

## **SPECIAL ISSUE**

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REPUBLIC OF KENYA

# ***KENYA GAZETTE SUPPLEMENT***

**NATIONAL ASSEMBLY BILLS, 2021**

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**NAIROBI, 5th November, 2021**

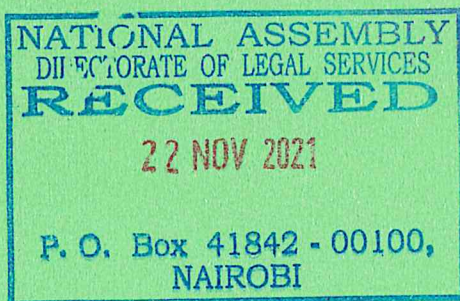
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## **CONTENT**

Bill for Introduction into the National Assembly —

PAGE

The Geriatric Bill, 2021..... 1619





**THE GERIATRIC BILL, 2021**  
**ARRANGEMENT OF CLAUSES**

*Clause*

**PART I— PRELIMINARY**

- 1— Short title.
- 2— Interpretation.
- 3— Object and purpose of the Act.
- 4— Guiding principles.
- 5— Application.

**PART II—ESTABLISHMENT OF THE NATIONAL  
COUNCIL FOR OLDER MEMBERS OF SOCIETY**

- 6— Establishment of the Council.
- 7— Functions of the Council.
- 8— Powers of the Council.
- 9— Composition of the Council.
- 10— Qualifications of Chairperson and members of the Council.
- 11— Removal from Office.
- 12— Chief Executive Officer of the Council.
- 13— Removal of the Chief Executive Officer.
- 14— Staff.
- 15— Headquarters.
- 16— Conduct of business of the Council.
- 17— Remuneration of the Chief Executive Officer of the Council
- 18— Tenure of office.
- 19— Protection from personal liability.
- 20— Liability of the Council for damages.
- 21— Delegation of powers or functions to committees or agents.
- 22— Power to hold inquiry.

**PART III—RIGHTS AND OBLIGATIONS OF THE  
FAMILY IN CARING FOR THE OLDER MEMBERS  
OF SOCIETY**

- 23— Obligations of the family of an older member of society.
- 24— Obligations of the State.
- 25— Employment of older members of society on scaled hour's basis.
- 26— Rights of older members of society.
- 27— Right to family and community care.
- 28— Right to legal capacity.
- 29— Right to equality and non-discrimination.
- 30— Right to documents of registration.
- 31— Right to privacy.
- 32— Right to protection and safety against risk and humanitarian emergencies.
- 33— Right to education.
- 33— Right to health.
- 34— Right to admission into public and private premises, and public transport.
- 35— Right to sports, recreation, leisure and culture.
- 36— Right of access to justice.
- 37— Obligations of the national Government with respect to the rights of older members of society.
- 38— Obligations of the county government with respect to the rights of older members of society.

**PART IV—COMMUNITY-BASED CARE FOR  
OLDER MEMBERS OF SOCIETY**

- 39— Rights of older members of society receiving community-based care and support services.
- 40— Community-based programmes for older members of society.

- 41— Registration of community-based care and support services.
- 42— Community-based care and support services to be registered.
- 43— Monitoring and evaluation of community-based care and support services.
- 44— Access to justice.

#### **PART V—PROHIBITION OF ABUSE OF OLDER MEMBERS OF SOCIETY**

- 45— Prohibition of abuse of an older member of society.
- 46— Notification of abuse of an older member of society.
- 47— Register of notifications of abuse of older members of society.

#### **PART VI—FINANCIAL PROVISIONS**

- 48— Funds of the Council.
- 49— Annual accounts and audit.
- 50— Financial year and annual report.
- 51— Allowances of Council members.

#### **PART VII—MISCELLANEOUS PROVISIONS**

- 52— Determination of a matter concerning older members of society.
- 53— Common seal.
- 54— General penalty.
- 55— Regulations.

#### **PART VIII— TRANSITIONAL PROVISIONS**

- 56— Existing homes.

**FIRST SCHEDULE—** Provisions as to the conduct of the business and affairs of the Council.

**SECOND SCHEDULE—** Procedure for dealing with offences against older members of society.

**THE GERIATRIC BILL, 2021****A Bill for**

**AN ACT of Parliament to give effect to Article 57 of the Constitution; to establish the National Council for Older Members of Society; to provide for the care, protection and empowerment of Older Members of Society; to provide for the maintenance of the well-being, safety and security of Older Members of Society, and for connected purposes**

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

**PART I—PRELIMINARY**

**1.** This Act may be cited as the Geriatric Act, 2021.

Short title.

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

Interpretation.

“abuse” means abuse of an older member of society as contemplated under this Act;

“assistive device” means an implement or tool provided to an older member of society to enable the older member of society carry on their day-to-day activities;

“basic service” includes provision of food, medical care, housing, sanitation, and water;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to older members of society;

“care” means physical, psychological, social, or material assistance provided to an older member of society, and includes services aimed at promoting the quality of life and general well-being of the older member of society;

“caregiver” means a person who provides care to older an older member of society;

“community-based care and support service” means any programme contemplated under section 27;

“department” means any department of the National Government or county governments responsible for matters relating to older members of society;

“home for the older members of society” means any building or premises maintained and used for the reception,

protection, and temporary care of older members of society in need of care and protection;

“home-based care” means care provided or services rendered at a place where older members of society reside, but does not includes a residential facility, by a care giver in order to ensure that an older member of society is maintained at a maximum level of comfort;

“older member of society” has the meaning assigned to it under Article 260 of the Constitution;

“older member of society in need of care and protection” means an older person in need of care and protection contemplated under this Act;

“person” has the meaning assigned to it under Article 260 of the Constitution.

“police officer” has the meaning assigned to it under the National Police Service Act;

“rehabilitation” means the process by which an older member of society is enabled to attain optimal physical, sensory, intellectual, psychiatric, or social functional levels, and includes measures to compensate for the absence of a function level or restore a functional level, but does not include medical care; No. 11A of 2011.

“respite care” means a service offered to an older member of society to provide temporary care, relief and comfort to the older member of society;

“Secretary” means the Principal Secretary for the department responsible for matters relating to older members of society; and

“service provider” means a person who provides services designed to respond to and address the needs of older members of society.

