

SPECIAL ISSUE

COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA

Kenya Gazette Supplement No. 6 (Taita Taveta County Bills No. 5)

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REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

TAITA TAVETA COUNTY BILLS, 2018

NAIROBI, 18th April, 2018

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**THE TAITA TAVETA COUNTY EARLY
CHILDHOOD DEVELOPMENT EDUCATION BILL,
2018**

A Bill for

**AN ACT of the County Assembly of Taita Taveta to
provide for pre-primary and early childhood
education in Taita Taveta County, to give effect to
paragraph 9 of part 2 of the Fourth Schedule to the
Constitution and for other connected purposes.**

ENACTED by the County Assembly of Taita Taveta as
follows—

PART I—PRELIMINARY

1. This Act may be cited as the Taita Taveta County
Early Childhood Development Education Act, 2018 and
shall come into effect on the date of publication in the
Gazette.

Short title and
commencement

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

Interpretation

“Board” means the Management Board of a public
pre-primary school or care centre established under section
20 of this Act;

“care centre” means an early childhood education and
care centre established under section 5 of this Act;

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

“community” means persons residing in the
neighbourhood of an early childhood education centre;

“curriculum” means the approved subjects taught or
programs offered and includes all the activities provided at
any centre;

“County Education Board” means the County
Education Board established under the Basic Education
Act, 2013;

“Department” means the county department for the
time being responsible for early childhood education;

“Division” means the section of the department that
for the time being deals with early childhood education;

“early childhood” means any age of childhood that is not more than six years of age;

“Executive Committee Member” means the county executive committee member for the time being in charge of education;

“inspector” means an inspector of schools appointed under the Basic Education Act, 2013;

“Pre-primary” has the same meaning assigned to it in the Basic Education Act, 2013.

3. This Act shall apply to all institutions offering early childhood development education under this Act.

Application

4. The provision of early childhood development education shall be guided by the following values and principles—

Guiding principles

- (a) the right of every child to education;
- (b) equitable access for the child to education and equal access to educational institutions;
- (c) promotion of quality and relevance;
- (d) accountability within the institutions of early childhood education;
- (e) protection of every child against discrimination within or by a care centre
- (f) protection of the right of every child in a care centre to equal standards of education;
- (g) encouraging independent and critical thinking and cultivating skills, disciplines and capacities for reconstruction and development;
- (h) promotion of good governance, participation and inclusiveness of parents, communities, private sector and other stakeholders in the development and management of early childhood education;
- (i) elimination of hate speech and tribalism through instructions that promote the proper appreciation of ethnic diversity and culture in society;
- (j) transparency and cost effective use of educational resources and sustainable implementation of educational services;

- (k) Elimination of gender discrimination, corporal punishment or any form of cruel and inhuman treatment or torture.
- (l) Promotion of innovativeness and creativity;
- (m) Non-discrimination, encouragement and protection of the marginalized, persons with disabilities and those with special needs; and
- (n) Provision of appropriate human resource, funds, equipment, infrastructure and related resources that meet the needs of every child in early childhood education.

5. An early childhood education and care centre means premises used regularly for the education of five or more children by the day or part of a day to—

Early childhood
education and care
centre

- (a) children under the age of six who do not belong to the persons providing the education; but
- (b) not for any continuous period of more than seven days.

(2) Subject to subsections (3) and (4), the following premises are not early childhood education and care centres—

- (a) registered schools;
- (b) hostels;
- (c) residences;
- (d) institutions under the control of the Ministry responsible for matters relating to health;
- (e) hospital care institutions;
- (f) premises where all the children present are—
 - (i) members of the same family in the care of a member of the family; or
 - (ii) members of the same family in the care of a caregiver who is not acting for gain or reward;
- (g) any premises, during any period of use for the education or care of five or more children under the age of six, none of whom attends for any

period exceeding two hours per day, in circumstances where the children's parent or guardian is—

- (i) in close proximity to the children and are able to be contacted; and
 - (ii) able to resume responsibility for the children at short notice:
- (h) any premises, during any period of use for the operation of a licensed home-based education and care service, or hospital-based education and care service.

