international obligations with regards to waste management, nationally determined contribution of waste and chemicals conventions; and
- (d) oversight and co-ordination of the administration of this Act.

Waste
Management
Council.

6. (1) There shall be a council to be known as the Waste Management Council which shall be established by the Cabinet Secretary within one year of the coming into operation of this Act.

(2) The Council shall comprise of—

- (a) the Cabinet Secretary who shall be the chairperson;
- (b) the chairperson of the Environment Committee of the Council of County Governors who shall be the co-chairperson;
- (c) a representative from the ministry responsible for matters relating to waste management;
- (d) a representative from the National Treasury;
- (e) a representative from the Authority;
- (f) the chairperson of the caucus of county executive committee members in charge of environment; and
- (g) three other persons appointed by the Cabinet Secretary for their competencies in sustainable waste management.

(3) The Council may co-opt members with relevant expertise when needed who shall advise the Council on specific matters relating to sustainable waste management.

(4) The Cabinet Secretary shall establish a waste management secretariat for the waste management council.

Functions of the
Council.

7. (1) The Council shall—

- (a) provide analytical support on sustainable waste management to ministries, agencies and county governments;
- (b) serve as the national knowledge and information management centre for disseminating knowledge and information on

sustainable waste management;

- (c) in collaboration with other agencies at the international, national and county governments level—
 - (i) identify sustainable waste prevention, reduction, reuse, recycling and disposal strategies;
 - (ii) optimise opportunities to mobilise financing for sustainable waste management; and
 - (iii) ensure co-ordination across national and county government entities in sustainable waste management;
- (d) co-ordinate activities relating to Kenya's international obligations relating to waste and chemicals conventions;
- (e) develop a national strategy for the reduction of land-based pollution to the marine environment;
- (f) provide technical assistance to county governments as may be needed from time to time; and
- (g) perform such other functions as may be assigned by the Cabinet Secretary.

(3) The Cabinet Secretary shall, within one year of the coming into operation of this Act, make regulations for the operationalisation of the Council.

Functions of the Authority.

- 8.** (1) The Authority shall—
- (a) develop standards and guidelines on sustainable waste management;
 - (b) generate and disseminate waste information for the public in consultation with county governments;
 - (c) enforce waste management legislation in consultation with county governments;
 - (d) save for where county governments have jurisdiction, issue licenses for waste management activities;
 - (e) conduct research, awareness creation and training on sustainable waste management; and
 - (f) establish a national waste information system for recording, collecting, management and analysis of data and information including—

- (i) data on the quantity and type or classification of waste generated, stored, transported, treated, transformed, reduced, reused, recycled, recovered or disposed of;
- (ii) a register of licensed waste management, recycling and other related activities;
- (iii) the status of the generation, collection, reduction, reuse, recycling, recovery, transportation, treatment and disposal of waste;
- (iv) the impact of waste on health and the environment;
- (v) the levels and extent of waste management services provided by counties;
- (vi) information on compliance with this Act; and
- (vii) any other information that is necessary for the purposes of the effective administration of this Act.

(2) The Authority shall develop an action plan for the implementation of the National Waste Management Strategy within one year of the coming into operation of this Act.

(3) The Authority shall provide analytical reports and support on waste management to ministries, agencies and counties and serve as the national knowledge and information management centre for disseminating information on sustainable waste management.

Functions of
county
governments.

9. (1) County governments shall be responsible for implementing the devolved function of waste management and establishing the financial and operational conditions for the effective performance of this function.

(2) County governments shall ensure that county waste management legislation is in conformity with this Act within a period of one year of the coming into operation of this Act.

(3) County governments shall ensure that the disposal of waste generated within the county is done within the county's boundaries except where there is an agreed framework for inter-county transportation and disposal of waste.

(4) County governments shall provide central collection centres for materials that can be recycled.

(5) County governments shall establish waste management infrastructure to promote source segregation, collection, reuse, and set

up for materials recovery.

(6) County governments shall maintain data on waste management activities and share the information with the Authority.

(7) County governments shall mainstream waste management into county planning and budgeting.

PART III—MEASURES AND ACTIONS

Policies,
regulations and
standards by the
Cabinet
Secretary.