**3. The object and purpose of this Act is to—**

Object and purpose  
of the Act.

- (a) establish the National Council for Older members of society;
- (b) provide a legal framework for the realization of Article 57 of the Constitution and promotion of the rights of older members of society;

- (c) promote and protect the dignity, well-being, safety, and security of older members of society;
- (d) provide a framework for the registration of older members of society, and regulation of the establishment and management of homes for older members of society; and
- (e) prohibit the abuse of older members of society.

4. (1) Every state organ, state officer, public officer and person engaged in dealing with older members of society is bound by the Constitution and shall, in the performance of their functions under this Act, be guided by the following principles—

Values and principles.

- (a) respect, protection, promotion, and fulfilment of the rights of the older members of society as enshrined under Article 57 of the Constitution;
- (b) fair and equitable treatment of older members of society;
- (c) accountability of duty bearers and transparency in the implementation of this Act;
- (d) pursuant to the provisions of Article 27 of the Constitution, ensure the protection of older members of society from discrimination on any ground including age, health status or disability;
- (e) targeted empowerment of the older members of society and those involved in the care and protection of the older members of society in order to promote their welfare and protection;
- (f) preservation of the freedom and dignity of older members of society;
- (g) coordinated public participation in the formulation and implementation of policies related to the care and protection of the older members of society; and
- (h) establishment of monitoring and evaluation mechanisms to ensure transparency in the management of homes and facilities for the care and protection of older members of society.

(2) The general principles set out in this section shall guide—

- (a) the implementation of all legislation relevant to older members of society; and
- (b) all proceedings, actions and decisions by any state agency in any matter concerning the older members of society.

(3) All proceedings, actions or decisions in a matter involving an older member of society, shall—

- (a) respect, promote and fulfil the rights of the older member of society subject to any lawful limitation;
- (b) respect the older member of society's inherent dignity;
- (c) treat the older member of society fairly and equitably; and
- (d) protect the elder person from unfair discrimination as provided under Article 27 of the Constitution.

5. This Act applies to all persons providing services to older members of society and binds both natural and juristic persons to the applicable extent, taking into account the nature of the right and the nature of any duty imposed by that right. Application.

## **PART II—ESTABLISHMENT OF THE NATIONAL COUNCIL FOR OLDER MEMBERS OF SOCIETY**

6. (1) There is established the National Council for Older Members of Society. Establishment of the Council.

(2) The Council shall be a body corporate with perpetual succession, 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, and disposing of movable and immovable property;
- (c) borrowing and lending money; and

- (d) doing or performing all other things or acts necessary for the proper performance of its functions under this Act which may lawfully, be performed by a body corporate.

7. (1) The functions of the Council shall be to—

Functions of the Council.

- (a) advise the National Government and county governments on matters relating to older members of society, including the right of older members of society to—

- (i) to fully participate in the affairs of society;
- (ii) to pursue their personal development;
- (iii) to live in dignity and respect and be free from abuse; and
- (iv) to receive reasonable care and assistance from their family and the State;

- (b) advise state and non-state actors on promotion of access to essential services by older members of society;

- (c) participate in the formulation, review and development of policies and legal framework on older members of society, including—

- (i) payment of pension;
- (ii) access to state and non-state social assistance programs;
- (iii) access to quality health care services and health insurance;
- (iv) employment, volunteerism, and income security;
- (v) social protection;
- (vi) disasters;
- (vii) care at institutional, family and community level;
- (viii) education, training and information communication and technology; and
- (ix) data on older members of society.

- (d) regulate the establishment and management of homes and other facilities for older members of society;
- (e) issue adjustment orders to institutions offering services to older members of society;
- (f) work with relevant agencies to ensure that matters relating to older members of society are determined expeditiously;
- (g) register, on a continuous basis—
  - (i) older members of society;
  - (ii) entities involved in the provision of services to older members of society; and
  - (iii) older members of society in need of medical care for purposes of providing subsidized medical services.
- (h) identify facilities the provision medical care to older members of society;
- (i) provide information and technical assistance to entities involved in the rehabilitation of older members of society;
- (j) assess and report on the implementation of programmes for older members of society;
- (k) co-ordinate with the National Government and county governments in the formulation of curricula for educational centres and other facilities for the training of older members of society;
- (l) assess and report to the Cabinet Secretary on the needs of older members of society and recommend areas of prioritization;
- (m) advise the National Government and county governments on the provision of suitable and affordable housing and other facilities for older members of society;
- (n) liaise the National Government and county governments in the promotion of public awareness and education on the rights of older members of society;

- (o) facilitate the provision of medical equipment, assistive devices and other equipment necessary for the health, comfort and general well-being of older members of society;
- (p) facilitate preparation of wills for older members of society at no cost to the older member of society or on such other terms as the Council may determine;
- (q) facilitate the conduct of research on any matter relating to the needs of older members of society; and
- (r) establish networks and collaborate with local and international organizations, including local and international organizations for the older members of society as the Council may consider necessary.

(2) The Council shall not levy any fees for providing its services to older members of society.

**8.** The Council shall have all powers necessary for the performance of its functions under the Constitution, this Act or any other written law, including the power to—

Powers of the Council.

- (a) conduct inquiries;
- (b) conduct accessibility and assessment audits; and
- (c) issue adjustment or compliance orders.

**9. (1)** The Council shall consist of—

Composition of the Council.

- (a) a Chairperson appointed by the President;
- (b) the Principal Secretary of the department responsible for matters relating to the older members of society or a representative designated in writing;
- (c) the Principal Secretary of the department responsible for finance or a representative designated in writing; and
- (d) four other members appointed competitively by the Cabinet Secretary being—
  - (i) two persons nominated by the most representative organization of older members of society; and

- (ii) two older members of society representing special interests;

(2) In gazetting appointments under subsection (1), the Cabinet Secretary shall, ensure that—

- (a) no more than two-thirds of the members are of the same gender; and
- (b) members nominated under section 9(1)(d)(i) and (ii) shall represent different categories of older members of society.

**10.** A person shall be qualified for appointment as the Chairperson of the Council, if the person—

Qualifications of  
Chairperson and  
members of the  
Council.