(3) Despite subsection (2), premises are early childhood education and care centres if they are—

- (a) within premises of a kind described in any of paragraphs (a) to (h) of subsection (2); and
- (b) used regularly or principally for the education or care of five or more children under the age of six who are children of—
 - (i) staff who work within premises of a kind described in any of paragraphs (a) to (h) of subsection (2); or
 - (ii) persons attending premises of that kind as residents or students.

(4) An early childhood education and care centre may be operated within the premises of a registered school; and its status as an early childhood education and care centre is not affected by the fact of its being operated within those premises.

PART II—RESPONSIBILITIES RELATING TO PRE-PRIMARY AND EARLY CHILDHOOD EDUCATION

6.(1) The Department shall promote the establishment of pre-primary and early childhood centres in the county to ensure early childhood education and development for all children before they proceed for the compulsory basic primary education.

Responsibilities of the
department

(2) The Executive Committee Member shall organize the pre-primary and early childhood education system in

the county and be responsible for the general progress, development and coordination of the system and its activities in accordance with the Basic Education Act, 2013.

7.(1) It shall be the responsibility of every parent or guardian to present for admission or cause to be admitted his or her child, as the case may be, to an early childhood education institution.

Duties of parents and guardians

(2) A person who contravenes this section shall be liable upon conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both fine and imprisonment.

8. The Executive Committee Member shall, in consultation with the County Education Board —

Quality assurance and standards

- (a) provide the curriculum, guidelines on minimum standards for school buildings, equipment and other relevant facilities for pre-primary and early childhood education and care centres;
- (b) ensure that the care givers who teach in the care centres have the necessary qualifications; and
- (c) ensure that all pre-primary and early childhood education centres are licensed, registered and regularly inspected by inspectors.
- (d) the Department may contract such consultants or experts as may be necessary for the discharge of its functions.

PART III—REGISTRATION OF EARLY CHILDHOOD CENTRES

9.(1) A person shall not operate a pre-primary or early childhood education centre, unless it is registered and licensed under this Act.

Care centres to be registered

(2) All pre-primary and early childhood education care centres shall undergo a quality review and approved in accordance with the guiding principles under section 4 of this Act by the Department before registration.

(3) A person who operates a pre-primary or early childhood education and care centre which is not registered under this Act commits an offence and is liable,

on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years or both fine and imprisonment.

10. (1) An application for registration of a pre-primary school or early childhood education and care centre shall be in a form prescribed by the Executive Committee Member and submitted to the Executive Committee Member.

Registration
procedure

(2) Within seven working days after receipt of an application under subsection (1), the Department shall forward a copy of the application to the County Education Board.

(3) The County Education Board shall within fifteen working days after receiving the application under subsection (2) —

- (a) visit and conduct an inspection of the proposed premises of the pre-primary school or care centre;
- (b) conduct an interview with the applicant to assess the suitability of the equipment and the persons proposed to be employed in the pre-primary school or care centre.

(4) The County Education Board shall within thirty days after the inspection and interview forward its recommendations to the Executive Committee Member for the registration of the pre-primary school or care centre, or to take such other action as the Department may deem fit.

11. Any person making an application for registration of a pre-primary school or care centre shall pay a fee prescribed by the Executive Committee Member to the Department.

Applicant to pay
prescribed fee

12. The Executive Committee Member shall upon receipt and after forwarding the application for the registration of a pre-primary or care centre to the County Education Board, publish the application in the Gazette.

Publication of the
application

13. (1) The Executive Committee Member shall register a pre-primary school or care centre if based upon the report of the County Education Department, he is satisfied that —

Registration of a pre-
primary school or
care centre

- (a) the applicant is an adult and a fit and proper person to operate the school centre or institution;
- (b) the applicant has not been convicted of an offence under the Psychotropic and Dangerous Drugs Act, the Children's Act No.8 of 2001, the Sexual Offences Act or an offence involving fraud, dishonesty or moral turpitude;
- (c) where the applicant is a company, firm or other organization, none of its directors or members, has been convicted of an offence mentioned in paragraph (b) above;
- (d) none of the persons to be employed by the applicant in the operation of the institution has been convicted of an offence mentioned in paragraph (b) above;
- (e) the applicant or a person to be employed by the applicant in the operation of the institution is not, by reason of any infirmity of mind or body or otherwise, incapable of operating or being employed in the institution.