10. (1) The Cabinet Secretary shall, within two years of the coming into operation of this Act and in consultation with the Authority, make policies and regulations for the proper administration of this Act.

(2) Notwithstanding the generality of subsection (1), the Cabinet Secretary shall, in consultation with the Authority, make regulations prescribing—

- (a) the closure of open dumpsites;
- (b) procedures for sustainable waste management;
- (c) the expansion of the market for recycled products and incentives to expand the market for pre-consumer and post-consumer recycled products through incentives, government procurement preferences and other policies; and
- (d) the promotion of health, safety and environmental standards including—
 - (i) labour and health standards for waste handlers;
 - (ii) quality and certification standards for organic waste;
 - (iii) operational standards for dumpsites;
 - (iv) the classification of engineered sanitary landfills;
 - (v) the formation of waste collection, materials recovery and recycling savings and credit co-operative organisations;
 - (vi) the facilitation of waste-to-energy and waste-to-manure projects; and
 - (vii) the facilitation of the collection of different types of wastes including medical waste, chemical waste and construction waste.

Policies, regulations and standards by county governments.

11. (1) County governments shall, in consultation with relevant national government agencies, the public and other stakeholders, develop county legislation within two years of the coming into operation of this Act.

(2) Notwithstanding the generality of subsection (1), county governments may make regulations prescribing—

- (a) the use of land within the jurisdiction of the county government for waste management; and
- (b) investment in sustainable waste management including waste collection, separation, treatment, processing, recovery and sanitary final disposal of waste.

Take back schemes.

12. (1) Products and packaging that may cause negative impacts on the environment shall be returned to the seller after their use.

(2) Products and packaging referred to in subsection (1) shall be marked with a special label.

(3) The seller of products referred to in subsection (1) shall take back the used products and packaging.

(4) The Cabinet Secretary shall prescribe regulations on the products and packaging referred to in subsection (1), the manner and form of marking the product and packaging, the processes and procedures for the collection, processing, treatment and return of products and packaging, and the manner of public information thereon.

Extended producer responsibility.

13. (1) An entity engaged in the production, conversion or importation of products and packaging shall bear extended producer responsibility over the products or packaging for the purpose of reducing the environmental impact of the products or packaging.

(2) For the purpose of this section, “extended producer responsibility” of an entity engaged in the production, conversion or importation of products and packaging includes the design of environmentally friendly and recyclable products and packaging, physical collection and management of waste, and financial contributions to a collective scheme.

(3) Recoverable and recyclable products, materials and packaging that may cause pollution shall be marked with a special label and returned to the seller, producer, importer, brand owner or agent after the post-consumer use of the products, materials and packaging.

(4) A manufacturer, importer, supplier, distributor or retailer of products or packaging referred to in subsection (2) shall join an

extended producer responsibility scheme within one year of the coming into operation of this Act.

(5) A producer, importer, converter, brand owner or distributor may, with the permission of the Authority, establish a collective producer responsibility organisation.

(6) There shall be one collective producer responsibility organisation for a specific waste stream.

(7) A consumer shall return to a seller, distributor, producer, importer, brand owner or agent the used product or packaging referred to in subsection (2).

(8) The Cabinet Secretary, in consultation with the standards body and the Authority, may prescribe design standards for the products or packaging referred in subsection (2).

(9) Extended producer responsibility schemes and collective producer responsibility organisations shall submit annual reports to the authority specifying the type and amount of waste generated by the participants in the schemes, the manner in which the waste was collected, managed and disposed of, and any other information that the Authority may prescribe from time to time.

(10) The Cabinet Secretary shall make regulations on extended producer responsibility and special return marks and labels for products and packaging referred to in subsection (2).

Materials
recovery
facilities.

14. (1) Each county government shall establish a materials recovery facility.

(2) A materials recovery facility shall be used for final sorting, segregation, composting and recycling of waste generated or transported to the county and transport the residual waste to a long-term storage or disposal facility or landfill.

(3) A materials recovery facility shall be licensed by the Authority.

(4) The Cabinet Secretary shall, in consultation with the Authority and county governments, make regulations for the establishment and proper management of materials recovery facilities.

PART IV—WASTE MANAGEMENT FUNCTIONS

Functions of the
Cabinet
Secretary.

