

REGULATORY IMPACT STATEMENT
THE ENVIRONMENTAL MANAGEMENT AND COORDINATION
(STRATEGIC ASSESSMENT, INTEGRATED IMPACT ASSESSMENT AND
AUDIT) REGULATIONS, 2025

Introduction

The draft Environmental (Strategic Assessment, Integrated Impact Assessment and Audit) regulations which comprise of Strategic Environmental Assessment (SEA), Environmental Impact Assessment (EIA) and Environmental Audit (EA) which are critical tools in environmental management and planning. These tools aid in identifying environmental impacts and propose possible mitigation measures geared towards safeguarding environmental assets and by extension promoting sustainable development and human health.

The Environmental (Impact Assessment and Audit) Regulations were first enacted in 2003. These Regulations have been in force for the last 22 years. During this period, there have been legislative changes as evidenced with the passing of a new constitution in 2010. Further, there have been a number of emerging issues, including but not limited to Climate Change.

It is against this backdrop that the Authority deemed it fit to undertake the review of the EIA and EA regulations of 2003. The primal objective of this exercise was to not only align the regulation to our Constitution but also mainstream the emerging environmental issues into it.

The Review of this Regulations was undertaken in 2018 and further in 2024 and presented before the Committees on Delegated Legislations of both houses of Parliament and a recommendation for renewed public participation was arrived at. It is on this basis that the Authority has embarked on undertaking fresh public

participation on the Regulations in line with the provisions of Article 10 of the Constitution

a) Objectives of the proposed regulations

The objective of the *Environmental Management and Coordination (Strategic Assessment, Integrated Impact Assessment and Audit) Regulations, 2025* is to promote good environmental practices that would result in sustainable development.

The specific objectives are to

- Provide high level integration of environmental concerns in decision making to promote sustainable development
- To assist decision making in planning and regulating economic activities while safeguarding environmental assets and opportunities
- Improve integration of projects, programmes, plans and policies into the environmental and social setting
- Reduce environmental damage and facilitate economic development and socio economic benefits.
- Promote integrated systematic and holistic approach in environmental assessment and monitoring
- To promote public participation in environmental decision making
- To promote sustainable exploitation, utilisation, management and conservation of the environment and human health

b) Effects of the proposed regulations

The effects of the proposed regulations can be categorised as follows;

Economic Effects

- (i) It enhances the ease of doing business by reducing cost and increasing efficiency.

- (ii) It opens opportunity for economic development, job creation and sustainable development.
- (iii) Enhances good investor climate.
- (iv) Supports the government policy objectives.

Social Effects

- i. By promoting sound environmental practices and therefore sustainable development, the potential risks are addressed thereby guaranteeing public health and safety, occupational safety and health and good environmental practise.
- ii. By promoting public participation, transparency and social acceptability (social licenses) it will mitigate against conflicts and social unrests.
- iii. Promotes social equity in utilisation of natural resources.

Environmental Effects

- (i) It ensures the right to a clean and healthy environment while promoting sustainable development.
- (ii) Puts in place preventive measures against destruction of the environment by assessing potential future risks to the environment by proposed projects, programmes, policies and plans.
- (iii) It enhances synergy building and inter-agency coordination among Ministries, Departments, Counties and Agencies (MDCA) in environmental management.
- (iv) Offers alternatives through consideration of international best practices for decision making to promote sustainable development.

(c) Statement of other practicable means of achieving the objectives of the proposed instrument (Strategic Assessment, Integrated Impact Assessment and Audit Regulations 2025)

Regulatory Options

Enforcement by the relevant Ministries, Departments, Counties and Agencies (MDCAs) on sectoral issues under their jurisdiction

Non Regulatory options

- i. The Authority to continue to enhance education and awareness of best environmental practices.
- ii. Negotiated compliance arrangements.
- iii. Compliance assistance programmes.
- iv. Compliance promotion
- v. Voluntary/Self-regulation practices by members of the public, operators and professionals.

