

REPUBLIC OF KENYA



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THE SENATE

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THE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION

REPORT ON:

1. The National Transport and Safety Authority (Operation of Motorcycles) Regulations, 2015;
2. The National Transport and Safety Authority (Operation of Tourist Service Vehicles) Regulations, 2015; and
3. The Traffic (Amendment) Rules, 2015

Clerk's Chambers,
First Floor,
Parliament Buildings,
NAIROBI.

Approved
[Signature]
Speaker
20/7/15

JULY, 2015

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ABBREVIATIONS

NTSA National Transport and Safety Authority

SEN Senator

PREFACE

Establishment of the Committee on Delegated Legislation

The Sessional Committee on Delegated Legislation is established pursuant to the Senate Standing Order 214 which states:

- 1) There shall be a select Committee to be known as the Committee on Delegated Legislation.
- 2) Whenever a statutory instrument is submitted to the Senate pursuant to the Constitution, any law or these Standing Orders, the statutory instrument shall, unless a contrary intention appears in the relevant legislation, be laid before the Senate by the Chair of the Senate Committee on Delegated Legislation and thereafter stand referred to the Committee.
- 3) The Committee shall consider in respect of any statutory instrument whether the statutory instrument-
 - a) is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written law;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
 - d) directly or indirectly bars the jurisdiction of the courts;
 - e) gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;
 - f) involves expenditure from the Consolidated Fund or other public revenues;
 - g) is defective in its drafting or for any reason, the form or purport of the statutory instrument calls for any elucidation;
 - h) appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;

- i) appears to have had unjustifiable delay in its publication or laying before Parliament;
- j) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions;
- k) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- l) inappropriately delegates legislative powers;
- m) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- n) appears for any reason to infringe on the rule of law;
- o) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
- p) accords to any other reason that the Committee considers fit to examine.

(4) If the Committee-

- a) resolves that the statutory instrument, be acceded to, the Clerk shall convey that resolution to the relevant state department or the authority that published the statutory instrument;
- b) does not accede to the statutory instrument, or part of a statutory instrument, the Committee may recommend to the Senate that the Senate resolves that all or any part of the statutory instrument, as the case may be, be annulled.

(5) If the Senate-

- a) fails to agree to the recommendation of the Committee under paragraph (4)(b), the statutory instrument shall be deemed to have been approved by Parliament;
- b) resolves to annul a statutory instrument, or part of a statutory instrument, the resolution shall, within seven days of the passage of the resolution, be referred to the National Assembly for concurrence.

Membership of the Committee on Delegated Legislation

The Membership of the Committee is as follows:

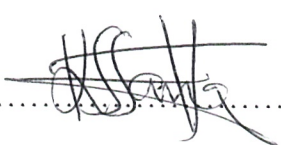
- | | | |
|-----------------------------|---|------------------|
| 1. Sen. Stephen Sang | - | Chairperson |
| 2. Sen. Judith Sijeny | - | Vice-Chairperson |
| 3. Sen. (Dr.) Boni Khalwale | - | Member |
| 4. Sen. Emma Mbura | - | Member |
| 5. Sen. Daniel Karaba | - | Member |
| 6. Sen. Liza Chelule | - | Member |
| 7. Sen. Godliver Omondi | - | Member |
| 8. Sen. Joy Gwendu | - | Member |
| 9. Sen. Boy Juma Boy | - | Member |

Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in the execution of its mandate.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Section 17 of the Statutory Instruments Act, 2014 and Standing Order 214, to present the Report of the Sessional Committee on Delegated Legislation on the National Transport and Safety Authority (Operation of Motorcycles) Regulations, 2015; the National Transport and Safety Authority (Operation of Tourist Service Vehicles) Regulations, 2015 and the Traffic (Amendment) Rules, 2015.

Signed.....

Date.....21/07/2015.....

SEN. STEPHEN SANG,

CHAIRPERSON

SESSIONAL COMMITTEE ON DELEGATED LEGISLATION.

EXECUTIVE SUMMARY

By a letter dated 11th March, 2015 the following Regulations were transmitted by the Ministry of Transport and Infrastructure to the Senate through the Office of the Clerk:

1. The National Transport and Safety Authority (Operation of Motorcycles) Regulations, 2015;
2. The National Transport and Safety Authority (Operation of Motorcycles) Regulations, 2015, and
3. The Traffic (Amendment) Rules, 2015.

The Regulations were tabled in the House on 17th March 2015 pursuant to section 12(1) of the Statutory Instruments Act, 2013 and the Senate Standing Order 214(2); and subsequently stood referred to the Sessional Committee on Delegated Legislation for scrutiny.

At its 6th sitting, held on 30th April, 2015 and its 7th sitting held on 5th May, 2015 the Committee scrutinized the abovementioned Regulations and raised various concerns. Section 16 of the Statutory Instruments Act, 2013 provides that in so far as practically possible the Committee shall confer with the Regulation-making authority before tabling of their report for their information and modification. Pursuant to this provision, the Committee invited the Cabinet Secretary, Ministry of Transport and Infrastructure for a consultative meeting to discuss the concerns raised on the Regulations.

Chapter one of this report gives a summary of the purpose and legal basis of the Regulations. Chapter two outlines the process of scrutiny of the Regulations, the concerns raised by the Committee and the response given by the Ministry of Transport and Infrastructure. Finally, chapter three highlights the Committee's recommendations acceding to the Regulations.

CHAPTER ONE INTRODUCTION

1.1 The National Transport and Safety Authority (Operation of Motor Vehicles) Regulations, 2015

The National Transport and Safety Authority (Operation of Motorcycles) Regulations, 2015 were gazetted on 6th March, 2015 under Legal Notice No. 19 of 2015. The key purpose of the Regulations is to regulate the motorcycle transport sector and in particular motorcycle taxis popularly known as *boda boda* and three wheeled motorcycles popularly known as *tuk tuks*. The Regulations provide a framework in which two wheeled *boda boda* and three wheeled (*tuk tuk*) motorcycles will operate in order to promote road safety. The Regulations are operational, save for Regulation 5(b) which makes provision for yellow helmets on *boda bodas* and Regulation 9 which requires that any person engaging in the business of motorcycle taxis services be a member of a body corporate which shall have a minimum of one hundred motorcycle taxis.

1.2 The National Transport and Safety Authority (Operation of Tourist Service Vehicles) Regulations, 2015

The National Transport and Safety Authority (Operation of Tourist Service Vehicles) Regulations, 2015 were gazetted on 6th March, 2015 under Legal Notice No. 19 of 2015. The key purpose of the Regulations is to regulate the operations of vehicles involved in the carriage of both local and international tourists by setting out minimum standards for their operations. The Regulations became operational upon publication.

1.3 The Traffic (Amendment) Rules, 2015

The Traffic (Amendment) Rules 2015 are an amendment to the Traffic Rules of 1984 which were made through Legal Notice 146 of 1984. The Traffic Rules of 1984 were principally licensing public service vehicles to carry both sitting and standing passengers.

The rules were therefore providing for-

- (a) the seating capacity of passengers in public service vehicles;
- (b) the fitting of seat belts in public service vehicles;
- (c) the manner of fitting of seat belts; and
- (d) the offence and fine for non-compliance of the above provisions.



The purpose of these Regulations is to permit and create provisions for standing passengers in high capacity public service vehicles in major towns.

1.4 The Legal Basis of the Regulations, 2014

Section 54 of the National Transport and Safety Authority Act No 33 of 2012 provides for the Cabinet Secretary's power to make Regulations in the following terms:

"The Cabinet Secretary may, in consultation with the Board, make regulations for the better carrying into effect of the provisions of this Act."

CHAPTER TWO COMMITTEE SCRUTINY AND OBSERVATIONS

At its 6th sitting, held on 30th April, 2015 and its 7th sitting held on 5th May, 2015, the Committee considered the following:

1. The National Transport and Safety Authority (Operation of Motorcycles) Regulations, 2015;
2. The National Transport and Safety Authority (Operation of Tourist Service Vehicles) Regulations, 2015; and
3. The Traffic (Amendment) Rules, 2015.