- (a) is a Kenyan citizen;
- (b) holds a bachelors degree from a university recognized in Kenya;
- (c) possess at least fifteen years' relevant working experience, five of which should have been in senior management, and has qualifications in—
  - (i) public administration;
  - (ii) law
  - (iii) human rights;
  - (iv) corporate governance and management; or
  - (v) economics.
- (d) meets the requirements of Chapter six of the Constitution.

(2) A person shall be qualified for appointment as a member of the Council, if the person—

- (a) is a Kenyan citizen;
- (b) holds at least a diploma from an institution recognized in Kenya in any of the following fields—
  - (i) social studies and development;
  - (ii) public administration;
  - (iii) human rights;

- (iv) law;
  - (v) economics;
  - (vi) corporate governance and management;
  - (vii) gerontology; or
  - (viii) geriatrics.
- (c) has knowledge and at least seven years' experience, three of which should be in matters relating to older members of society; and
- (d) meets the requirements of Chapter six of the Constitution.

(3) A person shall be disqualified from appointment as a Chairperson or a member of the Council, if such person—

- (a) has been removed from office for contravening the provisions of the Constitution or any other law;
- (b) is an official of a governing body of a political party; or
- (c) is a Member of Parliament or county assembly;
- (d) is an undischarged bankrupt; or

11. The Chairperson or a member of the Council may be removed from office by the Cabinet Secretary by notice in writing on the following grounds—

Removal from office.

- (a) absence from three consecutive meetings of the Council without the written permission of the Chairperson and in absence of the Chairperson, the Vice Chairperson;
- (b) incapacitation by prolonged physical or mental illness as to be unable to discharge the duties of the office;
- (c) being an undischarged bankrupt;
- (d) conviction of a criminal offence for which the penalty imposed is imprisonment for a term of six months or more; or
- (e) gross misconduct.

12. (1) The Council shall appoint a Chief Executive Officer through an open, transparent, and competitive recruitment process.

Chief Executive Officer of the Council.

(2) A person shall be qualified for appointment as the Chief Executive Officer of the Council, if the person—

- (a) is a Kenyan citizen;
- (b) holds a degree from a university recognized in Kenya in the following fields—
  - (i) law;
  - (ii) economics;
  - (iii) social studies;
  - (iv) Gerontology;
  - (v) geriatrics; or
  - (vi) corporate management;
- (c) has at least fifteen years' relevant experience five of which should have been at senior management level in public or private sector; and
- (d) meets the requirements of Chapter six of the Constitution.

(3) The Chief Executive Officer shall hold office for a term of four years and may be eligible for re-appointment for a further term of four years.

(4) The Chief Executive Officer shall be the Secretary and accounting officer of the Council.

**13.** (1) The Council may remove the Chief Executive Officer from office on the following grounds—

Removal of the  
Chief Executive  
Officer.

- (a) inability to perform the functions of the office arising out of physical or mental infirmity;
- (b) gross misconduct;
- (c) conviction of a criminal offence whose penalty is imprisonment for a term of six months or more without the option of a fine;
- (d) incompetence or negligence of duty;
- (e) violation of the Constitution and any other written law; and
- (f) any other grounds specified in the instrument of appointment.

(2) Before removing the Chief Executive Officer from office under subsection (1), the Council shall give the Chief Executive officer—

- (a) a sufficient notice in writing of the allegations made; and
- (b) an opportunity to present a defence against the allegations.

**14.** (1) The Council may recruit such staff as may be necessary for the proper discharge of its functions under this Act.

Staff of the Council.

(2) The staff recruited under subsection (1) shall serve on such terms and conditions as may be determined the Council, in consultation with the Salaries and Remuneration commission.

(3) The Government may, upon request by the Council second to the Council such number of public officers as may be necessary for the proper performance of the functions of the Council.

(4) A public officer seconded to the Council, shall, during the period of secondment, be considered an officer of the Council, and shall be subject only to the direction of the Council.

**15.** (1) The headquarters of the Council shall be in Nairobi, at a place designated by the Cabinet Secretary and published in the *Gazette*.

Headquarters.

(2) The Council may establish such offices in the counties as may be necessary for the proper performance of the functions of the Council under this Act.

(3) Subject to the provisions of any other written law as to the meetings of the Institute, the Institute may hold its sittings at any place in Kenya.

**16.** (1) The conduct and regulation of the business of the Council shall be as provided in the First Schedule.

Conduct of business of the Council.

(2) Except as provided in the First Schedule, the Council may regulate its own procedure and the procedure of the conduct of the business of any Committee of the Council.

**17.** The Chief Executive Officer of the Council shall be paid such remuneration as may be determined by the Council.

Remuneration of the Chief Executive Officer of the Council.

18. (1) The Chairperson and members of the Council shall hold office for a term of three years and may be eligible for reappointment for a further and final term of three years.

Tenure of office.

(2) A member of the Council may resign from office at any time upon giving a written notice to the appointing authority.

19. A matter or thing or an act done by a member of the Board or an officer, employee or agent of the Council shall not, if the matter or thing is done *bona fide* for executing the functions, powers, or duties of the Council, render the members of the Council, officer, employee or agent or any person acting on lawful directions of the Council personally liable to any action, claim or demand whatsoever.

Protection from personal liability.

20. This Act shall not relieve the Council of the liability to pay compensation or damages to any person for any injury to that person, the person's property or the person's interests caused by the exercise of any power conferred by this Act or by the failure, whether wholly or partially, of any works.

Liability of the Council for damages.

21. (1) The Council may, by resolution, either generally or in a particular case, delegate to any committee of the Council or to any member, staff, self-regulated organization or agent of the Council, the exercise of any of the powers or the performance of any of its functions or duties.

Delegation of powers or functions to committees or agents.

(2) Every such committee, staff, self-regulated organization, or agent shall be appointed by the Council in writing, setting out the scope of the delegation and any other matter which the Council may consider necessary.

(3) A delegation under this section may be revoked by the Council at any time.

(4) A delegation conferred under this section shall not prevent the Council from performing the function so delegated.

(5) In this section, a 'self-regulated organization' means an organization whose objects include the regulation of the operations of its members or the users of its services

and includes, organisations that may be recognised as such by the Council.

**22.** (1) The Council may conduct an inquiry or a sectoral study— Power to conduct inquiry.

(a) where it considers necessary or desirable for the purpose of carrying out the functions of the Council; and

(b) upon receipt of a written request from the Cabinet Secretary requiring the Council to conduct an inquiry or a sectoral study into a specified matter.