15. (1) The Cabinet Secretary shall prescribe measures for the reduction of waste, and the environmentally sound reuse, recycling and recovery of waste.

(2) Notwithstanding the generality of subsection (1), the Cabinet Secretary shall—

- (a) develop regulations on waste management;
- (b) in consultation with county governments, publish model county waste management laws and regulations; and
- (c) develop a National Waste Management Strategy.

Functions of
accounting
officers of
public entities.

16. (1) The accounting officer of a public entity shall be responsible for the management of waste generated the entity in accordance with this Act.

(2) Notwithstanding the generality of subsection (1), an accounting officer of a public entity shall ensure that—

- (a) any person who is in charge of or controls a facility or premises which is under the jurisdiction of the accounting officer and which generates waste shall minimise the waste generated by adopting the following cleaner production principles including—
 - (i) improvement of production processes through conservation of raw materials and energy;
 - (ii) eliminating the use of toxic raw materials;
 - (iii) reducing toxic emissions and waste;
 - (iv) monitoring the product cycle by—
 - (A) identifying and eliminating potential negative impacts of the product;
 - (B) enabling the recovery and reuse of the product;
 - (C) reclamation and recycling; and
 - (D) incorporating environmental concerns in the design process and disposal of a product;
- (b) any person whose activities generate waste shall collect, segregate and dispose of or cause to be disposed of the waste in accordance with this Act;
- (c) any person whose activities generate waste ensures that the waste is transferred to a person who is licensed to transport and dispose of the waste in accordance with this Act;

- (d) any person whose activities generate waste shall segregate the waste by separating the hazardous waste and dispose of the waste in a facility that has been established by the county government or Authority for that purpose;
- (e) the entity cleans up and restores the site to its natural state or near its natural state;
- (f) the entity prepares a waste management plan and integrates the plan in its corporate strategy and plan; and
- (g) the entity has provided waste segregation receptacles at its premises for organic, plastic and general dry waste and the waste generated is recycled through a licensed service provider.

(3) Notwithstanding the provisions of this section, a person in charge of an entity who, in the discharge of his or her duties, is involved in waste generation or disposal processes shall be responsible for his or her actions and omissions.

(4) A person in charge of a public entity that discharges waste contrary to the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand shillings or a term of imprisonment not exceeding one year or both.

(5) An officer of an entity who discharges waste contrary to the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand shillings or imprisonment not exceeding six months or both.

Functions of
county
governments.

17. Each county government shall—

- (a) enact a county sustainable waste management legislation within one year of the coming into operation of this Act;
- (b) establish waste recovery and recycling facilities and sanitary landfills for the disposal of non-recoverable waste;
- (c) incentivise the collection and separation of waste at source in neighbourhoods and informal settlements;
- (d) ensure that cities plan for waste management facilities as part of city expansion;
- (e) prepare a county waste management plan and quarterly monitoring reports for cities, urban areas, municipalities and administrative units; and
- (f) submit annual reports to the Authority and county assembly

on the implementation of the county waste management plan;
and

- (g) maintain data on waste management service provision by waste management service providers and share the information at least once in each year through the national waste information system developed under section 8 (1) (f).

Waste
management
plans.

18. (1) Each county government shall prepare and submit to the county assembly for approval an integrated waste management plan once every five years.

(2) Each county government shall include the approved integrated waste management plan in the integrated county development plan.

Duties of
private sector
entities.

19. (1) A private sector entity shall prepare a three-year waste management plan and submit an annual monitoring report to the Authority which shall specify—

- (a) the actual quantities of waste generated by the entity;
- (b) the waste management methods applied by the entity; and
- (c) any other information that the Authority may require.

(2) A private sector entity that fails to comply with the provisions of subsection (1) commits an offence and shall, on conviction, be liable to a fine of not more than two hundred thousand shillings and the person responsible for the private sector entity shall, in addition to the fine imposed on the entity, be liable to imprisonment for a term not exceeding three months.