2.1 Committee Observations

The Committee raised the following issues:

1. The National Transport and Safety Authority (Operation of Motorcycles)

Regulations, 2015:

- i. Regulation 8(c) lacks some information on the limit of kilograms a motor cycle whose carrying capacity does not exceed four hundred cc can carry.
- ii. The requirement under Regulation 6 that all passengers seat astride may be unacceptable in some cultures.

2. The National Transport and Safety Authority (Operation of Tourist Service

Vehicles) Regulations, 2015:

- i. Regulation 5(2) (a) does not state the mandatory requirements to be complied with or provide a period within which the applicant should comply with the requirements.
- ii. Regulation 5(2) (b) does not state the stipulated period needed for compliance before the issuance of a conditional license.
- iii. Regulation 7 is not clear on the data storage system and the specification.

3. The Traffic (Amendment) Rules, 2015:

- i. Regulation 86A (2) does not outline the commuter routes and the license issued by the Authority fails to state the number of sitting and standing passengers.
- ii. Regulation 86A (3) is not clear on the requirement that public service vehicles comply to the prescribed construction standards of KS372:2014.
- iii. Regulation 86A (4) is not clear on the requirement to indicate on the license the maximum number of sitting and standing passengers, on whether this will be a different class of license as well as the cost implications.
- iv. Regulation 86A (6) does not state the system that will reconcile the number of passengers on board a public service vehicle at all times. Similarly the requirement that the number of passengers to be displayed is not elaborated and how such a system is to be installed.
- v. Regulation 86A (8) makes reference to Rule 22. It is not immediately clear what rule 22 is about until reference is made to the previous regulations. The rule is not clear that the requirement is on the use of seat belts by passengers.

The Committee resolved to invite the Cabinet Secretary, Ministry of Transport and Infrastructure to a meeting on Tuesday, 12th May, 2015, to discuss the concerns raised on the Regulations.

2.2 Response from the Ministry of Transport and Infrastructure

The Ministry was represented by the NTSA Director General, Mr. Francis Meja, who gave the following response on the issues raised by the Members:

1. The National Transport and Safety Authority (Operation of Motor Cycles) Regulations, 2015

- i. Regulation 8(c) lacks some information on the limit of kilograms a motorcycle whose carrying capacity does not exceed four hundred cc can carry.*

The error was noted and would be raised with the Office of the Attorney General and the Government Printers.

- ii. The requirement under Regulation 6 that all passengers seat astride may be unacceptable in some cultures.*

Section 60 of the Traffic Act provides that all passengers seat astride. The Regulations merely duplicated the provisions of the Act. If passengers do not sit astride, they may affect the balancing of the motorcycle as weigh is not distributed evenly.

2. The National Transport and Safety Authority (Operation of Motor Cycles) Regulations, 2015

- i. *Regulation 5(2) (a) does not state the mandatory requirements to be complied with or provide a period within which the applicant should comply with the requirements.*

The conditions to be met in order to be issued with a license are contained in the preceding regulation 5(1).

- ii. *Regulation 5(2)(b) does not state the stipulated period needed for compliance before the issuance of a conditional license.*

This is a discretionary power empowering the Authority to issue a license on condition that the applicant fulfils the conditions outlined in 5(1) which at the time of the license the applicant either partially fulfilled or demonstrated that they would fulfill. The applicant is given a certain time period, expiry of which, the license is withdrawn. This time period is relative and depends on a particular case and particular circumstances and therefore is not stipulated in the Regulations

- iii. *Regulation 7 is not clear on the data storage system and specification.*

There are different data storage systems capable of storing the requested data. The Authority only requires that the data required can be stored and retrieved within 30 days. The Regulations therefore only specify what the data storage system should be capable of doing instead of giving specifics which would restrict or deem systems capable of doing the above obsolete. The Authority did not want to seem to favour any supplier.

3. The Traffic Amendment Rules, 2015

- i. *Regulation 86A(2) does not outline the commuter routes and the license issued by the Authority fails to state the number of sitting and standing passengers.*

The amendment was to provide for standing passengers in preparation for the launch of the Bus Rapid Transport System which shall have designated routes in which PSVs licensed to carry standing passengers can operate. The routes shall be determined depending on the road design and other factors. The routes are not yet operational and some are yet to be constructed, therefore, it is not possible to stipulate the route in the regulations.

- ii. *Regulation 86A (3) is not clear on the requirement that PSVs comply to the prescribed construction standards of KS372:2014.*

The Kenya Standard KS372:2014 is the national standard for the construction of PSVs, developed and gazetted by KEBS. It is the legal standard in Kenya available to all Kenyans from KEBS. The Regulation only clarifies and reaffirms the applicability of the standard for avoidance of doubt.

- iii. *Regulation 86A(4) is not clear on the requirement to indicate on the license the maximum number of sitting and standing passengers, on whether it will be a different class of license as well as the cost of implications.*

Depending on the class size of the PSVs, the Authority shall indicate on the license how many standing passengers shall be allowed based on the number of hand rails as per the standard.

- iv. *Regulation 86A(6) does not state the system that will reconcile the number of passengers on board a PSV at all times.*

The Authority has purposely left it to vehicle owner to install the system they are comfortable with as long as it can reconcile the total number of passengers and display the same.

- v. *Regulation 86A(8) makes reference to Rule 22.*

The Regulations are amendments to the Traffic Rules and not separate rules. Rule 22A contains the requirement for seatbelts. This rule was made based on the fact that there would only be seated passengers. Rule 86(A) excludes standing passengers from this requirement.

CHAPTER THREE COMMITTEE RECOMMENDATIONS

The Committee accedes to the National Transport and Safety Authority (Operation of Motorcycles) Regulations, 2015; the National Transport and Safety Authority (Operation of Motorcycles) Regulations, 2015 and the Traffic (Amendment) Rules, 2015.

APPENDICES

EXPLANATORY MEMORANDUM

EXPLANATORY MEMORANDUM TO THE NATIONAL TRANSPORT AND SAFETY AUTHORITY (OPERATION OF MOTORCYCLES) REGULATIONS, 2014

PART I

Name of the Statutory Instrument: The National Transport and Safety Authority (Operation of Motorcycles) Regulations, 2014.

Name of the Parent Act: The National Transport and Safety Authority Act.

Enacted Pursuant to: Section 54 of the National Transport and Safety Authority Act.

Name of the Ministry/ Department: Ministry of Transport and Infrastructure and the National Transport and Safety Authority.

Gazetted on 6th March 2015

Tabled on 10th March 2015

PART II

1. Purpose of the Statutory instrument

To regulate the motorcycle transport sector and in particular motorcycle taxis popularly known as boda boda and three wheeled motorcycles popularly known as tuk tuks.

2. Legislative Context

The statutory instrument in question is an amendment of the National Transport and Safety Authority (Operation of Motorcycles) Regulations to provide a legal framework in which two wheeled and three wheeled motorcycle taxis will operate in public roads to promote road safety. The amendment provides for the registration and areas of operation of motorcycle taxis. It also provides for the protective gear required for riders and passengers and the responsibilities of riders, passengers and owners of motorcycle taxis. In addition, it provides the requirement of a person engaging in motorcycle taxis services to be a member of a body corporate which will promote self-regulation in the industry.

3. Policy Background

•What is being done and why

3.1 The key policy objective of the NTSA Act is to ensure road safety and a sustainable and well organized road transport system. This will entail the formulation and enforcement of regulations covering the different modes of road transport including motorcycles. This instrument promotes road safety by providing guidelines on how motorcycles shall operate including the safe transportation of passengers. The instrument also seeks to promote the creation of employment at the same time by clearly providing the qualifications and requirements of riders.

Currently the operation of motorcycles is unregulated which has led to an increase in the number of fatalities involving motorcycle riders and their passengers. Also a number of criminal activities have been associated with them. In order to address this challenge there is need to have a legal instrument that regulates this sector hence this regulation.

The regulations also encourage self regulation by formation of Saccos or companies through which the motorcycle operators will exercise control over their members.

4. Consultation outcome

4.1 The Ministry and the National Transport and Safety Authority held various consultations with the stakeholders including but not limited to motorcycle associations, motorcycle assemblers, the parliamentary committee on transport, public works and housing, manufacturers and the general public over a period of 2 -3 months.