(2) A direction by the Cabinet Secretary under subsection (1) (b) shall specify the period for conduct of the inquiry and submission of an inquiry report.

(3) The Council may conduct an inquiry into any matter affecting older members of society upon receipt of a written request from a regulatory body or on its own motion.

### **PART III—RIGHTS AND OBLIGATIONS OF THE FAMILY AND THE STATE IN CARING FOR OLDER MEMBERS OF SOCIETY**

**23.** (1) The older members of society shall be cared for mainly by their families. Obligations of the family of older members of society.

(2) The family of an older member of society in need of medical care shall—

(a) facilitate the medical expenses of the older member of society; and

(b) make arrangements for the older member of society to receive the necessary nursing care.

(3) The family of an older member of society shall ensure that the older member of society lives in dignity and receives reasonable care and assistance as necessary.

(4) The family of an older members of society shall not seize the property of the older member of society including houses owned or any income generated from property owned by an older member of society.

(5) An older member of society shall have the right to marry, remarry, and divorce under any law without interference from the family.

(6) The family of married older members of society shall make arrangement for the spouses to reside together unless there are compelling circumstances to warrant separation as may be prescribed by the Council.

**24.** (1) The Cabinet Secretary may in consultation with the Council, prescribe the age or any other criteria that may be used in identifying older members of society eligible for social assistance from the state.

Obligations of the State.

(2) An older member of society who is a beneficiary of life annuity or pension from the state may not be eligible to receive social under subsection (1).

**25.** The Cabinet Secretary shall in consultation with the Council, the Public Service Commission, independent commissions, state agencies and the Salaries and Remuneration Commission make Regulations for voluntary or non-voluntary post-retirement employment of older members of society, on scaled hours, in the following critical service areas—

Employment of older members of society.

- (a) health
- (b) national security;
- (c) education; and
- (d) any other service area as may be determined by the Cabinet Secretary.

**26.** An older member of society shall have the right to enjoy the rights under the Constitution, and may—

Rights of older members of society.

- (a) participate in community life in a position appropriate to their interests and capabilities;
- (b) participate in inter-generational programmes;
- (c) establish and participate in matters of associations of older members of society;
- (d) participate in activities that enhance their capacity to generate income;
- (e) access opportunities that promote their optimal level of social, physical, mental, and emotional well-being;
- (f) participate fully in the affairs of the society;
- (g) pursue their personal development;

- (h) manage their property;
- (i) live in dignity and respect and be free from abuse; and
- (j) receive reasonable care and assistance from their family and the State.

**27.** An older member of society has the right to—

Right to family and community care.

- (a) reside at their residence for as long as is possible; and
- (b) benefit from the care and protection of the family and the community in accordance with the cultural values of the respective society.

**28.** (1) An older member of society has right to legal capacity and the right to be facilitated to access that right.

Right to legal capacity.

(2) An older member of society shall not be denied the right to legal capacity on the basis of an express or implied disqualification on the grounds of age only.

**29.** (1) An older member of society shall be entitled to equal protection of the law.

Right to equality and non-discrimination.

(2) An affirmative action measure seeking to achieve equality of older members of society shall not constitute discrimination.

(3) The national Government and the county governments shall ensure that an older member of society in need of care—

- (a) is treated fairly;
- (b) lives in a dignified and secure environment; and
- (c) is free from exploitation and physical or mental abuse.

**30.** (1) An older member of society has the right to be issued with a passport, national identity card, certificate of birth or any other document of registration or identification.

Right to documents of registration.

(2) Where an older member of society does not possess a birth certificate an alternative identification document, including a national identity card or any other identification document as may be prescribed by the Council may be recognized.

**31.** (1) An older member of society has the right to the privacy including the right to privacy of their family, property or communication. Right to privacy.

(2) Every public and private institution shall protect the privacy of the personal, health and rehabilitation information of an older member of society.

**32.** (1) An older member of society has the right to protection and safety, including protection during situations of armed conflict, humanitarian emergency or natural disaster. Right to protection and safety.

(2) Public and private institutions shall—

- (a) maintain an inventory of all older members of society within their access; and
- (b) at the end of each financial year submit the inventory the National Government and county governments and any other agency responsible for disaster management.

(4) The National Government and county governments shall be responsible for emergency management and shall take measures to ensure the inclusion of the older members of society in every program or system for disaster management and account for older members of society during emergency situations.

**33.** (1) The National Government and county governments shall facilitate the right of older members of society to educational, cultural, spiritual, and recreational resources. Right to education.

(2) The Cabinet Secretary responsible for education shall establish programmes and structures for the education, training recreational activities for older members of society.

**34.** (1) The Council shall in collaboration with the National Government and county governments facilitate the development of programmes to address the healthcare needs of older members of society. Right to health.

(2) The National Government and county governments shall take measures to ensure that each older member of society is provided with a subsidised comprehensive post-retirement medical cover.

(3) Public health facilities shall not charge any fees for issuance of medical assessment reports to older members of society.

(4) An older member of society shall not be compelled to undergo any medical or other form of testing as a precondition for continued provision of health insurance or other form of insurance cover.

(5) The National Government and county governments shall provide free annual medical check-ups for older members of society.

(6) The National Government and county governments shall develop special medical programmes for older members of society, including programmes on—

- (a) access to geriatric care and services;
- (b) inpatient and outpatient care;
- (c) access to nursing care in all counties;
- (d) geriatric friendly hospital facilities for use by older members of society;
- (e) priority access for older members of society in accessing medical treatment; and
- (f) community based public health programmes relevant to older members of society;

**35.** (1) An older member of society shall not, on the ground of old age only be denied—

(a) admission into a premise to which members of the public are ordinarily admitted; or

(b) the provision of a service which members of the public are generally entitled to.

(2) The proprietor of a premise referred to under subsection (1)(a) shall not, on the ground of age only, reserve the right of admission to the premises against an older member of society.

**36.** (1) An older member of society has the right to participate in any sports, recreation, leisure, and cultural activities including national and international sports events.

(2) Public and private institutions shall ensure that their sporting, recreation, leisure and cultural facilities and

Right to admission into public and private premises, and public transport.

