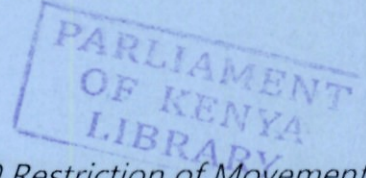


**EXPLANATORY MEMORANDUM TO THE PUBLIC HEALTH (COVID-19
RESTRICTION OF MOVEMENT OF PERSONS AND RELATED MEASURES)
VARIATION RULES, No. 2 of 2020**




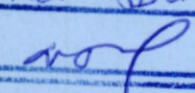
A. The Purpose of the Rules

1. The general purpose of the *Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Variation Rules, No. 2 of 2020* (L.N. 58/2020) is to vary the *Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020* (L.N. 50/2020) by regulating ferry transport. The Variation Rules indicate the time when ferry services shall be available to passengers and when the same shall be available for cargo, and prohibits ferry operators from transporting cargo during the times designated for passengers.
2. The *Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020* (L.N. 50/2020) seek to restrict movement from identified infected areas, prohibit public gatherings, regulate transport services and to provide for related measures, with the aim of curbing the spread of COVID-19.

B. The Legislative Context

3. Section 35 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 declare, by Order, a disease a formidable epidemic disease. By Legal Notice No. 37 dated 27th March, 2020 the Cabinet Secretary declared COVID-19 a formidable epidemic disease. Section 36 of the Public Health Act gives Cabinet Secretary the power to make Rules to prevent the spread of a formidable epidemic, endemic or infectious disease.

Pursuant to the said section, the Cabinet Secretary published the *Public*

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Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020 (L.N. 50/2020) which the present Rules now seek to vary.

4. The present Variation Rules have also been published in the context of the Public Order (State Curfew) Order, 2020 (L.N. 36/2020) published by the Cabinet Secretary for Interior and Coordination of National Government, declaring a nation-wide curfew effective from 27th March, 2020 for thirty (30) days. The hours of the curfew are from seven o'clock in the evening to 5 o'clock in the morning.

C. Policy Background

5. 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 23rd April, 2020 there were a total of three hundred and twenty (320) confirmed cases of COVID-19 in Kenya, with fourteen (14) deaths and eighty-nine (89) 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; observing respiratory hygiene and the safe management of dead bodies in the context of COVID-19.

The provisions of the present Rules 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 through social interaction.

D. Public Consultations

6. In view of the emergency circumstances occasioned by the rapid spread of COVID-19 and the measures that have already been taken to prevent and control the spread of the same, public consultations were not feasible prior to the publication of the present variation. The present variation simply seeks to provide for the times when ferry services shall be available to passengers and when they shall be available for cargo. The variation amends the *Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020* (L.N. 50/2020) so that ferry operators may not transport cargo during the times reserved for passengers. This is intended to ensure that there is adequate capacity to provide passenger services during the designated time periods and therefore also ensure that all other COVID-19 containment measures, such as the night-time curfew, are adhered to. The Variation Rules also provide for the application of specified hygiene conditions to users of ferry services and ferry operators.
7. Indeed, and in any case, it is noteworthy that the *Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020* (L.N. 46/2020) were subjected to public consultations following their publication. The present variation reflects most of the comments and views which, although given in the context of the earlier set of Rules, provided the public's general views and suggestions on the legal response measures to contain COVID-19.

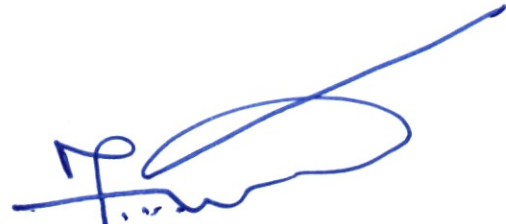
E. Guidance

8. The Ministry of Health, the Office of the Government Spokesman and the County Governments shall sensitize members of the public on the provisions and requirements of the present Rules.

F. The Contact Person in the Ministry of Health

9. 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 24th April, 2020.



Hon. Mutahi Kagwe, EGH
Cabinet Secretary for Health.

(Legislative Supplement No. 31)

LEGAL NOTICE NO. 58

THE PUBLIC HEALTH ACT

(Cap. 242)

THE PUBLIC HEALTH (COVID-19 RESTRICTION OF
MOVEMENT OF PERSONS AND RELATED MEASURES)
VARIATION RULES, NO. 2 OF 2020

IN EXERCISE of the powers conferred by section 36 of the Public Health Act and further to the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020, the Cabinet Secretary for Health makes the following Rules—

THE PUBLIC HEALTH (COVID-19 RESTRICTION OF
MOVEMENT OF PERSONS AND RELATED MEASURES)
VARIATION RULES, NO. 2 OF 2020

1. These Rules may be cited as the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Variation Rules, No. 2 of 2020.

Citation

2. The Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) Rules, 2020 are varied as follows:

(a) Insert the following new sub-rule immediately after sub-rule 5(4) –

“(4A) (i) Transportation of passengers by ferries shall only take place between 5:30 O’clock in the morning and 6:30 O’clock in the evening.

(ii) Ferry operators shall not engage in cargo transportation during the period set out under clause (i).

(iii) The hygiene conditions under Rule 6 shall apply, with the necessary modifications, to users of ferry services and ferry operators.”

(b) by deleting sub-rule 5(5) and substituting therefor the following new sub-rule:

“5(5) A person who contravenes sub-rules (1), (2), (3), (4) or (4A) commits an offence.”

Dated the 17th April, 2020.

MUTAHI KAGWE,
Cabinet Secretary for Health.