From these consultations, majority of the respondents, at least 80% were concerned with the restriction of motorcycle taxis from the central business districts and towns of Kenya. Following these responses, the Ministry and Authority responded to these opinions by amending the regulations to empower the Authority and relevant County governments to agree on the areas and hours of operation of the motorcycle taxis.

5. Guidance

5.1 The Ministry and National Transport and Safety Authority intends to embark on awareness campaigns throughout the country targeting motorcycle operators

and their users in order to explain and promote the regulations. This will be done through engagement in the media and holding of forums. Further the Ministry and Authority have partnered with the motorcycle assemblers and manufacturers to produce a pictorial handbook explaining the regulations.

6. Impact

6.1 The amendment shall have no fundamental effect to the rights and freedoms.

6.2 The amendment will lead to creation of informal employment

7. Monitoring and review

7.1 The success criteria of this amendment will be a reduction in fatalities arising from motorcycles by at least 20% in the course of the next three years.

8. Contact

8.1 Francis Meja, Director General NTSA.

Francis.meja@ntsa.go.ke

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EXPLANATORY MEMORANDUM

EXPLANATORY MEMORANDUM TO THE NATIONAL TRANSPORT AND SAFETY AUTHORITY (OPERATION OF TOURIST SERVICE VEHICLES) REGULATIONS, 2015

PART I

Name of the Statutory Instrument: The National Transport and Safety Authority (Operation of Tourist Service Vehicles) Regulations, 2015.

Name of the Parent Act: The National Transport and Safety Authority Act.

Enacted Pursuant to: Section 54 of the National Transport and Safety Authority Act.

Name of the Ministry/ Department: Ministry of Transport and Infrastructure and the National Transport and Safety Authority.

Gazetted on 6th March 2015

Tabled on 9th March 2015

PART II

1. Purpose of the statutory instrument

To regulate the operations of vehicles involved in the carriage of both local and international tourists by setting out minimum standards for their operations.

2. Legislative Context

The Tourism sector plays a major role in Kenya's economic growth, contributing approximately 11% of GDP. The Sector is highly labour intensive and also has several backward and forward linkages, with extensive multiple ripple effects, in various economic activities including transportation of passenger. While the National Transport and Safety Authority Act currently provides for a "Tourist License" this should be extended to gazetting of a new category of vehicle namely the Tourist Service Vehicle (TSV) as envisaged under the Tourism Act 2011.

3. Policy Background

• What is being done and why

3.1 The Tourism Industry requires to remain competitive with respect to key competing destinations both regionally and beyond. Tourist transportation is one key area where there is dire need for intervention in terms of the regulatory framework and standards of the product. Introducing a dedicated Tourist Service Vehicle category will be the first major step towards addressing existing concerns in the sector.

In earlier attempts to address the problem of "illegal" tour operations, the Ministry of Tourism gazetted a "Tourist Vehicle Sticker" designed to easily identify registered and licensed tour operators. This followed concerns raised that "matatus" were being used to ferry tourist into National Parks and Reserves which in addition to violating the Tourism Industry Licensing Act also served to lower tour guiding standards. This ended up giving Kenya a bad image internationally. While this sticker partly succeeded in reducing the incidence of illegal operations, there is need to go a step further and develop measures that create an enabling environment for growth in this important sector.

Introducing a TSV category would have the following benefits: -

1. Easier detection of illegal operators especially to the Parks and Reserves and Airports.
2. Development and maintenance of high standards in the tour industry
3. Easier administration of the various laws and regulations by allowing clear distinction between mainstream PSV and tourist vehicles.

4. Consultation outcome

4.1 The Ministry and the National Transport and Safety Authority held various consultations with the stakeholders including but not limited to tourist associations, operators, the national parliamentary committee on transport and the general public over a period of 2 -3 months.

From these consultants, a vast majority of the respondents, at least 98% supported the introduction of these regulations.

5. Guidance

5.1 The Ministry and National Transport and Safety Authority intend to embark on engage tourist operators through educative forums. Further the Authority has being in engagement with the Kenya Association of Tourist Operators (KATO) who have being educating their members on the regulation.

6. Impact

6.1 The amendment shall have no fundamental effect to the rights and freedoms.

6.2 The amendment will uplift the standards of tourist service operators.

7. Monitoring and review

7.1 The success criteria of this regulation will be measured by the increased detection of "illegal" operators and especially those going to the Parks and Reserves as well as the Airports.

8. Contact

8.1 Francis Meja, Director General NTSA.

Francis.meja@ntsa.go.ke

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EXPLANATORY MEMORANDUM

EXPLANATORY MEMORANDUM TO THE TRAFFIC (AMENDMENT) RULES 2014

Name of the Statutory Instrument: The Traffic (Amendment) Rules 2014

Name of the Parent Act: The Traffic Act

Enacted Pursuant to: Section 119 (1) (c) of The Traffic Act.

Name of the Ministry/ Department: Ministry of Transport and Infrastructure/ State Department of Transport.

Gazetted on 30th January 2015

Tabled on

PART II

1. Purpose of the Statutory instrument

To permit and create provisions for standing passengers in high capacity public service vehicles in major towns.

2. Legislative Context

The statutory instrument in question is an amendment of the Traffic Rules to give provisions for standing of passengers in high capacity public service vehicles. The Traffic Rules currently give provisions for seating passengers in Public Service Vehicles and thus the need to include a provision for standing passengers in high capacity public service vehicles which can carry up to 100 passengers.

3. Policy Background

3.1 The Integrated National Transport Policy advocates for the use of high capacity public service vehicles in major towns to help reduce congestion on roads.

3.2 The department intends to consolidate the relevant legislation before the end of the year to accommodate for subsequent amendments if any.

4. Consultation outcome

4.1 Stakeholders from the Public Service Vehicles Industry have severally petitioned the Ministry of Transport to allow standing passengers in high capacity public service vehicles. This resulted in several consultative forums to chart the way forward to address the issue of standing passengers in high capacity public service vehicles. Moreover these consultations led to the development of Passenger Body Vehicle Construction Specification Standards KS.372.2014.

5.1 The Ministry of Transport and Infrastructure intends to sensitize stakeholders on the importance of high capacity vehicles with provision for standing passengers in major towns to reduce congestions.

6. Impact

6.1 The amendment shall have no fundamental effect to the rights and freedoms.

6.2 The amendment will lead to the reduction of the operational costs for public service vehicles in major towns where there are traffic jams as the high capacity service vehicles will carry many passengers and as a result less vehicles on the road.

7. Monitoring and review

7.1 The success criteria of this amendment will be an increase in business opportunities and revenue for Public Service Vehicle operators as the cost in operations will reduce because the high capacity public service vehicles will carry many passengers and there will be no need of operating several smaller vehicles to carry many passengers. The congestion on the roads will also reduce significantly when the number of smaller Public Service Vehicles reduce on the roads.

8.1 Francis Meja, Director General NTSA.

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LEGAL NOTICE NO. 11

THE TRAFFIC ACT

(Cap. 403)

IN EXERCISE of the powers conferred by section 119 (1) (c) of the Traffic Act, the Cabinet Secretary for Transport and Infrastructure makes the following Rules—

THE TRAFFIC (AMENDMENT) RULES, 2015

1. These Rules may be cited as the Traffic (Amendment) Rules, 2015. Citation.
2. The Traffic Rules are amended by inserting the following new rule immediately after rule 86 — Sub-Leg.

Licensing of public
service vehicles
carrying both seating
and standing
passengers.

86A. (1) The Authority shall licence public service vehicles which shall carry both sitting and standing passengers.

- (2) Public service vehicles licensed to carry both sitting and standing passengers shall only operate on commuter service routes determined by the Authority.
- (3) The Authority shall not issue a licence to a public service vehicle to carry sitting and standing passengers unless the public service vehicle conforms to the prescribed construction standard of KS 372:2014.
- (4) The licence issued by the Authority to a public service vehicle to carry both sitting and standing passengers shall indicate the maximum number of standing passengers.
- (5) The public service vehicle licence issued under this rule shall have a system that will reconcile the total number of passengers on board at all times while in operation.
- (6) The number of passengers on board shall be displayed on a real time basis on an electronic screen on the front and rear of the vehicle.

