SPECIAL ISSUE

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BOMET COUNTY BILLS, 2021

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THE BOMET COUNTY COMPASSIONATE ASSISTANCE BILL, 2021

A Bill for

AN ACT of the County Assembly of Bomet to establish the County Compassionate Assistance Committee; to provide for the rendering of compassionate assistance to persons in need and for connected purposes

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Bomet County Compassionate Assistance Act, 2021.

Interpretation

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

"Committee" means the County Compassionate Assistance Committee established under section 3;

"beneficiary" means a person receiving compassionate assistance from the State;

"child" means a person under the age of eighteen years;

"Director" means a person appointed as such under section 7;

"financial assistance" means a type of compassionate assistance provided as—

(a) payment for food, shelter, clothing, fuel, utilities, household supplies and personal requirements;

(b) payment for special needs of the kind prescribed by the regulations;

(c) payment for care in residential institutions;

(d) payment for travel and transportation expenses;

(e) payment for funeral and burial expenses;

(f)payment for health care services; and

"Executive Member" means the Executive Committee Member for the time being responsible for matters relating to compassionate assistance;

"orphans and vulnerable children" means children as described under section 20;

"residential institution" means an institution approved in accordance with Regulations that provide for living accommodation and temporary or continuing care for persons in need;

"compassionate assistance" means assistance provided in accordance with this Act to persons in need and other persons and includes financial assistance and compassionate services.

PART II—ESTABLISHMENT OF THE COUNTY COMPASSIONATE ASSISTANCE COMMITTEE

Establishment of the Committee

3. There is established a Committee to be known as the County Compassionate Assistance Committee.

Functions of the Committee

4. The functions of the Committee shall be to—

(a) identify and provide compassionate assistance to persons in need of compassionate assistance;

(b) plan, develop , operate and manage any project or enterprise that has as its object to render recipients of compassionate assistance capable of self support;

(c) make grants to any organization, group or body of citizens for the purpose of providing assistance to persons in need or likely to become in need;

(d) enter into agreements with agencies or other persons for the provision of compassionate services;

(e) advise the Executive Member on the county policy to be adopted with regard to provision of compassionate assistance ;

(f) formulate and enforce standards for the conduct of compassionate assistance programmes;

(g) facilitate the periodic review of the county compassionate assistance policy in line with other county government policy statements;

(h) mobilize resources to support and fund compassionate assistance programmes and initiatives;

(i) coordinate and harmonize compassionate assistance programmes;

(j) develop mechanisms to facilitate citizen participation in compassionate assistance programmes;

(k) develop guidelines for implementation, monitoring and evaluation of compassionate assistance programmes; and

(l)perform such other functions as may be necessary for the better carrying out of the functions of the Committee under this Act.

Composition of the Committee

5. (1) The Committee comprise of—

(a) the Chief Officer for the time being responsible for compassionate services who shall be the chairperson;

(b) the County Director for the time being responsible for compassionate services or a senior office designated by the Executive Member;

(c) the Director shall also be the secretary to the Committee;

(d) three other county officers appointed by the Executive Member who shall be persons with involved in matters related to compassionate assistance

(2) In appointing persons as members of the Committee, the Executive Member shall ensure that not more than two-thirds of the members of the Committee are of the same gender.

Conduct of business and affairs of the Committee

6. The conduct and regulation of the business and affairs of the Committee shall be as provided in the Schedule.

Functions of the Director

7. (1) The Director shall, in consultation with the Committee, be responsible for the direction of the affairs and transactions of the Committee, the exercise, discharge and performance of its objectives, functions and duties.

(2) The Director shall—

(a) ensure the maintenance of efficiency of the Committee;

(b) manage the budget of the Committee to ensure that its funds are properly expended and accounted for; and

(c) perform such other duties as the Committee may, from time to time, assign.

(3) The Director shall submit to the Committee for approval, not later than three months before the commencement of each financial year, a programme of activities of the Committee in respect of that financial year.

PART III—COMPASSIONATE ASSISTANCE

Compassionate assistance to persons in need

8. (1) The Committee shall, in accordance with this Act, provide compassionate assistance to persons in need.

(2) The Executive Member shall, in consultation with the Committee make guidelines on categories from which persons with need are to be drawn.

