



EXPLANATORY MEMORANDUM TO THE PUBLIC HEALTH (COVID-19 RESTRICTION OF MOVEMENT OF PERSONS AND RELATED MEASURES) (NAIROBI METROPOLITAN AREA) ORDER, 2020

A. The Purpose of the Order

1. The general purpose of the *Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Nairobi Metropolitan Area) Order, 2020* (L.N. 51/2020) is to prevent the spread of COVID-19 in the Nairobi Metropolitan Area. The specific objectives of the Order are as follows:
 - (i) to provide for the restriction of movement into and out of COVID-19 infected areas in the Nairobi Metropolitan Area;
 - (ii) to provide a framework for prohibiting and/or regulating certain public gatherings;
 - (iii) to define hygiene conditions to be applied in public places during the restriction period; and
 - (iv) to provide for penalties for violations thereof.

2. The Legislative Context

Section 36 of the of the Public Health Act, Chapter 242 of the Laws of Kenya gives the Minister (Cabinet Secretary) responsible for Health (hereinafter, the Cabinet Secretary) the power to make rules to prevent the spread of a formidable epidemic, endemic or infectious disease. The present Order have therefore been made in this context.

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3. Policy Background

The World Health Organization declared COVID-19 a public health emergency on 30th January 2020. Since then, the disease continues to spread rapidly, across boundaries. The disease spreads mainly through close contact with infected persons. On 13th March 2020, Kenya confirmed its first case of COVID-19. As at 19th April 2020, there were a total of two hundred and seventy (270) confirmed cases of COVID-19 in Kenya, with fourteen (14) deaths and sixty-seven (67) recoveries.

The World Health Organization has provided guidelines on measures that need to be taken to prevent and control the spread of COVID-19. Some of these measures had been or are being implemented in several jurisdictions that have been afflicted by COVID-19. These measures include maintaining social distance; washing hands with soap and water and observing respiratory hygiene.

The provisions of the present Order seek to give effect to the foregoing prevention and control measures that have been recommended by the World Health Organization and/or implemented in other jurisdictions faced with the COVID-19 pandemic, in order to prevent and control the spread of COVID-19 in the Nairobi Metropolitan Area.

4. Public Consultations

In view of the emergency circumstances occasioned by the rapid spread of COVID-19 in the Nairobi Metropolitan Area, and the need for immediate action to prevent and control the spread of the same, public consultations were not feasible prior to the publication of the Order. It would be appreciated that the measures that the Order seek to implement are reflective of the necessary executive action that, as a matter of necessity, has to be taken urgently, to prevent and contain the further spread of COVID-19 in the Nairobi Metropolitan Area.

It would also be appreciated that the objectives of the present Order would have been undermined if the Order was to be subjected to public participation prior to its publication. The purpose of the Order is to restrict movement into and out of identified infected areas in the Nairobi Metropolitan Area. Disclosing the Order prior to publication, especially through public participation, would only have led to panic reactions and pre-emptive mass movements from the infected areas, with the consequence that the Order would serve no meaningful purpose. Such mass

movements would have been exacerbated by the fact that the Order was made around the Easter period, which is a peak travel period as thousands of Kenyans travel upcountry for the Easter festivities. Indeed, the reported incidents of persons attempting to flout the Order by using the so-called “panya routes” serve to corroborate this apprehension.

While there is reasonable probability that the identified infected areas certainly have infected persons, not all of them have been identified, tested and isolated, partly due to limitations of contact tracing, and the time required to undertake the said contact tracing. Consequently, without the restrictions imposed by the present Order, interactions with such persons would enable community transmission across the Nairobi Metropolitan Area, thereby jeopardizing efforts at containing the spread of the disease.

It is also noteworthy that Rule 3 of the *Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020* (L.N. 50/2020) published in the Kenya Gazette on 6th April, 2020, gives the Cabinet Secretary the power to declare, by Order, that these Rules are in force within an area specified in the Order and such area deemed to be an infected area and to thereupon regulate and/or prescribe such activities and conduct that may be carried out in the infected area, which is, in essence, the effect of the present Order.

The Order promulgated by the Cabinet Secretary for Health provide prophylactic measures which serve to cushion the vulnerable in Nairobi Metropolitan Area from the ravages of COVID-19; it is the poor who would suffer more as opposed to other citizens if exposed to the highly infectious COVID-19 disease.

5. Guidance

The Ministry of Health, the Office of the Government Spokesman and the Nairobi Metropolitan Area shall sensitize members of the public on the provisions and requirements of the present Order.

6. The Contact Person in the Ministry of Health

The contact person at the Ministry of Health shall be the Cabinet Secretary, Hon. Mutahi Kagwe EGH or the Principal Secretary, Ms. Susan Mochache CBS.

Dated the.....^{20th} ^{April}....., 2020.



Hon. Mutahi Kagwe, EGH
CABINET SECRETARY.