- (7) Public service vehicles licensed to carry sitting and standing passengers shall have all its doors closed at all times when the vehicle is in motion.
- (8) Standing passengers in a public service vehicle licensed under this rule shall not be subject to the provisions of rule 22A.
- (9) An operator of a public service vehicle licensed under this rule shall not cause or permit that public service vehicle to carry more persons than it is licensed to carry, whether seated or standing.
- (10) An operator who contravenes the provisions of paragraph (9) commits an offence and shall be liable upon conviction—
 - (a) for a first offence, to a fine of five thousand shillings for each passenger in excess of the licensed capacity;
 - (b) for a second and subsequent offence, to revocation or suspension of the licence by the Authority.
- (11) An operator of a public service vehicle licensed to carry sitting and standing passengers who contravenes or fails to comply with any other prescribed conditions under this rule relating to the licence shall be liable, upon conviction—
 - (a) for a first time offence, to a fine of twenty thousand shillings;
 - (b) for a second and subsequent offence, to revocation or suspension of the licence by the Authority.
- (12) For the purposes of this rule an "operator" means the owner, driver or the conductor of the licensed public service vehicle under this rule.

Dated the 19th January, 2015.

M. S. M. KAMAU.

Cabinet Secretary for Transport and Infrastructure.

(Legislative Supplement No. 11)

LEGAL NOTICE NO. 19

THE NATIONAL TRANSPORT AND SAFETY AUTHORITY ACT

(No. 33 of 2012)

IN EXERCISE of the powers conferred by section 54 of the National Transport and Safety Authority Act, the Cabinet Secretary for Transport and Infrastructure in consultation with the Board makes the following Regulations:—

THE NATIONAL TRANSPORT AND SAFETY AUTHORITY
(OPERATION OF MOTORCYCLES) REGULATIONS, 2015

1. (1) These Regulations may be cited as the National Transport and Safety Authority (Operation of Motorcycles) Regulations, 2015 and shall come into force upon publication in the Gazette.

Citation and
commencement.

(2) Notwithstanding the provisions of paragraph (1), regulations 5 (b) and 9 shall come into force on the 1st January, 2016.

2. In these Regulations, unless the context otherwise requires —

Interpretation.

“Act” means the National Transport and Safety Authority Act, 2012;

“Authority” means the National Transport and Safety Authority established under section 3 of the Act;

“Cabinet Secretary” has the meaning assigned to it under the Act;

“corporate body” means a limited liability company registered under the Companies Act and includes a cooperative society registered under the Cooperative Societies Act and a society registered under the Societies Act;

Cap 486.

“licence” means a driving licence issued by the Authority under the Act;

Cap 490.

“two wheeled motorcycle” means any mechanically propelled vehicle with two wheels the weight of which unladen does not exceed eight hundred kilograms;

“three wheeled motorcycle” means any mechanically propelled vehicle with three wheels the weight of which unladen does not exceed eight hundred kilograms;

“two wheeled motorcycle Taxi” means a two wheeled motorcycle used for the purpose of carrying or ferrying of a passenger for reward or hire;

“three wheeled motorcycle Taxi” means a three wheeled motorcycle used for the purpose of carrying or ferrying of a passenger for reward or hire;

"motorcycle" means any mechanically propelled vehicle with less than four wheels the weight of which un laden does not exceed eight hundred kilograms:

"owner" means the registered owner of a motorcycle:

"ride" means to operate, manage or to be in control of a motor cycle:

"rider" means the person operating or person in control of a motorcycle":

"Third Party Motor Vehicle Insurance" means an insurance policy by that name issued in respect to a motorcycle pursuant to the provisions of the Insurance (Motor Vehicles Third Party Risks) Act:

Cap. 405.

"Third Party Public Service Vehicle Insurance" means an insurance policy by that name issued in respect to a motorcycle pursuant to the provisions of the Insurance (Motor Vehicles Third Party Risks) Act.

Cap. 405.

3. These Regulations shall apply to all motorcycles operating on a public road in Kenya.

Application of the Regulations.

4. (1) No motorcycle shall be sold or transferred by any person without the following protective gear—

Protective Gear.

(a) two helmets which comply with the standards established by the Kenya Bureau of Standards and which shall have the registration number indelibly printed in letters not less than three inches in height on both sides of the helmet:

(b) two reflective jackets which shall have the registration number of the motorcycle indelibly printed in letters not less than four inches in height on the back of the jacket.

(2) A person desirous of transferring a motorcycle must present physical proof of compliance with regulation 4 (1) to the Authority.

(3) No supplier, distributor or person involved in the business of selling motorcycles in Kenya shall sell, distribute or otherwise convey a motorcycle without the protective gear described in regulation 4.

(4) For Purposes of this regulation the term "reflective jacket" shall also mean a reflective vest.

5. Every owner of a two wheeled motorcycle shall —

Responsibilities of Owners.

(a) provide the rider and passenger with the protective gear stipulated in regulation 4 (1):

(b) ensure that the helmets provided under (a) are yellow if the two wheeled motorcycle is a taxi:

(c) not cause or permit any person to ride their motorcycle unless such person is the holder of a valid driving licence or a valid provisional licence endorsed in respect of that class of motorcycle:

(d) for private motorcycles, ensure that the motorcycle is at the very minimum insured against third party risks in accordance with the Insurance (Motor Vehicles Third Party Risks) Act:

Cap. 405.

- (e) for two wheeled motorcycle taxi, ensure that motorcycle has a Third Party Public Service Vehicle Insurance;
- (f) ensure that no structural modifications to the motorcycle are undertaken that may affect the safe operation of the motorcycle;
- (g) ensure that no structural modifications to the motorcycle are undertaken that may obstruct the visibility of the rear number plates;
- (h) ensure that no modifications to the exhaust system or any other noise abatement device of a motorcycle are done so as to cause the noise emitted by the motorcycle to be above that emitted by the motorcycle as originally manufactured.

6. Every rider of a motorcycle shall—

Responsibilities of a
Rider

- (a) have a valid driving license issued by the Authority;
- (b) ensure that they shall not ride or carry a person on a motor cycle without the prescribed protective gear properly fastened;
- (c) not carry more than one person at a time;
- (d) ensure that passengers are carried on a proper seat with foot rests securely fixed to the motor cycle behind the rider's seat;
- (e) ensure that a passenger sits astride the motor cycle;
- (f) ensure that the headlights of the motorcycle are on at all times when riding;
- (g) ensure that loads and passengers are not carried at the same time;
- (h) keep the protective gear in a clean, dry and generally wearable condition;
- (i) ensure that the rear number plates are visible at all times;
- (j) overtake on the right hand side and not to overtake in the same lane occupied by vehicle being overtaken;
- (k) observe traffic lights;
- (l) observe all traffic rules;
- (m) not park in undesignated areas.

7. (1) Every passenger in a motorcycle shall—

Responsibilities of a
Passenger.

- (a) properly wear a helmet and reflective jacket whenever being carried on a motorcycle;
- (b) not board or be carried on a motorcycle that already has a passenger except as provided by Regulation 7 (2) (a);
- (c) not board or be carried on a motorcycle that is carrying any load;

(d) sit astride in the seat fixed behind the rider's seat.

(2) For the purposes of these Regulations—

(a) a child who is less than thirteen years old may be carried together with an adult provided the child is seated between the rider and the adult and wears a helmet designed for children;

(b) persons with disabilities will be exempted from the requirement to sit astride while being carried on a motorcycle.

Carriage of Loads

8. (1) A motorcycle rider shall not carry a load—

(a) whose width projects more than fifteen centimeters beyond the outside end of the handle bars;

(b) whose height is more than two metres from the ground;

(c) whose weight is more than thirty kilograms for a motorcycle whose carrying capacity does not exceed fifty cc and kilograms for a motorcycle whose carrying capacity does not exceed four hundred cc;

(d) which projects to the rear beyond the maximum overall length of the motorcycle by more than sixty centimeters. The rear extremity of the load must be plainly indicated by a conspicuous red marker during the day and by a red light at night.