Right to sports, recreation, leisure, and culture.

activities are accommodative to the needs of older members of society.

(3) An older member of society is entitled to the use, free of charge social, recreational or sports facilities owned or operated by the National Government and county governments during social, sporting, or recreational activities.

(4) The national Government and each county government shall provide older members of society with a suitable environment for sports, recreation, and leisure, including training support and medical personnel.

37. (1) The law enforcement agencies shall take the age of an older member of society into account during arrest, detention, trial, or other form of lawful confinement.

Right of access to justice.

(2) A suit involving an older members of society shall be disposed of expeditiously having due regard to their age and health condition.

38. (1) The National Government and county governments shall to the extent of their constitutional mandate, promote the care, maintenance, and protection of older members of society in Kenya.

Obligations of the National Government with respect to the rights of older members of society.

(2) In ensuring that the National Government and county governments fulfil their obligations under subsection (1), the Council shall—

- (a) adopt a national strategy to promote the realization of the rights of the older members of society as set out under Article 57 of the Constitution.
- (b) collaborate with county governments in the development of infrastructure for the care, rehabilitation, and provision of basic services to older members of society;
- (c) facilitate access to social, financial, legal, and other services by older members of society;
- (d) conduct public sensitization programmes and promote access to information on the care and management of older member of society; and
- (e) maintain a data base of the health status and social needs of older members of society, in order

to establish adequate mechanisms for the provision of services to address the identified needs.

(3) In discharging its obligations under subsection (1), the Council shall—

- (a) collaborate with the relevant public entities to—
  - (i) establish mechanisms to promote the realization of the rights of older members of society as provided under Article 57 of the Constitution; and
  - (ii) establish mechanisms to ensure that older members of society have access to community and family-based care support systems;
- (b) collaborate with National Government and county governments and relevant private entities in the provision of social and financial services to older members of society;
- (c) promote periodic research, data collection, analysis, and dissemination of information on the welfare of older members of society;
- (d) collaborate with the national Government and the county governments in—
  - (i) promoting access to the highest attainable standards of health by older members of society; and
  - (ii) promoting the expansion and strengthening of community and family-based care and support systems for older members of society;
- (e) perform such other functions as may be necessary for the implementation of this Act.

(3) The Council may, for purposes of subsection (2), conduct inquiries, including public inquiries, into any matter relating to the welfare, care, and protection of older members of society.

#### **PART IV—COMMUNITY-BASED CARE FOR OLDER MEMBERS OF SOCIETY**

**39.** An older member of society receiving community-based care and support services has, in addition to the rights contemplated under this Act, the right to—

Rights of older members of society receiving community-based care and support

- (a) reside at the family home; services.
- (b) pursue opportunities for the full development of their potential; and
- (c) benefit from family and community care and protection in accordance with the society's system of cultural values.

40. (1) The Cabinet Secretary may, in collaboration with any relevant Cabinet Secretary or the relevant Executive Committee Member in a county— *Community-based programmes for older members of society.*

- (a) develop community-based programmes on prevention of abuse and promotion of protection of older members of society;
- (b) determine how a person who runs a programme contemplated under paragraph (a) may be supported, either financially or through other support mechanisms.

(2) The programmes contemplated under subsection (1) are programmes whose objective is to—

- (a) promote the economic empowerment of older members of society;
- (b) establish recreational opportunities for older members of society;
- (c) provide information on education and counselling services, HIV and AIDS, care for orphans, age related medical conditions like Alzheimer's, dementia, and basic emergency care;
- (d) promote the spiritual, cultural, medical, and social interest of older members of society;
- (e) provide nutritionally balanced meals and safe water to needy older members of society;
- (f) promote the skills and capacity of older members of society to sustain their livelihoods;
- (g) provide professional services, including care and rehabilitation to ensure the independent living of older members of society;
- (h) protect the rights of older members of society with disabilities;

- (i) protect the rights of older members of society to freedom from violence, sexual abuse and discrimination based on gender, and abuses in relation to property and land rights;
- (j) eliminate discrimination against older members of society with regard to employment opportunities and ensure that older members of society work under decent working conditions;
- (k) ensure provision of appropriate services contained in the indigent policy for vulnerable and qualifying older members of society;
- (l) utilise and manage existing facilities for older members of society as multi-purpose community centres; and
- (m) integrate community care and development programmes for older members of society.

(3) Home-based care programmes for older members of society within the community may include—

- (a) provision of hygienic and physical care for older members of society;
- (b) provision of professional and lay support for the care of older members of society in a home;
- (c) rehabilitation programmes that include provision of assistive devices;
- (d) protection of the rights of older members of society to freedom from violence, sexual abuse and discrimination based on gender, and abuses in relation to property and land rights;
- (e) protection of the rights of older members of society with disabilities;
- (f) provision of respite care;
- (g) provision of information, education and counselling for family members, caregivers, and the community on age related life conditions; and
- (h) provision of free health care to vulnerable older members of society and other older members of society as may be prescribed by the Cabinet Secretary.

41. (1) Any person who wishes to provide community-based care and support services shall apply to the Council for the registration of the service in the prescribed form.

*Registration of community-based care and support services.*

(2) The Cabinet Secretary shall prescribe through Regulations, the conditions for the registration and deregistration of community-based care and support services, including—

- (a) application for registration;
- (b) approval of registration;
- (c) temporary registration;
- (d) suspension of registration;
- (e) termination of registration; and
- (f) any matter contemplated under subsection (4).

(4) A registration certificate issued under this section shall not be transferable.

(4) Where the provider of community-based care and support services intends to terminate the provision of such services, the provider shall—

- (a) notify the Council of the intended termination and the impact of the termination on the beneficiaries of the service;
- (b) inform the affected beneficiaries of the intended termination of the service; and
- (c) take all reasonable steps to ensure that the beneficiaries of the service are not adversely affected and, where appropriate, refer the beneficiaries to an alternative service provider.

(5) Any person who provides home-based care and support services shall ensure that caregivers receive the prescribed training.

(6) The social workers and health care providers contemplated under subsection (1) shall be persons registered with the appropriate statutory body.

(7) The Council shall maintain a register of all caregivers providing home-based care and shall prescribe a code of conduct for such caregivers.

(8) Subsection (7) shall not apply to the social workers and health care providers contemplated under subsection (2).