(d) Assessment of the Costs and Benefits of the Strategic Assessment, Integrated Impact Assessment and Audit Regulations 2025

❖ Cost of the Regulations

- (i) Need for increased personnel
- (ii) More office space
- (iii) ICT enhancement (H A data base, website, system automation)
- (iv) Mobility (vehicles, motorbikes and others vessels)
- (v) Equipment's (computers, GPS equipments')
- (vi) Capacity enhancement
- (vii) Education and awareness
- (viii) Enforcement and monitoring

❖ Benefits of the regulations

Economic Benefits

- (v) It enhances the ease of doing business by reducing cost and increasing efficiency.
- (vi) It opens opportunity for economic development, job creation and sustainable development.
- (vii) Enhances good investor climate.
- (viii) Supports the government policy objectives

Social Benefits

- (i) By promoting sound environmental practices and therefore sustainable development, the potential risks are addressed thereby guarantying public health and safety, occupational safety and health and good environmental practise.
- (ii) By promoting public participation, transparency and social acceptability (social licenses) it will mitigate against conflicts and social unrests.
- (iii) Promotes social equity in utilisation of natural resources.
- (iv) It regulates development while enhancing zoning and compatibility requirements of proposed projects.

Environmental Benefits

- (a) It ensures the right to a clean and healthy environment while promoting sustainable development.
- (b) Fosters domestication of relevant International Environmental treaties, and Conventions.
- (c) Puts in place preventive measures against destruction of the environment by assessing potential future risks to the environment by proposed projects, programmes, policies and plans.

- (d) It enhances synergy building and inter-agency coordination among Ministries, Departments, Counties and Agencies (MDCA) in environmental management.
- (e) Offers alternatives through consideration of international best practices for decision making for proposed projects, programmes, policies and plans towards promoting sustainable development.

e) Reasons why other measures are not appropriate

1. Article 69 of the Constitution mandates the State to develop systems of Environmental Impact Assessment, Environmental Audit and Monitoring a function the State discharges through the Authority.
2. The Environmental Management and Coordination Act, Cap 387 provides for the development of regulations for implementation of the Act.

f) Matters specified by the Regulations

Matters specified in the Regulations include;

- i. Environmental Assessment
- ii. Registration of Experts
- iii. Summary Project Reports
- iv. Comprehensive Project Reports
- v. Environmental Assessment Study
- vi. Environmental Audit and Monitoring
- vii. Strategic Environmental Assessment

g) Adequacy of the regulatory impact statement - Independent Advice -

To undertake the regulatory impact assessment and to guide on the formulation of the Regulations, the authority constituted a taskforce with representation from the following

- The Environmental Institute of Kenya

- WWF - The World Wide Fund for Nature Kenya
- Kenya Association of Manufacturers
- Directorate of Occupational, Health and Safety Services
- NEMA provided the secretariat and coordination
- Kenya Private Sector Alliance

The Terms of Reference for the Task Force were;

1. Prepare the draft Environmental (Strategic Assessment, Integrated Impact Assessment and Audit) regulations.
2. Ensure all staff members are consulted and their input incorporated in the Regulations.
3. Ensure that the Lead Agencies are consulted and their input considered in the Regulations.
4. Ensure public participation in the process of formulating the Regulations.
5. Coordinate the finalization and Gazettement of the Regulations.
6. Perform any other task related to the amendment of the Regulations until finalization

In order to effectively execute the above mentioned TORs, the Task Force has scheduled to undertake the following activities;

1. Comprehensive literature review and benchmarking
2. Various drafting sessions
3. Preliminary stakeholder consultations
4. Working retreat to compile, review and incorporate stakeholder comments into the draft regulations.
5. Engagement with NEMA staff and management
6. Three advertisements in print media and continuous updates on NEMA website and social media platforms.

H CONCLUSION

The draft Environmental (Strategic Assessment, Integrated Impact Assessment and Audit) regulations which comprise of SEA, EIA and EA are critical tools in environmental management and planning. They will go a long way in promoting the right to a clean and healthy environment as enshrined under Article 42 of the Constitution of Kenya.

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