(2) The rider of a motorcycle carrying loads shall ensure that no part of the load carried drags on the road.

(3) For the purpose of this regulation the term "load" excludes luggage carried by a passenger provided such luggage does not exceed ten kilograms in weight and does not project more than fifteen centimeters beyond the outside end of the handle bars.

(4) The luggage in sub-regulation (3) may be carried together with the passenger provided the luggage is properly secured between the rider and the passenger.

9. (1) Any person engaging in business of motorcycle taxis services shall be a member of a body corporate which shall have a minimum of one hundred motorcycle taxis.

Membership in a body corporate.

(2) For two wheeler motorcycle taxis, the name of the group or sacco which they are members of must be indelibly printed in letters not less than four inches in height on the back of both jackets.

10. Every three wheeled motorcycle taxi shall—

(a) be fitted with a seat belt for the rider and a seat belt per seating position for passengers;

(b) have a covered body;

(c) have painted on both sides and on the rear, a broken horizontal yellow band having a width of one hundred and fifty millimeters and of a consistency sufficient to enable

Requirements for operation of three wheeled motorcycle taxi.

such band to be clearly visible by day at a distance of two hundred and seventy five meters;

- (d) no part of the motorcycle, whether unladen or laden, other than the driving mirror or direction indicators, shall project more than fifteen centimeters, beyond the outside wall of the outmost rear tyre;
- (e) have at the minimum a motor commercial public service vehicle insurance cover.

11. Every owner of a three wheeled motorcycle taxi shall—

Responsibility of
owners.

- (a) not cause or permit any person to ride their motorcycle unless such person is the holder of a valid driving licence or a valid provisional licence endorsed in respect of that class of motorcycle;
- (b) ensure that all three wheeled motorcycle taxi owned have at the minimum a Third Party Public Service Vehicle Insurance.

12. Every rider of a three wheeled motorcycle shall—

Responsibilities of a
Rider.

- (a) not ride a motorcycle unless that person has a valid driving licence issued by the Authority;
- (b) not ride a motor cycle without properly wearing a seat belt or carry passengers who have not properly worn their seat belts;
- (c) not carry more than passengers in excess of the seating positions provided;
- (d) ensure that the headlights of the motorcycle are on at all times when riding;
- (e) overtake on the right hand side and not to overtake in the same lane occupied by vehicle being overtaken;
- (f) observe traffic lights;
- (g) not ride or operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles;
- (h) keep the seat belts in a clean, dry and generally wearable condition;
- (i) observe all traffic rules.

13. Every passenger in a three wheeled motorcycle shall—

Responsibilities of a
Passenger.

- (a) wear seatbelt whenever being carried on a motorcycle;
- (b) not board or be carried on a motorcycle that already has the maximum number of passengers allowed.

14. The Authority in consultation with the relevant county government shall designate—

Areas of operation.

- (a) the areas of operation of motorcycle taxis;

(b) the hours of operation of motorcycle taxis.

15. A person who contravenes any provision of these Regulations and whose penalty is not provided for in the Traffic Act, commits an offence and is liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months or, both.

Offences and
penalties.
Cap 403.

16. Regulation 25A of Legal Notice 173 is revoked.

Repeal.

Made on the 5th February, 2015.

MICHAEL S.M. KAMAU,
Cabinet Secretary for Transport and infrastructure.

LEGAL NOTICE No. 20

THE NATIONAL TRANSPORT AND SAFETY AUTHORITY ACT (No. 33 of 2012)

IN EXERCISE of the powers conferred by section 54 of the National Transport and Safety Authority Act, the Cabinet Secretary for Transport and Infrastructure in consultation with the Board makes the following Regulations —

THE NATIONAL TRANSPORT AND SAFETY AUTHORITY (OPERATION OF TOURIST SERVICE VEHICLES) REGULATIONS, 2015

1. These Regulations may be cited as the National Transport and Safety Authority (Operation of Tourist Service Vehicles) Regulations, 2015 and shall come into force upon publication in the Gazette.

Citation.

2. In these Regulations, unless the context otherwise requires —

Interpretation.

“Act” means the National Transport and Safety Authority Act, 2012;

“Appeals Board” means the Transport Licensing Appeal Board established under section 39 of the Act;

“Authority” means the National Transport and Safety Authority established under section 3 of the Act;

“Cabinet Secretary” has the meaning assigned to it under the Act;

“corporate body” means a limited liability company registered under the Companies Act, and includes a cooperative society registered under the Cooperative Societies Act and a society registered under the Societies Act;

Cap 486.

Cap 490.

“licence” means a tourist service licence issued by the Authority;

“licensee” means a person to whom a license is issued under the Act;

“owner” means the registered owner of the tourist service vehicle;

"private car hire" has the same meaning as assigned to it in the Traffic Act; Cap 403.

"tourist service vehicle" means any vehicle (including private hire vehicles) operated by a licensed tour operator and used exclusively for the carriage of tourists;

"Third Party Motor Vehicle Insurance" means an insurance policy by that name issued in respect to a tourist service vehicle pursuant to the provisions of the Insurance (Motor Vehicle Third Party Risks) Act; Cap 405.

"tour operator" means the corporate body with operational responsibility over the tourist service vehicle on a day to day basis either as the registered owner of the vehicle or pursuant to the terms of a contract or franchise agreement with the registered owner of the vehicle.

3. These Regulations shall apply to all tourist service vehicles operating on a public road in Kenya. Application of the Regulations.

4. (1) A person shall not operate a tourist service vehicle without a valid license issued by the Authority. Tourist Service Vehicles to be Licensed.

(2) A person desirous of operating a tourist service vehicle shall make an application to the Authority and shall be accompanied with the fee prescribed in the First Schedule.

5. (1) A person desirous of operating tourist service vehicles shall — Conditions to be met by applicants.

- (a) have a valid tour operators license issued by the Tourism Regulatory Authority;
- (b) have in place a code of conduct approved by the Authority governing its employees, agents and sub-contractors;
- (c) have in place a documented management system, safety management system based on ISO 39001:2012 "Road Traffic Safety Management Systems" or equivalent and customer complaints handling system;
- (d) comply with labour laws and regulations including those relating to statutory deductions, health and safety of the workplace, Work Injuries Benefits Act, insurance, statutory leave days and written contracts of employment for staff;
- (e) subscribe to an accident and emergency mutual aid system.

(2) The Authority may —

- (a) refuse to issue a tourist service vehicle license to an applicant who fails to fulfill any of the stipulated conditions; or
- (b) at its discretion issue a license conditional on the requirement that the applicant demonstrates compliance within a stipulated period failing which the license shall be withdrawn upon the expiry of the stipulated period.

6. A person applying for a license shall submit to the Authority certified copies of —

- (a) a valid tour operators license issued by the Tourism Regulatory Authority;
- (b) certificate of registration as a company under the Companies Act, or a cooperative society under the Cooperative Societies Act;
- (c) a list of its directors;
- (d) a lease or certificate of ownership of the head office from which it is operating or intends to operate the tourist service vehicle business;
- (e) tax compliance certificate issued by the Kenya Revenue Authority;
- (f) a description of the operator's management system, safety management system and customer complaints handling system;
- (g) valid driving license, identity card, and certificate of good conduct of each person who shall drive the tourist service vehicles in respect to which the application for the license is being made;
- (h) valid inspection certificate issued by the Authority of each vehicle in respect to which an application is being made;
- (i) the certificate of ownership or other evidence of ownership in the name of the owner of the vehicle or a contract or franchise agreement between the applicant and the operator or intended operator of the vehicle; and
- (j) the current third party insurance.

Documents to be submitted with the application.

Cap 486.

Cap 490.

7. (1) Every operator of licensed tourist service vehicles shall —

- (a) have in place or outsource a fleet management system capable of recording speed and location of the vehicle at any one time;

Operation of Tourist Service Vehicles.