(9) A person who contravenes the provisions of this section commits an offence.

**42.** (1) A person who operates an unregistered community-based care and support facility commits an offence.

Community-based care and support services to be registered.

**43.** The Council shall monitor and evaluate community-based care and support services.

Monitoring and evaluation of community-based care and support services.  
Access to justice.

**44.** (1) The National Government and county governments shall, to the extent of their constitutional mandate, ensure access to justice for older members of society, including recourse to age-appropriate exceptions for the older members of society, in order to facilitate their involvement in legal proceedings, by—

- (a) providing appropriate training for persons working in administration of justice, including the members of the National Police Service and correctional officers;
- (b) providing special consideration for older members of society during arrest, detention, trial, or confinement;
- (c) establishing mechanisms for the expeditious disposal of cases involving older members of society;
- (d) offering free legal services for older members of society with respect to—
  - (i) the violation of the rights of an older member of society or deprivation of their property;
  - (ii) violence against older members of society; and
  - (iii) such other matters as may be prescribed by the Cabinet Secretary through Regulations,

in consultation with the Council, the Attorney-General and relevant stakeholders.

(2) The Chief Justice shall make rules providing for the exemption, of older members of society, from payment of court fees in relation to certain matters.

#### **PART V—PROHIBITION OF ABUSE OF OLDER MEMBERS OF SOCIETY**

**45.** (1) A person shall not subject an older member of society to any form of physical or mental abuse.

Prohibition of abuse of an older member of society.

(2) Any conduct occurring within a relationship in which there is an expectation of trust and which causes harm or distress or is likely to cause harm or distress to an older member of society constitutes abuse under subsection (1).

(3) For the purposes of subsection (1) and (2), “abuse” includes—

- (a) physical abuse which includes any act or threat of physical violence towards an older member of society;
- (b) any conduct that violates the sexual integrity of an older member of society;
- (c) psychological abuse including any pattern of degrading or humiliating conduct towards an older member of society, including—
  - (i) insults, ridicule or name calling;
  - (ii) threats of emotional pain; and
  - (iii) repeated invasion of older members of society privacy, liberty, integrity, or security;
- (d) economic abuse including—
  - (iv) the deprivation of economic or financial resources; or
  - (v) the disposal of household effects or other property belonging to the an older member of society without the consent of the older members of society.

(3) A person who contravenes the provisions of this section commits an offence and shall be liable, upon

conviction, to imprisonment for a term not exceeding five years or to a fine not exceeding one million shillings, or to both.

46. (1) A medical practitioner, social worker or any person who examines, attends to, or deals with an older member of society suspects that the older member of society has been abused, shall notify the Council and the Director of Medical Services of such abuse or injury.

Notification of  
abuse of an older  
member of society.

(2) Upon receipt of a notification under subsection (1), the Director of Medical Services shall investigate the alleged abuse.

(3) Where the Director establishes that the older member of society has been subjected to any form of abuse, the Director shall report the matter to the relevant police authorities who shall commence appropriate action without delay.

(4) Upon receipt of a notification under subsection (1), the Director of Medical Services in consultation with the Council may, in addition to reporting the matter under subsection (3)—

- (a) relocate the victim from their residence and place them in a hospital, a home for the older members of society or such other place as the Director may consider necessary for the safety and well-being of the victim; and
- (b) where necessary, make arrangements for the victim to receive medical treatment.

(4) A person shall not be liable for any action or claim for damages in respect of any notification given in good faith under subsection (1).

(5) A person who fails to comply with subsection (1) commits an offence and shall be liable, on conviction, to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred thousand shillings or to both.

47. (1) The Council shall maintain a register of notifications received under section 46(1).

Register of  
notifications of  
abuse of older  
members of  
society.

(2) The Register maintained by the Council under subsection (1) shall contain—

- (a) the identification details of the victim;
- (b) the identification details of the alleged offender;
- (c) the date the notification was made;
- (d) a description of the circumstances relating to each notification;
- (e) the action taken by the relevant authorities; and
- (f) such other information as the Council may consider necessary.

(2) A person who is convicted of the offence abuse of an older member of society and whose name appears in the register maintained under subsection (1) shall not—

- (a) operate or be employed in a home for older members of society; or
- (b) provide community-based care and support services to any older members of society.

#### **PART IV—FINANCIAL PROVISIONS**

**48.** The funds of the Council shall consist of—

Funds of the  
Council.

- (a) such monies, as may, from time to time, be appropriated by the National Assembly;
- (b) interest from bank deposits;
- (c) such monies, revenue or assets as may accrue to or vest in the Council in the exercise of its powers or the performance of its functions; and
- (d) any grants, gifts, donations, or other endowments given to the Council.

**49. (1)** The Council shall cause to be kept all proper books and records of accounts of the income, expenditure, assets, and the liabilities of the Council and prepare an annual statement of accounts in conformity with the international accounting standards.

Annual Accounts  
and Audit.

(2) The annual accounts of the Council shall be prepared, audited, and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the Public Finance Management Act.

(3) The provisions of the Public Finance Management Act and the Public Audit Act shall apply to this Act.

No. 8 of 2012.

No. 8 of 2012.

No. 34 of 2015.

(4) The Council shall within three months after the receipt of the audit report, submit an annual report to the Cabinet Secretary and the Auditor General covering the activities and operations of the Council for the year to which the report relates.

(5) The annual report may be published and publicized in such other manner as may be determined by the Council.

**50.** (1) The financial year of the Council shall be the period of twelve months ending on the thirtieth of June in each year.

Financial year and  
Annual Report.

**51.** The Chairperson and members of the Council shall be paid such remuneration and allowances as may be determined by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

Remuneration of  
Council Members.

## **PART V—MISCELLANEOUS PROVISIONS**

**52.** In any matter concerning an older member of society—

Determination of a  
matter concerning  
an older member of  
society.

- (a) conciliation, mediation and problem solving shall be preferred;
- (b) approaches likely to occasion confrontation shall be avoided; and
- (c) delays shall be avoided to the greatest extent possible.

**53.** (1) The common seal of the Council shall be kept in the custody of the Chief Executive Officer or such other person as the Council may direct, and shall not be affixed on any document except upon authorization of the Chief Executive Officer.

Common seal.