(3) Notwithstanding subsection (2) persons in need shall include—

(a) orphans and vulnerable children;

(b) persons disabled by acute chronic illnesses;

(c) children with congenital diseases;

(d) persons with disabilities; and

(e) any other persons as may from time to time be determined by the Executive Member, in consultation with the Committee.

(4) To qualify for compassionate assistance a person must meet the criteria set out in this Part.

Types of compassionate assistance

9. Compassionate assistance may be provided to an applicant in the form of—

(a) emergency assistance for a period not exceeding one month;

(b) short term assistance for a period of less than four consecutive months;

(c)long term assistance for a period of four or more consecutive months, or special assistance as may be prescribed under Regulations.

Eligibility for compassionate assistance

10. (1) A person is entitled to compassionate assistance if the person—

(a) is a person in need as provided for under this Act;

(b) is a resident of Bomet County, and complies with any requirement prescribed in Regulations.

Orphans and vulnerable children

11. A child qualifies for compassionate assistance if that child—

(a) is an orphan with no parents either biological or adoptive and is not under the care of a guardian who provides the basic needs of the child;

(b) is under the care of a person who suffers a serious long-term ailment or disability which renders the person unable to care for the child;

(c) has been abandoned by the parent or parents of the child and is not under the care of a guardian who provides the basic needs of the child or;

(d) is under the care of parents or guardians who are unable to provide for the child's basic needs.

Persons with disabilities

12. (1) A person with disability shall be eligible for compassionate assistance under this Act if—

(a) the person suffers from severe mental or physical disability;

(b) the person's disability renders them incapable of catering for their basic needs; and there is no known source of income or support for the person.

Application for compassionate assistance

13. (1) A person may apply to the Committee for compassionate assistance, in the prescribed manner and form.

(2) Where an application is made by a person in accordance with sub-section (1), the Committee may conduct an investigation to verify that the person is eligible and the Committee may request additional information.

(3) If the applicant—

(a) qualifies for compassionate assistance as provided for under this Act, the Committee shall render the relevant compassionate assistance;

(b) does not qualify for compassionate assistance in terms of this Act, the Committee shall in writing, inform the applicant—

(i) that the applicant does not qualify for compassionate assistance in terms of this Act;

(ii) of the reasons why the applicant does not qualify; and

(iii) of the applicant's right of appeal as specified under section 26 of this Act.

(4) The Committee shall convey its decision to the applicant within one month from the time the application under subsection (2) is received by the Committee.

Appeals

14. A person, who is aggrieved by a decision of the Committee under this Act, may within thirty days from the date of the Committee's decision, appeal to the Executive Member who may annul or vary the decision as he may consider necessary.

Suspension or cancellation of compassionate assistance

15. The Committee may suspend or cancel compassionate assistance if the compassionate assistance was—

(a) obtained through misrepresentation, deceit, fraud or failure to disclose any material information;

(b) in excess of amounts permitted by this Act and Regulations made pursuant to this Act; and

(c) approved and granted in error.

Refund to the government

16. (1) If the Committee pays money erroneously to a person who is not entitled under this Act, the amount of money so paid is an amount due to the county government and shall be payable to the county government by the person or, if the person is deceased, by the estate of the person.

(2) The Committee shall recover the amounts to which a person was not entitled, as provided for under subsection (1), in accordance with this Act or any other law.

(3) The Committee shall remit an amount owing by a person in terms of subsection (1) if the person satisfies the Committee that the person received the amount without knowing that they were not entitled to receive the payment.

Preservation of personal information of applicant

17. (1) A person may not divulge any information furnished by an applicant in respect of an application except—

(a) to a person who requires it in order to perform a function in terms of this Act;

(b) with the consent of the applicant.

(2) If the information submitted by an applicant changes, the applicant shall inform the Committee of the change as soon as possible.

Review of compassionate assistance

18. The Committee shall review compassionate assistance at any time where it has reason to believe that a change in the beneficiaries' circumstances may have occurred.

PART IV—FINANCIAL PROVISIONS

Establishment of the Fund

19. There is established a Fund to be known as the County Compassionate Assistance Fund which shall be administered by the Committee.