- (b) subscribe to a data storage system capable of storing data on vehicle speed, location and operation for a period of thirty days;
- (c) provide the data stored in (b) to the Authority before the expiry of the prescribed storage period;
- (d) in case of any accident resulting in a fatality, submit an investigation report to the Authority within fourteen days containing details of the driver, passengers, time of accident, probable cause and corrective measures undertaken;
- (e) boldly display at a conspicuous place on the vehicle an identification mark approved by the Authority;
- (f) except for private car hire, boldly display on the vehicle the name of the company under which the vehicle operates;

(g) maintain a passenger manifest.

(2) Tourist service vehicles shall conform to the construction and design specifications for tourist service vehicles that shall be approved by the Authority.

8. (1) Every driver of a tourist service vehicle shall—

Driver of Tourist
Service Vehicle.

(a) have a valid driver's license for that category of vehicle;

(b) have a valid Public Service Vehicle License;

(c) have a valid tourism driver-guide license issued by the Tourism Regulatory Authority.

(2) Notwithstanding subsection 8(1), persons who hire tourist service vehicle for self-drive shall only be required to have a valid driver license for that category of vehicle.

9. A person shall take out an insurance cover for a tourist service vehicles, where the insurance company —

Insurance.

(a) is licensed by the Insurance Regulatory Authority under the Insurance Act to provide that category of insurance;

Cap 487.

(b) submits to the Authority a report on claims made in respect to accidents involving tourist service vehicles it has insured and compensation paid in the immediately preceding year; and

(c) submits to the Authority its customer service charter and claims payment policy.

10. A person aggrieved by the decision of the Authority taken under these Regulations may within fourteen days of receiving the decision appeal to the Appeals Board.

Appeals.

11. (1) A person who —

Offences and
penalties.

(a) operates a tourist service vehicle without a valid license issued by the Authority in respect to that vehicle;

(b) drives a tourist service vehicle in breach of any provision of these Regulations; or

(c) provides false information to the Authority;

commits an offence and is liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months or, both.

(2) The Authority may —

(a) suspend, cancel or withdraw the license of a tourist service vehicle operated by an operator who contravenes any provision under these Regulations;

(b) suspend, cancel or revoke the license of a driver who contravenes any provisions of these Regulations or the Traffic Act;

Cap 487.

(c) where it deems necessary order that all vehicles belonging a Company be subjected to inspection.

12. Legal Notice 217 of 2013 on speed governors shall apply to Tourist Service Vehicles.

Application of Legal Notice 217 of 2013.

Made on the 5th February, 2015.

MICHAEL S.M. KAMAU,
Cabinet Secretary for Transport and infrastructure.

LEGAL NOTICE NO. 21

THE EXPORT PROCESSING ZONES ACT

(Cap. 517)

DECLARATION OF EXPORT PROCESSING ZONE

IN EXERCISE of the powers conferred by section 15 (1) of the Export Processing Zones Act, the Cabinet Secretary for Industrialization and Enterprise Development declares the land parcel specified in the Schedule hereto to be an Export Processing Zone.

SCHEDULE

All that piece of land being subdivision No. MN/IV/1365 measuring approximately 1.429 hectares or thereabouts situated North of Mtwapa Creek in Kilifi County.

Dated the 10th February, 2015.

ADAN MOHAMED,
Cabinet Secretary for Industrialization and Enterprise Development.

LEGAL NOTICE NO. 22

THE LABOUR RELATIONS ACT

(No. 14 of 2007)

IN EXERCISE of the powers conferred by section 49 (1) of the Labour Relations Act, 2007, the Cabinet Secretary for Labour, Social Security and Services makes the following Order:—

THE UNION OF KENYA CIVIL SERVANTS (DEDUCTION OF AGENCY FEES) ORDER, 2015

1. This Order may be cited as the Union of Kenya Civil Servants (Deduction of Agency Fees) Order, 2015.

2. Every employer shall—

- (a) deduct on a monthly basis, the sum specified in the Schedule in respect of each unionsable employee who is not a member of the Union of Kenya Civil Servants but is benefiting from the Collective Bargaining Agreement signed between the Government of Kenya and the Union of Kenya Civil Servants;
- (b) remit within ten days of the date of deduction, the total sums deducted under item (a) by crossed cheque made payable to the Union of Kenya Civil Servants' account number

01120120993000 at the Co-operative Bank of Kenya, Moi Avenue Branch, Nairobi;

- (c) notify the Union of Kenya Civil Servants in writing within one month of all payments together with a full schedule of the paid up members; and
- (d) make written returns to the Registrar of Trade Unions at P.O. Box 47606, Nairobi within one month of making all the payments to the Union of Kenya Civil Servants.

SCHEDULE

A sum equal to 1.5 per centum from each employee's basic salary per month.

Made on the 10th February, 2015.

SAMUEL K. ZULU-KAMBI
Cabinet Secretary for Labour, Social Security and Service

**MINUTES OF THE 6TH SITTING OF THE SENATE SESSIONAL COMMITTEE ON
DELEGATED LEGISLATION HELD ON THURSDAY, 30TH APRIL, 2015 AT 11.00 AM
IN THE 2ND FLOOR BOARDROOM, KICC**

PRESENT

1. Sen. Judith Sijeny - Vice-Chairperson (Chairing)
2. Sen. Daniel Karaba
3. Sen. Boy Juma Boy
4. Sen. Liza Chelule

ABSENT WITH APOLOGY

1. Sen. Stephen Sang - Chairperson
2. Sen. (Dr.) Boni Khalwale
3. Sen. Godliver Omondi
4. Sen. Emma Mbura
5. Sen. Joy Gwendu

IN ATTENDANCE

SENATE

- | | |
|--------------------------|--------------------|
| 1. Ms. Josephine Kusinyi | - Legal Counsel |
| 1. Ms. Beatrice Kapei | - Legal Counsel |
| 2. Ms. Carol Kirorei | - Committee Clerk |
| 3. Mr. Said Osman | - Research Officer |
| 4. Mr. Charles Musera | - Serjeant-At-Arms |

MIN. NO. 60/2015

- PRELIMINARIES

The Chairperson called the meeting to order at 11.20 a.m. followed by a word of prayer.

MIN. NO. 61/2015

- ADOPTION OF THE AGENDA

The agenda of the sitting was adopted as presented having been proposed by Sen. Karaba and seconded by Sen. Juma Boy

MIN. NO. 62/2015

- CONFIRMATION OF PREVIOUS MINUTES

The minutes of the 5th sitting were confirmed as a true record of the proceedings after being proposed by Sen. Karaba and seconded by Sen. Juma Boy.

MIN. NO. 63/2015 - CONSIDERATION OF THE NATIONAL TRANSPORT AND SAFETY AUTHORITY (OPERATION OF MOTORCYCLES) REGULATIONS, NTSA (OPERATION OF TOURIST SERVICE VEHICLES) REGULATIONS, 2015, THE TRAFFIC AMENDMENT RULES, 2015 AND THE DRAFT KENYA INFORMATION AND COMMUNICATIONS (REGISTRATION OF SIM-CARDS) REGULATIONS, 2015

Ms. Kusinyi took Members through the National Transport and Safety Authority (Operation of Motor Cycles) Regulations, 2015 which provide a framework in which two wheeled (*boda boda*) and three wheeled (*tuk tuk*) motorcycles will operate in order to promote road safety.

The key provisions of the Regulations were summarized as follows:

1. The Regulations are operational save for Regulation 5 (b) (provision of yellow helmets on *boda boda*) and Regulation 9 (membership of a corporate body), which shall become operational on 1st January, 2016.
2. Regulation 4 provides that motorcycles shall only be sold or transferred if they have protective gear i.e. two helmets and two reflective jackets.
3. Owners of two wheeled motorcycles shall only be sold or transferred if they have protective gear i.e. two helmets and two reflective jackets.
4. The rider of a motorcycle is obligated among other responsibilities, to carry only one person, ensure headlights are on at all times, ensure the passenger sits astride and park at designated areas.

5. Regulation 7(2), a child who is less than 13 years may be carried together with an adult, seated in between the rider and the adult. Persons with disabilities are exempted from the requirement to sit astride.
6. Every three wheeled motorcycle taxi is required to be painted a broken horizontal line on both sides and on the rear.
7. Regulation 14 stipulates that the Authority in consultation with the relevant county government shall designate areas of operation of motorcycle taxis and the hours of operation.