(2) The Common seal of the Council, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any order or authorization by the Council under this section shall be presumed to have been duly given.

(3) The affixing of the common seal of the Council shall be authenticated by the signature of the Chairperson of the Council or the Chief Executive Officer:

Provided that the Council shall, in the absence of either the Chairperson or the Chief Executive Officer,

nominate one of their number, by resolution, to authenticate the seal of the Council on behalf of either the Chairperson or the Chief Executive Officer.

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

**55.** (1) The Cabinet Secretary may, in consultation with the Council, make Regulations generally for the better carrying into effect of the provisions of this Act. Regulations.

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

- (a) minimum standards for registration of a home;
- (b) minimum standards for the care, safety and general wellbeing of older members of society;
- (c) the conditions for provision subsidised comprehensive medical cover for older members of society;
- (d) criteria and assessment procedures for admission of an older member of society into a home;
- (e) minimum standards for the establishment and management of a home;
- (f) conditions subject to which such registration certificates may be granted or renewed and the fees payable in respect of the grant or renewal of such certificates; or
- (g) qualifications for employment as a manager or other staff in a home for older members of society.

Cap. 2.  
No. 23 of 2013.

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

- (a) for services of different types or descriptions rendered in relation to an older member of society; and
- (b) in respect of different kinds of registrations.

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

- (a) the authority of the Cabinet Secretary and the County Executive Committee Member to make regulations shall be limited to bringing into effect the provisions of this Act and the fulfilment of the objectives specified under subsection (1); and
- (b) the principles and standards set out under the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013 in relation to subsidiary legislation shall apply to Regulations made under this Act.

## **PART VII—TRANSITIONAL PROVISIONS**

**56.** (1) Subject to subsections (2), (3) and (6), every Existing homes.  
home which, immediately before the commencement of this Act, was registered as a home for older members of society shall be deemed to be registered as a home for older member of society under this Act, and shall continue to be so licensed for the unexpired period of registration subject to such conditions of registration as may be imposed under this Act.

(2) Despite subsection (1), a County Executive Committee Member may give a written notice to the owner of a home registered under subsection (1), requiring the manager to apply for registration under this Act within three months of the date of the notice, and—

- (a) where the manager fails to apply for registration within the specified period, the home shall, at the end of that period cease to be registered under subsection (1); or
- (b) where the manager applies for registration within the specified period, the centre shall continue to be a registered home under subsection (1) pending determination of the application.

(3) Despite subsection (1), if subsection (4) applies, the County Executive Committee Member may, by written notice to the manager who operates a home for the older members of society that is deemed to be registered under subsection (1), declare that the home is no longer registered under subsection (1) and the notice shall have effect accordingly.

(4) The County Executive Committee Member may issue a notice under subsection (3), only if the County Executive Committee Member is satisfied that the manager or the home—

- (a) has failed to comply with the requirements for registration Act; or
- (b) has failed to comply with any other condition for registration.

(5) The County Executive Committee Member may, notwithstanding that a home does not meet the requirements for registration under this Act, issue a transitional certificate to the manager operating the home in such manner as the County Executive Committee Member may prescribe, in consultation with the Council and subject to such conditions as may be imposed.

(6) A County Executive Committee Member may suspend or withdraw a certificate where a person operating a home for the older members of society fails to comply with conditions the specified in the certificate issued under subsection (5).

(7) A notice issued under subsection (3) or subsection (6) shall set out the grounds for the action taken.

(8) Subsections (1) to (6) shall not limit any powers to cancel or suspend the registration of a home for older members of society in the manner prescribed by the County Executive Committee Member.

## FIRST SCHEDULE

### PROVISIONS RELATING TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. The members of the Board, other than *ex officio* members, shall be appointed in such a manner that the respective expiry dates of their tenure occur at different times.

Appointment.

2. (1) The Board shall meet at least four times in every financial year and not more than four months shall elapse between the date of one meeting of the Board and the date of the next meeting.

Meetings.

(2) Notwithstanding the provisions of subparagraph (1), the Chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

3. At the first meeting of the Board, the members shall elect a Vice-Chairperson, from among the members appointed under this Act.

Vice-Chairperson.

4. A member of the Board, other than an *ex officio* member, may—

Vacation of office.

- (a) at any time resign from office by notice in writing, in the case of the Chairperson, to the President, and in the case of any other member, to the Cabinet Secretary;
- (b) be removed from office by the President, or Cabinet Secretary, if the member—
  - (i) has been absent from three consecutive meetings of the Board without the permission of the Board;
  - (ii) is adjudged bankrupt or enters a composition scheme or arrangement with his or her creditors;
  - (iii) is convicted of an offence involving dishonesty or fraud;
  - (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;

- (v) is incapacitated by prolonged physical or mental illness;
- (vi) is found to have acted in a manner inconsistent with the aim and objectives of this Act;
- (vii) fails to comply with the provisions of this Act relating to disclosure; or
- (viii) is otherwise unable or unfit to discharge his or her functions as member of the Board.

5. Other than in the case of a special meeting or unless three quarters of members agree, every member of the Board shall be given at least fourteen days written notice of every meeting of the Board.

Notice of meeting.

6. The quorum for the conduct of business of the Board shall be half of the members, and unless a unanimous decision is reached, decisions shall be by a majority vote of the members present, and in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

Quorum.

7. The Chairperson shall preside at every meeting of the Board at which the Chairperson present, in the absence of the Chairperson, the Vice-Chairperson shall preside and in the absence of the Vice-Chairperson, the members present shall elect one of their members to preside at that meeting, and with respect to that meeting the person elected shall have all the powers of the Chairperson.

Chairperson to preside.

8. (1) If a member has a direct or indirect interest in any matter under consideration by the Board, and is present at the meeting of the Board at which the matter is the subject of consideration, the member shall, at the meeting and as soon as practicable after the commencement, disclose that fact and shall be excluded from voting at the meeting at which the matter is being considered.

Disclosure of interest.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

9. Subject to the provisions of this Schedule, the Board may regulate its own procedure.

Board may regulate own procedure.