(2) Any person aggrieved by the decision of the Department under this section may, within thirty days of being notified of the decision, appeal against the decision to the Education Appeals Tribunal established under the Basic Education

14. (1) The Executive Committee Member may upon recommendation by the County Education Board, issue to the applicant for registration of a pre-primary school or care centre a temporary permit to operate pending the fulfilment of the conditions required by the Board for the determination of the application.

Temporary operation
permit

(2) A permit issued under subsection (1) shall cease to operate upon—

- (a) the delivery of a certificate of registration to the applicant; or
- (b) the expiry of ninety days after receipt of the notice of refusal of registration.

(3) The Executive Committee Member may as a condition for issue of the temporary permit, prescribe a

period within which the applicant must fulfil the conditions required by the Board for the improvement of the operations or premises of the pre-primary school or care centre.

(4) A permit issued under this section shall be in the form prescribed by the Executive Committee Member.

(5) The holder of a temporary permit under this section shall allow an inspector to enter the premises of the pre-primary school or care centre, at reasonable hours for the purpose of carrying out any inspection to ascertain whether or not the pre-primary school or care centre is in compliance with conditions of the permit.

15. (1) The department shall on registration of a pre-primary school or care centre issue a registration certificate to the applicant.

Registration
certificate

(2) A registration certificate shall be valid for a period of five years from the date of issue and may be renewed upon application by the operator of the pre-primary school or care centre, in accordance with this Act.

16. The proprietor of the pre-primary school or care centre shall display the certificate issued under section 15 above in a conspicuous place on the premises of the institution.

Registration
certificate to be
displayed

17. The Department shall keep a register of all pre-primary and early childhood education and care centres operating in the county and shall include in the register the name of the institution and such other particulars as the Executive Committee Member may prescribe.

Register of all care
centres

PART IV — ADMINISTRATION AND CURRICULUM

18. The proprietor of every registered early childhood education care center or pre-primary school shall keep, and avail to the Executive Committee Member on request —

Administrative
requirements

- (a) a register of the children who attend or have attended the pre-primary school or care centre, specifying the date of birth of each; and
- (b) a record of the attendance of children at the pre-primary school or care centre; and

- (c) a record of all fees and other charges paid in respect of children's attendance at the care centre; and
- (d) any other records that are necessary to enable the pre-primary school or care centre's performance to be monitored adequately.

19. (1) The Executive Committee Member may prescribe a curriculum framework for registered early childhood services.

Curriculum
framework

(2) The Executive Committee Member may not prescribe a curriculum framework or amend any prescribed curriculum framework, unless the Executive Committee Member has consulted with those organisations that appear to the Executive Committee Member to be representative of persons likely to be substantially affected by the curriculum framework or the amendment, as the case may be.

(3) As soon as practicable after prescribing or amending a curriculum framework, the Executive Committee Member shall publish a notice in the *Gazette*—

- (a) stating that a curriculum framework has been prescribed or, as the case may be, amended; and
- (b) setting out the curriculum framework or the amendment to the curriculum framework in its entirety, or stating where or how a copy of the curriculum framework or the amendment to the curriculum framework can be obtained by the public.

(4) Without limiting the generality of subsection (1), a notice under subsection (3) may—

- (a) specify different commencement dates for different provisions of the curriculum framework or for different purposes; and
- (b) specify a transitional period during which pre-primary schools and care centres may elect to comply with another specified curriculum requirement and specify a date on which service providers shall comply with the curriculum framework.

(5) If a curriculum framework is prescribed under this section, every registered pre-primary school or care centre to whom that curriculum framework applies, shall implement that curriculum framework in accordance with any requirements prescribed in regulations made under this Act.

20. (1) There is established in every public pre-primary education centre, a Management Board. The Board shall consist of—

Establishment of
Management Boards

- (a) one person elected from amongst the parents from each level within the school to represent parents of children in the education centre;
- (b) one representative of the teaching staff in the education centre nominated by the teachers;
- (c) one person with knowledge and experience in matters relating to early childhood development education within the county appointed by the executive committee member
- (d) one person with knowledge and experience in matters related to children with special needs nominated by the Executive Committee Member;
- (e) one public officer nominated by the Executive Committee Member within the county; and
- (f) where the institution is hosted by another institution, the head teacher of the hosting institution.