Ms. Kusinyi noted that Regulation 8(c) lacks some information on the limit of kilograms a motor cycle whose carrying capacity does not exceed four hundred cc can carry.

Members raised the following concerns:

1. The requirement for all persons to sit astride may be unacceptable in some cultures.
2. Regulation 7(2) needed to also exempt “incapacitated” passengers from the requirement to sit astride.
3. That structural modifications prohibited in the Regulations should include wind-screens fitted at the front of the motorcycles.
4. That there was need for a provision for a barrier between the rider and passenger on a *boda boda*.

The Committee resolved to defer the scrutiny of the following Regulations to Tuesday, 5th May, 2015:

- i. The National Transport and Safety Authority (Operation of Tourist Service Vehicles) Regulations, 2015
- ii. The Traffic (Amendment) Rules 2015
- iii. The draft Kenya Information and Communications (Registration of Sim-Cards) Regulations, 2015

MIN. NO. 64/2015

-DATE OF NEXT MEETING

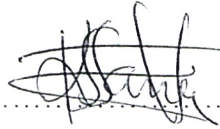
The next meeting would be on Tuesday, 5th May, 2015.

MIN. NO. 65/2015

-ADJOURNMENT

There being no other business, the meeting was adjourned at twelve o'clock.

SIGNED:



(CHAIRPERSON)

DATE:

5/05/2015

**MINUTES OF THE 7TH SITTING OF THE SENATE SESSIONAL COMMITTEE ON
DELEGATED LEGISLATION HELD ON TUESDAY, 5TH MAY, 2015 AT 9.00 A.M. IN
THE 2ND FLOOR BOARDROOM, KICC**

PRESENT

- | | |
|-----------------------------|--------------------|
| 1. Sen. Stephen Sang | - Chairperson |
| 2. Sen. Judith Sijeny | - Vice-Chairperson |
| 3. Sen. Daniel Karaba | |
| 4. Sen. Joy Gwendu | |
| 5. Sen. Liza Chelule | |
| 6. Sen. Godliver Omondi | |
| 7. Sen. Emma Mbura | |
| 8. Sen. (Dr.) Boni Khalwale | |
| 9. Sen. Boy Juma Boy | |

IN ATTENDANCE

1. Ms. Josephine Kusinyi
2. Ms. Beatrice Kapei
3. Ms. Carol Kirorei

SENATE

- Legal Counsel
- Legal Counsel
- Committee Clerk

MIN. NO. 66/2015

- PRELIMINARIES

The Chairperson called the meeting to order at 11.20 a.m. followed by a word of prayer.

MIN. NO. 67/2015

- ADOPTION OF THE AGENDA

The agenda of the sitting was adopted as presented having been proposed by Sen. Gwendu and seconded by Sen. Mbura

MIN. NO. 68/2015

- CONFIRMATION OF PREVIOUS MINUTES

- i. The minutes of the 4th sitting were confirmed as a true record of the proceedings after being proposed by Sen. Godliver and seconded by Sen. Juma Boy.

- ii. The minutes of the 6th sitting were confirmed as a true record of the proceedings after being proposed by Sen. Chelule and seconded by Sen. Karaba.

MIN. NO. 69/2015 - CONSIDERATION OF THE NATIONAL TRANSPORT AND SAFETY AUTHORITY (OPERATION OF MOTORCYCLES) REGULATIONS, NTSA (OPERATION OF TOURIST SERVICE VEHICLES) REGULATIONS, 2015, THE TRAFFIC AMENDMENT RULES, 2015 AND THE DRAFT KENYA INFORMATION AND COMMUNICATIONS (REGISTRATION OF SIM-CARDS) REGULATIONS, 2015

Ms. Kusinyi gave a brief to Members on the National Transport and Safety Authority (Operation of Motor Cycles) Regulations, 2015 considered at the previous meeting. Ms. Kapei then took Members through the National Transport and Safety Authority (Operation of Tourist Service Vehicles) Regulations, 2015 and the Traffic (Amendment) Rules 2015.

The key provisions of the Traffic (Amendment) Rules 2015 were summarized as follows:

1. Regulation 86A. (2) Provides that public service vehicles should operate on a commuter service route that has been determined by the Authority.
2. Regulation 86A. (3) Puts a condition to granting of a license by the Authority. The public service vehicles have to conform to prescribed construction standards as set out in the rules. Construction standard of KS.372:2014.
3. Regulation 86A(6) Requires that the public service vehicles shall display on real time the number of passengers on board on real time basis on an electronic screen on the front and rear of the vehicle.
4. Regulation 86A (8) Exempts standing passengers in public service vehicles from rule 22. From the reading it is not clear what rule 22 is on.
5. Regulation 86A (10) provides for penalties. An operator who contravenes the provisions of paragraph 9 commits an offence under the regulation and is liable upon conviction to

(a) first offence to a fine of five thousand shillings for each passenger in excess of the licensed capacity and

(b) for a second offence and subsequent offence to revocation or suspension of the license by the Authority.

She noted the following drafting issues in the Regulations:

1. Regulation 86A (2) does not outline the commuter routes and the license issued by the Authority fails to state the number of sitting and standing passengers.
2. Regulation 86A (3) is not clear on the requirement that public service vehicles comply to the prescribed construction standards of KS372:2014.
3. Regulation 86A (4) is not clear on the requirement to indicate on the license the maximum number of sitting and standing passengers, on whether this will be a different class of license as well as the cost implications.
4. Regulation 86A (6) does not state the system that will reconcile the number of passengers on board a public service vehicle at all times. Similarly the requirement that the number of passengers to be displayed is not elaborated and how such a system is to be installed.
5. Regulation 86A (8) makes reference to Rule 22. It is not immediately clear what rule 22 is about until reference is made to the previous regulations. The rule is not clear that the requirement is on the use of seat belts by passengers.

The key provisions of the National Transport and Safety Authority (Operation of Tourist Service Vehicles) Regulations, 2015 were summarized as follows:

1. Regulation 5(1) sets out the requirements and conditions to be met by an applicant.
2. A valid license issued by the Tourism Regulatory Authority is required for one to operate a tourist service vehicle. The rules require that an application for a license is made in a prescribed form and accompanied with a prescribed fee as set out in the first schedule.

3. Conditions to be met by applicant are set out as follows-

- (a) have a valid tour operator license issued by the Tourism Regulatory Authority;
- (b) have in place a code of conduct approved by the Authority, this code is to govern its employees, agents and subcontractors;
- (c) have in place a documented management system, safety management system based on road traffic safety management system or equivalent and customer complaint handling system;
- (d) comply with labor laws and regulations including those relating to statutory deductions, health, safety of the workplace, work injuries Benefits Act, insurance statutory leave days and written contract of employment for staff ;
- (e) subscribe to an accident and emergency mutual aid system.

4. Regulation 7 sets out the documents every operator of a licensed tour operator should have in place-

- (a) the requirement to have in place a fleet or outsource of management system capable of recording speed and location of the vehicle. This system needs to be elaborated and operators given guidelines on what kind of system they should be installing or outsourcing;
- (b) subscribe to a data storage system capable of storing data on vehicle speed and location and operation for a period of thirty days;
- (c) provide the data stored in (b) to the Authority before the expiry of the prescribed storage period;
- (d) in case of any accident resulting in a fatality, submit an investigation report to the Authority within fourteen days containing details of the driver, passengers ,time of accident, probable cause and corrective measure undertaken;
- (e) boldly display on a conspicuous place on the vehicle an identification mark approved by the Authority;
- (f) except for private car hire, boldly display on the vehicle the name of the company under which the vehicle operates ;and
- (g) maintain a passenger manifest

The following drafting issues were noted:

1. Regulation 5(2)(a) does not state the mandatory requirements to be complied with or provide a period within which the applicant should comply with the requirements.
2. Regulation 5(2)(b) does not state the stipulated period needed for compliance before the issuance of a conditional license.
3. Regulation 7 is not clear on the data storage system and the specification.

Members resolved to invite the Cabinet Secretary, Ministry of Transport and Infrastructure to a meeting on Tuesday, 12th May, 2015, to discuss the concerns raised on the Regulations.