Sources of the Fund

20. (1) The sources of the Fund shall be—

(a) any funds provided by donors, for the purpose of the Fund;

(b) monies that may accrue to or vest in the Committee in the course of the exercise of its functions under this Act;

(c) gifts, grants, donations or endowments as may be given to the Committee;

(d) monies from any other source provided for the Committee.

(2) The Fund shall be applied to the following purposes—

(a) general administration expenses of the Committee which in each financial year shall not exceed three per cent of the monies in the Fund and the annual budget of which shall be approved by the Executive Member;

(b) provide assistance to persons in need of compassionate assistance;

(c) any other purpose that would enhance the development and promotion of compassionate assistance that may be approved by the Executive Member.

(3) The Executive Member for finance shall, in consultation with the Committee, make regulations to govern the administration of the fund, including the proportion of funds to be applied to each purpose under subsection (2).

(4) The Executive Member for finance shall cause a draft of the Regulations proposed to be made in exercise of the power under subsection (3) to be laid before the County Assembly for approval before gazettement.

Financial Year

21. The financial year of the Committee shall be the period of twelve months ending on the thirtieth June in each year.

Annual Estimates

22. At least three months before the commencement of each financial year, the Committee shall cause to be prepared estimates of revenue and expenditure of the Committee for that year.

Accounts and Audit

23. (1) The Committee shall cause to be kept proper books and records of accounts of the income, expenditure, assets and liabilities of the Committee.

(2) Within a period of three months after the end of each financial year, the Committee shall submit to the Auditor General, the accounts of the Committee in respect of that year together with—

(a) a statement of income and expenditure during the year and

(b) a statement of the assets and liabilities of the Committee on the last day of that year.

(3) The accounts of the Committee shall be audited and reported upon in accordance with the provisions of the Public Audit Act, 2003 (Cap. 412B).

PART V—MISCELLANEOUS PROVISIONS

Giving false information

24. A person commits an offence if the person knowingly—

(a) makes a false or misleading statement in any application or report under this Act or makes an application or report that by reason of non disclosure of facts is false or misleading;

(b) provides any person employed in the administration or enforcement of this Act with any statement or information that is false in any material part;

(c) cashes a cheque for assistance to which the person is not entitled;

(d) fails to report that the circumstances which caused the person to qualify for assistance have changed;

(e) communicates or allows to be communicated to any person privileged information or allows a person to inspect or have access to a statement or other writing containing any such information; or

(f)persistently refuses or neglects to maintain any other person for whose maintenance the person is liable.

(2) A person who is convicted of an offence under subsection (1) shall be guilty of an offence and shall be liable to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding one year, or both.

General penalty

25. A person who is found guilty of an offence under this Act for which no penalty is expressly provided shall be liable to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

Regulations

26. The Executive Member may make further Regulations generally for the better carrying out of the provisions of this Act and, without limiting the generality of the forgoing, the Executive Member, may make Regulations—

(a) prescribing procedures for the consideration of information and the granting of compassionate assistance;

(b) providing for the investigation of applications in order to determine the eligibility of applicants;

(c) in respect of financial resources and the manner in which they are considered in determining eligibility for compassionate assistance;

(d) in respect of kinds and amounts of compassionate assistance that may be granted to an applicant and the manner and time in which such assistance may be given;

(e) prescribing the circumstances and conditions under which compassionate assistance is required to be assessed, changed or revoked;

(f)on the income and assets of an applicant to be taken into account in determining the amount of compassionate assistance;

(g) describing the forms to be used under this Act;

(h) prescribing the approval of residential institutions and the granting of compassionate assistance to the residents of those residential institutions;

(i)in respect of the recovery of overpayment of compassionate assistance and repayments of monies granted or paid under this Act;

(j) on any condition or limitations subject to which any assistance shall be made;

(k) on the postponement of any payment of compassionate assistance pending any relevant inquiry; and

(l) on any matter which it is necessary to prescribe for the effective carrying out or furtherance of the provisions or objects of this Act.

SCHEDULE

[Section 7.]

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMITTEE

Vacation of office

1. A member appointed to the Committee under paragraph (a) and (f) of section shall cease to be a member if the member—

(a) serves the Executive with written notice of resignation;

(b) is absent without the written permission of the chairperson notified to the Committee, from three consecutive meetings of the Committee;

(c) is incapacitated by prolonged physical or mental illness from performing the duties of the office of a member of the Committee.