**SECOND SCHEDULE****PROCEDURE FOR DEALING WITH OFFENCES  
AGAINST OLDER MEMBERS OF SOCIETY**

1. (1) A police officer, social development officer, national Government, or county government administrator, to whom a report contemplated under this Act has been made or who is satisfied that it will be in the best interests of the older member of society if the alleged offender is removed from the home or place where the older member of society resides, shall issue a written notice which—

Written notice to alleged offender

- (a) specifies the full name, residential address, occupation, and status of the alleged offender;
- (b) requires the alleged offender to leave the home or place where the older member of society resides and refrain from entering the home or place or having contact with the older member of society until proceedings relating to the alleged offence are determined; and
- (c) contains a certification by the police that the original of such written notice has been served to the alleged offender and that the contents of the certificate have been made known to the alleged offender.

2. (1) The Board shall meet at least four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

Meetings.

(2) Notwithstanding the provisions of subparagraph (1), the chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) The police officer shall forthwith forward a duplicate original of the written notice to the clerk of the magistrates' court concerned.

(4) The production to the magistrates' court of the duplicate original referred to in subsection (2) is prima facie proof of the issue of the original thereof to the alleged offender and that such original was handed to the offender.

(5) A magistrates' court before which an alleged offender to whom a written notice in terms of subsection (1) has been issued, appears, may summarily inquire into the circumstances which gave rise to the issuing of the notice.

(6) After consideration of the circumstances that gave rise to the issuance of the written notice and hearing the alleged offender, the magistrates' court may—

- (a) issue an order prohibiting the alleged offender from entering the home or place where the older member of society resides or from having any contact with the older member of society or both, for such period as the court considers fit;
- (b) order that the alleged offender may enter the home or the place where the member of society resides or have contact with the member of society upon such conditions as would ensure that the best interests of the member of society are served;
- (c) order that the alleged offender will be responsible for the maintenance of the older member of society's family during the period contemplated in paragraph (a); or
- (d) make such other order as the court may consider necessary.

(6) A person is guilty of an offence, if the person—

- (a) has been served with a written notice contemplated in subsection (1) and the person—
  - (i) fails to leave the home or place where the older member of society resides; or
  - (ii) has contact with the older member of society in contravention of the notice;
- (b) contravenes the court order issued under subsection (5).

3. (1) Where a social worker or health care provider submits a written report under oath to a prosecutor, the prosecutor may seek issuance of a summon informing the alleged offender of the allegations and requiring the alleged offender to appear in Court, at a time and place specified in the summon.

Procedure for arraigning  
an alleged offender in  
Court.

(2) A public prosecutor shall only seek issuance of a summon upon receipt of a report of the alleged abuse against an older member of society from the social worker.

(3) Where the notice issued under subsection (1) contains sufficient grounds for the magistrate to suspect that a social worker or health care provider may be denied access to the place where the alleged victim resides, the magistrate, may, upon application by public prosecutor issue a warrant authorising the social worker or health care provider to enter such premises.

(4) A magistrate may through the warrant issued under subsection (3), order that a police officer should accompany the social worker or health care provider.

(5) The Criminal Procedure Code shall apply with the necessary modification, in relation to the form and manner of service of summons in criminal cases in lower courts, the time provided for a person summoned to appear, and the consequences of non attendance or refusal to remain in attendance upon appearance.

(6) A person is guilty of an offence, if that person—

- (i) obstructs or hinders a social worker or a health care provider in the performance of their duty; or
- (ii) fails to provide a social worker or health care provider with information relating to the alleged abuse of older member of society.

(4) (1) Subject to this section, a magistrate before whom any person is brought shall enquire into the allegations contained in the summons.

Enquiry into of an older member of society.

(2) A public prosecutor or a person designated by the magistrate shall appear at the enquiry and may call witnesses and cross-examine any other witnesses giving evidence at the enquiry.

(3) The person against whom the allegations in question were made may give evidence and the legal representative of the person may—

(4) cross-examine a witness called in terms of subsection (2) and may call witnesses and shall be given the opportunity to advance reasons why an order should not be issued under subsection (10).

(5) Subject to anything to the contrary contained in this Act, the law relating to criminal trials in magistrates' courts

applies with the necessary modification in respect of written summons the calling and examination of witnesses for the purposes of or at the enquiry, the taking of evidence and the production of documents and other articles thereat.

(6) The magistrate holding the enquiry may determine whether or not the proceedings shall be conducted in an open court room or behind closed doors.

(7) The Criminal Procedure Code in so far as it relates to the conduct of a criminal trial in the absence of an accused, applies with the necessary changes in respect of an enquiry held in terms of this section.

(8) The Magistrates' Courts Act applies with the necessary changes in respect of any proceedings in connection with an enquiry held in terms of this section.

(9) A magistrate holding an inquiry under this schedule enquiry may direct a medical health officer, a psychiatrist, or a clinical psychologist to examine the older member of society concerned and to furnish the magistrate with a report on the findings of such examination.

(10) The contents of a report submitted or furnished in terms of subsection (8) shall be disclosed to the person against whom the allegations were made, and if he or she so desires, he or she or his or her legal representative shall be given an opportunity to cross-examine the person who made the report, in relation to any matter arising out of the report, and to disprove any allegation made therein.

(11) If, after consideration of the evidence and of any report submitted or furnished in terms of subsection (8), it appears to the magistrate that any allegation in the summons is correct, the magistrate may—

- (a) authorise the person concerned to accommodate or care for the older member of society concerned under such conditions as the magistrate may impose; or
- (b) prohibit that person from accommodating or caring for any older member of society for such period, but not exceeding 10 years, as may be determined by the magistrate.

(12) Any person who contravenes or fails to comply with any condition imposed in terms of subsection (10) (a) or who contravenes or fails to comply with subsection (10) (b) is guilty of an offence.

## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statements of the Objects and Reasons for the Bill**

The principal object of this Bill is to give effect to Article 57 of the Constitution by establishing a legal framework for the treatment of older members of society.

The Bill seeks to improve the living conditions of older members of society by providing for their rights to human dignity, safety and security, education, health and equality and non-discrimination.

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

The Bill delegates legislative powers to the Cabinet Secretary to make regulations generally for the better carrying into effect of any provisions of this Act but it does not limit fundamental rights and freedoms.

### **Statement of how the Bill concerns county governments**

The Bill concerns county governments in terms of Article 109(4) of the Constitution, as it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

### **Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution**

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 4th November, 2021.

GATHONI WAMUCHOMBA,  
*Member of Parliament.*