2) The Management Board may co-opt such persons not exceeding two in number to sit in the Board, whose knowledge and skills are found necessary for the performance of the functions of the board

21. (1) The Board shall perform the following functions among others—

Functions of the
Board

- (a) identify the needs of early childhood education and development services within the local communities and development of viable strategies to meet those needs;
- (b) mobilize the parents and local communities to

initiate and sustain education centres and support early childhood education programmes;

- (c) manage the early childhood education programme in the care centres;
- (d) recruit the support staff within the education and care centre;
- (e) identifying the local resources to equip the education centre and identifying sources for funds for supporting the education centre;
- (f) ensure the provision of quality early childhood education services in the care centre;
- (g) ensure that the facilities within the education and care centre are well maintained;
- (h) carry out advocacy in relation to the needs and the rights of children in relation to early childhood education; and
- (i) undertake such other functions as may be necessary for the implementation of this Act within the education centre.

(2) The Board shall open and operate its own bank account.

(3) The Board of an institution of basic education may establish such committees as the Board may consider appropriate to perform such functions and discharge such responsibilities, as the Board may deem necessary.

22. Every public early childhood education and care centre shall submit an annual report to the Executive Committee Member within 30 days of the end of the year.

Annual report on governance of care centres

PART V—POWERS OF ENTRY AND INSPECTION

23. A parent or guardian of a child has a right of entry to a registered early childhood service provider whenever their child is there, except if the parent or guardian—

Parent or guardian's right of entry

- (a) is subject to an order of a court that prohibits access to, or contact with the child, either generally or with respect to the child while, or at a time when the child is attending the care centre; or

- (b) is suffering from a contagious or infectious disease likely to have a detrimental effect on the children if passed on to them; or
- (c) is, in the opinion of a person responsible for the operation of the care centre, under the influence of alcohol or any other substance that has a detrimental effect on the functioning or behaviour of the person; or
- (d) is, in the opinion of a person responsible for the operation of the care centre, exhibiting behaviour that is or is likely to be disruptive to the effective operation of the care centre.

24. (1) An inspector may, for the purpose of ensuring that the provisions of this Act, or the conditions of any licence, certificate, or grant issued or made under any of those provisions, are being complied with, or for the purpose of conducting any audit, at any reasonable time—

Powers of entry and
inspection without
warrant

- (a) enter and inspect any premises that are or contain a registered early childhood education and care centre;
- (b) inspect, photocopy, print out, or copy any documents, whether held in electronic or paper form, that the person believes on reasonable grounds to be those of the registered early childhood service;
- (c) remove any document described in paragraph (b), whether in its original form or in an electronic form or as a paper copy.

(2) If a document is removed from the premises under subsection (1)(c), the person who removes it shall—

- (a) leave at the premises a list of the documents removed; and
- (b) Return the documents, or a copy of them, to the premises as soon as practicable, unless to do so would prejudice any investigation being or to be carried out by the Department.

(3) For the purposes of this section, inspection, in relation to any premises, includes observing any children present there.

25. (1) An inspector who has reasonable grounds to believe that any premises are being used as an early childhood education and care centre in contravention of this Act, may apply, in writing, and on oath to court for a warrant.

(2) If the magistrate to whom the application is made is satisfied that there are reasonable grounds to believe that the premises are being so used, they may issue a warrant directed to the person by name authorising the person to enter and inspect the premises.

(3) A warrant issued under subsection (2) shall contain—

- (a) a reference to this section; and
- (b) the full name of the person authorised;
- (c) a description of the premises concerned; and
- (d) the date on which it was issued and the date on which it expires.

(4) A warrant issued under subsection (2) shall authorise the person named in it, at any reasonable time within four weeks after the date on which it is issued, to—

- (a) enter the premises described in the warrant; and
- (b) do, on those premises, anything necessary to ascertain whether those premises are being used as an early childhood education and care centre, in contravention of this Act.

(5) A person exercising any power under subsection (4) shall have the appropriate warrant and proof of identity and shall produce them to the occupier of the premises concerned—

- (a) on first entering the premises; and
- (b) Whenever subsequently reasonably required to do so by the occupier.