(3) A private sector entity shall—

- (a) adopt the following cleaner production principles including—
 - (i) improvement of production processes through conserving raw materials and energy;
 - (ii) limiting the use of toxic raw materials to safe levels within such time as may be prescribed by the Authority;
 - (iii) reducing toxic emissions and wastes; and
 - (iv) monitoring the product cycle from beginning to end by;
- (b) identify and eliminate potential negative impacts of the product;

- (c) enable the recovery and reuse of the product where possible;
- (d) reclaim and recycle;
- (e) incorporate environmental concerns in the design, process and disposal of the product;
- (f) collect, segregate and dispose of or cause to be disposed of the waste in accordance with this Act;
- (g) shall segregate waste by separating hazardous waste from non-hazardous waste and dispose of the waste in a facility provided by the county government or the Authority;
- (h) transfer the waste to a person who is licensed to transport and dispose of the waste in accordance with this Act;
- (i) clean up and restore the site it was using to its natural state;
- (j) prepare a waste management plan and integrate it in its corporate strategies and plans; and
- (k) provide waste segregation receptacles at its premises for organic, plastic and general dry waste.

(4) A private entity that generates waste shall segregate the waste by separating hazardous waste and dispose of the hazardous waste in a facility provided by the county government or the Authority.

(5) A private entity or any its officers that fails to manage waste in accordance with this Act commits an offence and on conviction, shall be liable to a fine—

- (a) of at least five per cent of the entity's net income registered in the previous tax year or five million shillings whichever is the higher; and
- (b) of at least two hundred thousand shillings for the entity's officers.

(6) Where a private entity or any of its officers has been convicted of an offence under subsection (2), and the entity continues to fail to comply with the provisions of this Act, the entity or the officer commits a further offence and for each day the failure continues on conviction, shall be liable to a fine—

- (a) not exceeding zero-point-five per cent of the entity's net income registered in the previous tax year, for the private entity; and

- (b) not exceeding twenty thousand shillings for the entity's officers.

PART V—PUBLIC PARTICIPATION AND ACCESS TO INFORMATION

Access to information.

20. (1) The Authority shall keep the records on waste management submitted to it and maintain their confidentiality where the circumstances so require.

(2) A person may have access to the records submitted to the Authority under this Act.

(3) A person who wishes to access the records submitted to the Authority under this Act may, on application in writing to the Authority, be granted access to the records.

(4) The Authority may, with the approval of the Cabinet Secretary and by notice on the *Gazette*, prescribe reasonable fees to be levied for processing applications for access to information under this section.

Public participation.

21. Public consultation and participation under this Act shall be conducted in accordance with the procedures set out under the Constitution, this Act and any other relevant written law.

PART VI—FINANCIAL PROVISIONS

Fees to be allocated to county waste management facilities.

22. Each county government shall allocate all waste collection and tipping fees or other charges levied on waste received at a county government waste management facility for the improvement of waste management activities and services.

Incentives for waste management.

23. (1) The Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for matters relating to finance, introduce incentives—

- (a) for locally produced and imported sustainable waste management equipment and materials including collection machines, equipment for recycling, composting, transporting and waste compacting; and
- (b) to expand private investment in materials recovery and recycling activities.

(2) The incentives contemplated under subsection (1) shall apply to—

- (a) importers of sustainable waste management equipment, air pollution control equipment, recycling and composting equipment;

- (b) private investors to expand investment in waste recycling and enhance circular economy; and
- (c) private operators of certain classes of waste management equipment including equipment for recycling and composting.

(3) The Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for matters relating to finance, prescribe incentives and make regulations for the preferential use of recovered or recycled materials over newly manufactured materials with no recycled content.

PART VII—MONITORING AND COMPLIANCE

Monitoring and evaluation by the Authority.

24. (1) The Authority shall monitor and review the performance of private entities and county governments in carrying out their functions under this Act.

(2) The Authority shall develop regulations prescribing the procedure for reporting on compliance with this Act by private entities.

(3) Notwithstanding any other provision in this Act, the Authority may, by notice in the *Gazette*—

- (a) require a private entity that has waste management obligations to prepare reports on the status of the entity's performance of the entity's waste management obligations and prescribe the period for reporting; and
- (b) require a private entity that fails to comply with its waste management obligations to prepare a report within a specified time on the actions it has taken, is taking or intends to take to secure the entity's future performance of the entity's obligations.

Compliance and enforcement.