Meeting of the Committee

2. (1) The Committee shall hold such number of meetings at such places and at such times as the Committee shall consider necessary for the proper discharge of its functions.

(2) At least four days' notice shall be given prior to any meeting of the Committee.

Special meetings

3. The chairperson or any three members may call a special meeting whenever it is expedient for the transaction of the business of the Committee by giving not less than seven days' notice to the members.

Presiding at meetings

4. (1) The chairperson shall preside at all meetings of the Committee.

(2) In the absence of the chairperson at a meeting, the vice-chairperson shall preside at that meeting of the Committee.

(3) In the absence of the chairperson and the vice chairperson at a meeting, the members present shall elect a member to preside at that meeting off the Committee.

Quorum

5. The quorum for the conduct of business at meeting of the Committee shall be a majority of the members of the Committee.

Voting

6. (1) A decision on any matter before the Committee shall be by a majority of votes of the members present and voting.

(2) In the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

Vacancies and defects in appointment

7. Proceedings of the Committee shall not be invalid by reason only of a vacancy in the membership of the Committee or by reason of a defect in the appointment of a member.

Minutes

8. (1) Minutes of the proceedings at meetings of the Committee shall be kept in such a manner as the Executive Member shall direct.

(2) The minutes of the meetings of the Committee shall be available to the Executive or to a person nominated by the Executive, on the request of the Executive Member.

Committees of the Committee

9. The Committee may establish such committees as may be necessary for the performance of the functions of the Committee.

Power of the Committee to regulate its own procedure

10. Subject to the provisions of this Schedule, the Committee shall regulate its own procedure.

Code of conduct

11. Within six months of the commencement of this Act, the Committee shall establish a code of conduct, applicable to all members of staff of the Committee and justifiable for purposes of disciplinary proceedings, to ensure—

(a) compliance with applicable law;

(b) the effective, efficient and economical use of the Committee's resources;

(c) the effective, efficient and economical use of funds designated for payment to beneficiaries of compassionate asssistance;

(d) the promotion and assistance of the human dignity of beneficiaries of compassionate protection;

(e) the promotion and maintenance of a high standard of professional ethics;

(f)the prevention of conflicts of interest; and

(g) the assistance of confidential information held by the Committee.

Conflict of Interest

12. (1) A member of the Committee shall be considered to have a conflict of interest for the purposes of this Act if the member has an interest that could conflict with the proper performance of the members' duties as a member of the Committee.

(2) If at any time a member of the Committee has a conflict of interest in relation to any matter before the Committee for consideration or determination or any matter the Committee could reasonably expect might come before it for consideration or determination the member shall immediately disclose the conflict of interest to the other members of the Committee and refrain from taking part, or any further part, in the consideration or determination of the matter.

(3) Where the Committee becomes aware that a member or has a conflict of interest in relation to any matter before the Committee, the Committee shall direct the member to refrain from taking part, or taking any further part in the consideration or determination the matter.

(4) If a chairperson has a conflict of interest the member shall, in addition to complying with the other provisions of this section, disclose the conflict that exists to the Executive Member in writing.

(5) Upon the Committee becoming aware of any conflict of interest, it shall make a determination as to whether in future the conflict is likely to interfere significantly with the proper and effective performance of the functions and duties of the member or the Committee and the member with the conflict of interest shall not vote on this determination.

(6) Where the Committee determines that the conflict is likely to interfere significantly with the member's proper and effective performance as provided for in paragraph (5), the member shall vacate office as a member of the Committee unless the member has eliminate the conflict to the satisfaction of the Committee within thirty days of the declaration of the conflict of interest.

(8) The Committee shall report to the Executive Member any determination by the Committee that a conflict is likely to interfere significantly with performance as above and whether or not the conflict has been eliminated to the satisfaction of the Committee.

(7) The annual report of the Committee shall disclose details of all conflicts of interest and determinations arising during the period covered by the report.

(8) The Committee shall cause minutes of all resolution and proceedings of meetings of the Committee to be entered in books kept for that purpose.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

This Bill seeks to provide for the establishment of the County Compassionate Assistance Fund.

SAMUEL KETER,
Chairperson, Committee on Administration,
Peace, Justice and Legal Affairs.

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