(6) Each warrant issued under subsection (2) expires on the earlier of the following dates—

- (a) the date when the purpose for which it was issued has been satisfied; or
- (b) the date specified as the date of expiry under subsection (3)(d).

26. A person who obstructs, hinders, resists, or deceives any person exercising or attempting to exercise a power of entry conferred by sections 25 and 26 commits an offence, and is liable, on conviction, to a fine not exceeding one hundred thousand shillings.

Offence of
obstructing power of
entry

PART VI—MISCELLANEOUS PROVISIONS

27. In every year, out of the money appropriated by the County Assembly to the department—

Funding of certain
early childhood
education services

- (a) the registered public pre-primary and early childhood care centres —
 - (i) may be paid general grants; and
 - (ii) may be paid one or more discretionary grants; and

(2) The amount of every grant shall be determined by the Executive Committee Member in consultation with the Board of the care centre and—

- (a) may be paid unconditionally, or subject to any conditions the Executive Committee Member may specify in writing when the grant is paid or earlier; and
- (b) may be paid to be used for any purpose the service provider considers appropriate, or for only such purposes as the Executive Committee Member specifies in writing when the grant is paid or earlier; and

(3) The care centre shall ensure that—

- (a) where a grant has been paid subject to conditions, the conditions are complied with; and
- (b) If a grant has been paid to be used only for purposes specified by the Executive Committee Member under subsection (2) (b), the grant is used only for those purposes.

28. (1) A person may make a complaint in writing to the department if that person has reason to believe that—

Public complaints

- (a) a pre-primary school or early childhood care centre is operating illegally or is contravening any provision of this Act; or

- (b) a child at any pre-primary or early childhood care centre has been abused or has suffered injury or harm as a result of the act or negligence of the operator, a person acting as an agent, or any person employed in the care centre;

(2) Upon receiving a complaint under subsection (1), the Executive Committee Member shall refer the complaint to an inspector and notify the County Education Board;

(3) The inspector shall subject to subsection (2), make such inquiries as may be appropriate and may conduct discussions with the complainant, the proprietor of the care centre and any employee involved in the complaint.

(4) The inspector shall submit to the department a report containing the following information—

- (a) the grounds of the complaint, noting any facts in dispute between the relevant parties;
- (b) whether in the opinion of the inspector, the matter can be remedied;
- (c) If the inspector is of the opinion that the matter can be remedied, the measures recommended by the inspector to effect the remedy and the time period the inspector considers to be reasonably sufficient to effect the remedy.

(5) Upon receiving a report under subsection (4), the Executive Committee Member shall constitute a committee of five persons, four from the Department and one from representatives of care centres to consider the report and shall—

- (a) give notice in writing to the proprietor, the complaining party and any other party referred to in the report, of the constitution of a committee to consider the report;
- (b) Specify the date, being not less than seven days from the date of the notice, when the parties may attend before the committee to make representations on the complaint.

(6) Any person who attends before the committee under subsection (5) shall be entitled to legal representation.

(7) After consideration of the report, the committee shall submit its recommendation to the Executive Committee Member who, after considering the committee's recommendation, may—

- (a) dismiss the complaint;
- (b) direct the implementation of the recommendations in the report, subject to such variations as he or she may deem appropriate;
- (c) inform the County Education Board of the decision made;

(8) Any person aggrieved by the decision of the Executive Committee Member under this section may, within thirty days of being notified of the decision, appeal against the decision to the Education Appeals Tribunal established under the Basic Education Act, 2013.

(9) This section is without prejudice to any other proceedings that may be lawfully instituted against the operator, employee or other relevant party.

29. The Department shall cause any matter of concern to the community in the county relating to pre-primary and early childhood care centres to be published—

Publication of matters
of concern to the
community

- (a) by fixing a copy of the document comprising the matter in a conspicuous place on or near the outer door of its offices;
- (b) by including the document comprising the matter as a supplement to an official local publication, if any; or in any other manner as is customary published in the local area.

30. A person who contravenes any provision of this Act for which no other penalty is prescribed, commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding one year or to both.