25. (1) The Authority shall—

- (a) monitor, investigate and report on whether public and private entities are in compliance with the provisions of this Act; and
- (b) monitor and enforce compliance with the provisions of this Act.

(2) In the performance of its functions under this Act, the Authority shall have all the powers necessary for the purpose of monitoring and investigation including the power to enter premises of any private entity and make an enquiry relating to compliance with

this Act.

(3) A person commits an offence if that person—

- (a) hinders the Authority in the performance of its functions under this Act;
- (b) fails or refuses to give information that the person may lawfully be required to give to the Authority; or
- (c) gives false or misleading information to the Authority.

(4) A person who is convicted of an offence under subsection (3) shall be liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding five years or to both.

Role of the
National
Environment
Complaints
Committee.

26. (1) The National Environment Complaints Committee shall establish a complaints and redress mechanism for the purposes of this Act.

(2) A person making a complaint on waste management to the National Environment Complaints Committee may submit evidence.

Partnership
programmes.

27. (1) The Authority shall, in consultation with county governments, establish a partnership programme with waste generating industries and sectors for continuous education on waste to encourage compliance.

(2) The county executive committee member responsible for environmental management in each county shall develop a framework for inter-county co-operation on waste management including the sharing of waste treatment facilities, materials recovery facilities and waste disposal facilities for approval by the county assembly.

(3) The Cabinet Secretary shall develop regulations for the framework for inter-county co-operation on waste management.

PART VIII—GENERAL PROVISIONS

Restoration.

28. (1) A person who fails to manage waste in accordance with this Act shall be required to clean up and restore the site where the waste was being managed to its natural state.

(2) The Authority shall issue the person with a site restoration order if the person fails to clean up and restore the site in accordance with subsection (1).

No. 8 of 1999.

(3) A restoration order issued under this section shall be effected in accordance with the Environmental Management and Co-ordination Act, 1999.

Dispute
resolution.

29. Any person or an entity aggrieved by—

- (a) a refusal to grant a license under this Act;
- (b) the imposition of any condition, limitation or restriction on a license granted under this Act;
- (c) any fee payable under this Act; or
- (d) the imposition of a restoration order in accordance with section 27,

may, within sixty days of the occurrence of the event with which the person or entity is aggrieved, appeal to the National Environment Tribunal.

General
penalty.

30. A person who contravenes a provision of this Act for which a penalty has not been prescribed shall, on conviction, be liable to a fine of not less than two million shillings and not more than four million shillings or to imprisonment for a term not exceeding four years or to both.

PART IX—MISCELLANEOUS MATTERS

Integrating
waste
management
into school
curricula.

31. The Cabinet Secretary shall, in consultation with the Cabinet Secretary responsible for matters relating to education and the Authority, develop a curriculum on sustainable waste management within one year of the coming into operation of this Act.

Regulations.

32. (1) The Cabinet Secretary may, in consultation with the Authority, make regulations for the better carrying into effect of the provisions of this Act.

(2) Notwithstanding the generality of subsection (1), regulations made under this section may provide for—

- (a) anything required to be prescribed under this Act;
- (b) take back schemes;
- (c) the conversion of dumpsites into landfills;
- (d) categories of waste segregation;
- (e) design and identification of waste transportation vehicles;
- (f) materials recovery facilities;
- (g) collection schedules for sorted waste types; and

(h) any other matter required under this Act.

(3) For the purpose of Article 96 (4) of the Constitution—

(a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make regulations for the orderly conduct of the business and affairs of county governments, the Authority and the National Environment Complaints Committee;

(b) the regulations made under this section shall be of such a nature and scope, and within the limits specified in this section; and

(c) the principles and standards applicable to the regulations made under this section shall be those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

Cap. 2.
No. 23 of 2013.

Transitional
provisions.

33. (1) The Cabinet Secretary shall, in consultation with county governments, develop a timetable for county governments to adopt the Act and regulations made thereunder.

(2) The Authority shall publish a model county waste management legislation and related subsidiary legislation on such date as the Cabinet Secretary may appoint.

No. 9 of 1999.

(3) Regulations relating to waste management under the Environmental Management and Co-ordination Act, 1999, shall remain in operation until corresponding regulations under this Act have been published in the *Gazette*.

SCHEDULE

(s. 21)

Provisions on Public Consultation

1. (1) Where this Act imposes a requirement for public consultation in matters relating to sustainable waste management policies, regulations, plans or actions, the respective national or county government entity or public entity shall publish a notice—

(a) in the *Gazette*;

(b) in at least two newspapers with a nationwide circulation;

(c) in at least one newspaper with a circulation in the locality in which the policies, regulations, plans or actions relate;

(d) in at least one radio station broadcasting in the locality in which the policies, regulations, plans or actions relate; and

(e) via the county executive committee member responsible for environmental matters in the county.

(2) The notice specified in subparagraph (1) shall—

- (a) set out a summary of the policy, regulation, plan or action;
- (b) state the place where the details of the policy, regulation, plan or action may be inspected; and
- (c) invite written comments on, or objections to, the policy, regulation, plan or action from any interested person and specify to whom and the date by which the comments are to be submitted.

2. The respective national and county government entity or private entity shall make arrangements for the public to obtain copies, at a reasonable fee, of documents relating to the policy, regulation, plan or action which are in the possession of the entity.

3. The respective national or county government entity or private entity shall consider the—

- (a) comments or objections received under paragraph (2); and
- (b) comments or objectives received at a public meeting held in relation to the policy, regulation, plan or action, or received from any other source and in any other form.

4. The respective national or county government entity or private entity shall, by notice in the Gazette, inform any interested person of the decision relating to the policy, regulation, plan or action and the reasons thereof and the place where the decision may be accessed.

5. Where regulations under the Act so require, the respective national or county government entity or private entity shall convene a public meeting relating to the policy, regulation, plan or action before a decision is rendered on the policy, regulation, plan or action.

Dated the, 2020.

KERIAKO TOBIKO,
Cabinet Secretary for Environment and Forestry.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Bill is to establish the legal and institutional framework for the sustainable management of waste; the realisation of the constitutional provision on the right to a clean and health environment. The Bill is divided into 9 Parts and runs to 32 clauses and one Schedule.

Part I of the Bill (clauses 1 – 4) provides for preliminary matters. Clause 2 provides for the defined terms; clause 3 provides for the objects of the Act; and clause 4 provides for the principles underpinning the Act.

Part II of the Bill (clauses 5 – 9) provides for policy, co-ordination and oversight of waste management. Clause 5 provides for the role of the Cabinet Secretary; clause 6 provides for the establishment of the Waste Management Council while clause 7 provides for its functions; clause 8 provides for the functions of NEMA; and clause 9 provides for the functions of county governments.

Part III of the Bill (clauses 10 – 14) provides for measures and actions including the for the role of the Cabinet Secretary and county governments regarding policies, regulations and standards; the administration of take-back schemes; the extended producer responsibility of entities engaged in the production, conversion and importation of products and packaging; and the establishment and administration of materials recovery facilities.

Part IV of the Bill (clauses 15 – 19) provides for the waste management functions of the Cabinet Secretary and accounting officers of public entities, county governments. It also provides for the establishment and management of materials recovery facilities; and the duties of private sector entities.

Part V of the Bill (clauses 20 and 21) provides for access to the information on waste management submitted and maintained by NEMA, and for public consultation and participation for the purposes of the Act.

Part VI of the Bill (clauses 22 and 23) provides for financial provisions including the allocation of fees for county waste management facilities; incentives for the production and importation of sustainable waste management equipment, and for encouraging investment in materials recovery and recycling activities.

Part VII of the Bill (clauses 24 – 27) provides for monitoring, compliance and enforcement by NEMA; the role of the National Environment Complaints Committee in establishing a complaints and redress mechanism for the purposes of the Act; and the establishment of partnership programmes by the Authority.

Part VIII of the Bill (clauses 28 – 30) provides for general provisions including the obligation for environmental restoration where waste management activities have taken place; dispute resolution mechanisms relating disputes under the Act; and a general penalty for offences for which no specific penalty is provided for under the Act.

Part IX of the Bill (clauses 30 – 33) provides for miscellaneous matters including the integration of waste management into school curricula; the making of regulations for the

better carrying out of the provisions of the Act by the Cabinet Secretary; and for transitional matters.

The Schedule to the Bill provides for the procedure to be followed in public participation as specified in clause 21.