General penalty

31. (1) The Executive Committee Member in consultations with the County Education Board may make regulations for the better carrying into effect of the provisions of this Act and without prejudice to the generality of the foregoing may prescribe—

Regulations

- (a) the fees to be charged under this Act;
 - (b) Regulating the management, operation, and control of registered early childhood services of any kind, and imposing duties on service providers;
 - (c) any matter that the Executive Committee Member considers necessary for the administration of this Act.
- (2) Regulations made under subsection (1) may —
- (a) prescribe minimum standards relating to premises, facilities, programmes of education, practices in relation to children's learning and development, staffing and parental or a guardian's participation including adult to child ratios, health and safety, implementation of the curriculum framework and communication and consultation with a parent or guardian;
 - (b) authorise the Executive Committee Member, after consultation with those organisations that appear to the Executive Committee Member to be representative of persons likely to be substantially affected by these regulations, to prescribe criteria to be used by the inspector to assess compliance with the minimum standards imposed by these regulations;
 - (c) require the Executive Committee Member to publish a notice in the *Gazette* —
 - (i) stating that criteria referred to in paragraph (b) have been prescribed; and
 - (ii) setting out the criteria in their entirety, or stating where or how a copy of those criteria may be obtained by members of the public;
 - (d) limit or regulate the numbers of children who may attend a registered early childhood education and care centre or any premises used to provide a licensed home-based early childhood education and care service;
 - (e) prescribe conditions governing, or that may be imposed in respect of, registered early childhood services and the duties of their service providers;

- (f) prescribe the records to be kept by service providers in respect of children attending licensed early childhood education and care centres, licensed home-based education and care services, and licensed hospital-based education and care services; and
 - (g) Prescribe offences and punishment for the offence in respect of the contravention of, or non-compliance with the regulations and in any case the fine may not exceed five hundred thousand shillings.
- (3) The executive committee member shall cause a draft of the Regulations proposed to be made under subsection (1) to be laid before the Assembly for approval before publication in the gazette.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to give effect to paragraph 9 of part 2 of the Fourth Schedule to the Constitution regulate provision of pre-primary education, childcare facilities and early childhood education in Taita Taveta County. The structure of the Bill is as follows:

Part I (clauses 1–5) of the Bill contains preliminary provisions

This part has provisions that explain the meaning of words and terms used in the Act and the scope of application of the Act including the definition of early childhood education and care centre.

Part II (clauses 6-8) of the Bill deals with Responsibilities of various actors with regards to early childhood education.

This part allocates the Department responsible for early childhood education the role of promoting the establishment of pre-primary and early childhood centres in the county and ensuring that early childhood education and development is available for all children before they proceed for the compulsory basic primary education. It gives the parents or guardians of a child below the age of six the duty of availing to and ensuring their children below six years of age attend and gain pre-primary education.

PART III (clause 9-17) sets out the provisions for registration of pre-primary schools and care centres

The part provides that all pre-primary institutions and centres where early childhood education is taught are registered, the requirements an applicant has to meet in order to register the institutions and what happens when an applicant is denied registration by the department.

The part also deals with requirements to display registration certificate at premises and the need for the department to keep and maintain a register of the pre-primary institutions.

PART IV (clause 18-22) contains provisions on administration and management of the care centres

The part vests in the Executive Committee Member powers to prescribe a curriculum framework for registered pre-primary schools and care centres, the establishment of a board of management to be responsible for running of public pre-primary schools and imposes a duty on the public institutions offering pre-primary education to prepare and submit annual governance reports to the executive committee member.

PART V (Clause 23-26) contains provisions on powers of entry and inspection

This part grants parents or guardians rights to enter the premises at which early childhood education is taught if their children are in those schools at that material time to consult the teachers or check on the welfare of their children.

It also grants the inspectors of schools the right to enter and inspect the conditions of the institutions or investigate complaints that may have been raised by a member of the public. It also creates offences to persons obstructing inspectors of schools from entry to institutions.

PART VI (Clause 27-31)- provides for miscellaneous provisions

This part contains provisions allowing members of the public to raise public complaints if they notice a care centre operating illegally, a child at a care centre is being abused and how the department handles the complaints. It also gives the executive committee member powers to make regulations for the effective operations of the Act.

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

Dated the 26th March, 2018.

HARRIS KEKE,
*Chairperson Early Childhood Education, Libraries and Vocation
Training Committee.*