Ms. Kusinyi then took Members through the draft Kenya Information and Communications (Registration of Sim-Cards) Regulations, 2015 as follows:

1. Regulation 4(2) provides that only telecommunications operators or their agents shall be allowed to sell sim-cards. The operator is obligated to submit to the Communications Authority of Kenya, on a quarterly basis, a record of all its agents, sim-cards sold, registered subscribers[4(4)(a)], deactivated and suspended subscribers[15(7)].
2. A minor upon attaining the age of majority is required to register his/her personal details within ninety days to avoid suspension of telecommunication services [8(4)].
3. In terms of penalties, Regulation 12 states that a person who commits an offence under the Regulations shall, on conviction be liable to a fine not exceeding 300,000/= or imprisonment not exceeding six months or both.

4. A subscriber registered before commencement of the Regulations is required to fulfill requirements contained therein within six months to avoid disconnection of services. On the other hand, unregistered subscribers are required to comply within thirty days to avoid disconnection.

The following drafting issues were highlighted:

1. The Regulations are enacted pursuant to Section 27(2)(gg) & (h) and not 27D as stated.
2. Regulation 5(1)(l) needs to be clarified further by adding a corporate body as well, as it gives an assumption that only statutory bodies will be require a letter from the CEO before registration.
3. Regulation 6(2)(e)(ii), realignment of the words at one least partner, to at least one partner & 6(2)(e) (iii), there should be more clarity on what legislation or gazette notice is required.
4. Regulation 7(1), the Form in the Schedule is not marked A, the letter A may be deleted, as it's the only form in the Schedule.
5. Regulation 15(2), refers to the wrong paragraph, the 14(1)(c), should be 15(1)(c).
6. Regulation 18 should refer to the 2014 Regulations, as the 2013 Regulations had already been revoked by Legal Notice No. 10 of 2014.
7. In the Schedule, the use of the term mentally handicapped at (i) and (k) should be deleted and a more friendly term such as persons with disabilities that may hinder them from

undertaking the registration process, be adopted. This will also ensure that persons with other severe disabilities (blind, maimed) are covered.

8. In (l) still under the Schedule reference should be made to (j) and not (i).
9. The Authority could consider adding a requirement on the agent's details in the Schedule, which could assist in records in terms of keeping a tab on rogue agents.

The Committee resolved to communicate the drafting issues noted to the Communication Authority of Kenya before the publication of the final Regulations.

MIN. NO. 70/2015

-ANY OTHER BUSINESS

i. Regulations

Members were informed that the Basic Education Regulations, 2015 and the Tobacco Control regulations had been tabled in the House.

Members resolved to consider the Regulations on Thursday, 7th May, 2015. Further, in light of the public discourse on the Regulations, the Committee, resolved to invite stakeholders in the education and tobacco sectors, on Thursday 14th May, and Thursday, 21st May respectively, to give their submissions on the Regulations.

ii. County Visits and meetings with Counties

Members resolved to undertake county visits to Lamu and Kilifi Counties between 31st May and 3rd June, 2015. The Secretariat was tasked to summarize the counties visited and engaged through meetings with the Committee, and those pending by the next meeting.

MIN. NO. 71/2015

-DATE OF NEXT MEETING

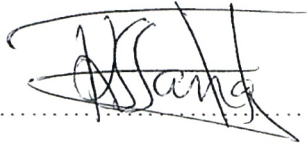
The next meeting would be on Thursday, 7th May, 2015.

MIN. NO. 72/2015

-ADJOURNMENT

There being no other business, the meeting was adjourned at 10.30 a.m.

SIGNED:

A handwritten signature in black ink, appearing to be 'S. Sanga', written over a horizontal dotted line.

(CHAIRPERSON)

DATE:

26/05/2015

**MINUTES OF THE 9TH SITTING OF THE SENATE SESSIONAL COMMITTEE ON
DELEGATED LEGISLATION HELD ON TUESDAY, 12TH MAY, 2015 AT 9.00 A.M. IN
THE BIG BOARDROOM, 4TH FLOOR BOARDROOM, KICC**

PRESENT

- | | |
|-------------------------|--------------------|
| 1. Sen. Stephen Sang | - Chairperson |
| 2. Sen. Judith Sijeny | - Vice-Chairperson |
| 3. Sen. Daniel Karaba | |
| 4. Sen. Godliver Omondi | |
| 5. Sen. Boy Juma Boy | |
| 6. Sen. Liza Chelule | |

ABSENT WITH APOLOGY

1. Sen. (Dr.) Boni Khalwale
2. Sen. Joy Gwendu
3. Sen. Emma Mbura

IN ATTENDANCE

1. Ms. Francis Meja
2. Mr. Robert Ngugi
3. Mr. Khasmin Mohamed

MINISTRY OF TRANSPORT

- Director General, NTSA
- Head of Legal, NTSA
- NTSA

IN ATTENDANCE

1. Ms. Joyce Aluoch
2. Ms. Carol Kirorei
3. Ms. Grace Wahu

SENATE

- Committee Clerk
- Committee Clerk
- Research Officer

MIN. NO. 81/2015

- PRELIMINARIES

The Chairperson called the meeting to order at 9.12 a.m. followed by a word of prayer. He then welcomed the officers from the NTSA to the meeting. He then led in a self-introductory session. Mr. Meja conveyed the apologies of the Cabinet Secretary who was unable to attend the meeting due to exigencies of duty. The Chairperson informed the meeting that the purpose of the meeting was to receive the views of the Ministry on the issues raised by the Committee on the

NTSA(Operation of Motor Cycles) Regulations, 2015, the NTSA (Operation of Tourist Service Vehicles) Regulations,2015 and the Traffic Amendment Rules, 2015.

MIN. NO. 82/2015

- ADOPTION OF THE AGENDA

The agenda of the sitting was adopted as presented having been proposed by Sen. Karaba and seconded by Sen. Chelule.

MIN. NO. 83/2015

**- MEETING WITH THE CABINET SECRETARY,
MINISTRY OF TRANSPORT & INFRASTRUCTURE**

Mr. Ngugi gave the following response to the issues raised by the Committee:

1. The National Transport and Safety Authority (Operation of Motor Cycles) Regulations, 2015

- i. Regulation 8(c) lacks some information on the limit of kilograms a motorcycle whose carrying capacity does not exceed four hundred cc can carry.*

The error was noted and would be raised with the Office of the Attorney General and the Government Printers.

- ii. The requirement under Regulation 6 that all passengers seat astride may be unacceptable in some cultures.*

Section 60 of the Traffic Act provides that all passengers seat astride. The Regulations merely duplicated the provisions of the Act. If passengers do not sit astride, they may affect the balancing of the motorcycle as weigh is not distributed evenly.

2. The National Transport and Safety Authority (Operation of Motor Cycles) Regulations, 2015

- i. Regulation 5(2)(a) does not state the mandatory requirements to be complied with or provide a period within which the applicant should comply with the requirements.*

The conditions to be met in order to be issued with a license are contained in the preceding regulation 5(1)

- ii. *Regulation 5(2)(b) does not state the stipulated period needed for compliance before the issuance of a conditional license.*

This is a discretionary power empowering the Authority to issue a license on condition that the applicant fulfils the conditions outlined in 5(1) which at the time of the license the applicant either partially fulfilled or demonstrated that they would fulfill. The applicant is given a certain time period, expiry of which, the license is withdrawn. This time period is relative and depends on a particular case and particular circumstances and therefore is not stipulated in the Regulations

- iii. *Regulation 7 is not clear on the data storage system and specification.*

There are different data storage systems capable of storing the requested data. The Authority only requires that the data required can be stored and retrieved within 30 days. The Regulations therefore only specify what the data storage system should be capable of doing instead of giving specifics which would restrict or deem systems capable of doing the above obsolete. The Authority did not want to seem to favour any supplier.

3. The Traffic Amendment Rules, 2015

- i. *Regulation 86A(2) does not outline the commuter routes and the license issued by the Authority fails to state the number of sitting and standing passengers.*

The amendment was to provide for standing passengers in preparation for the launch of the Bus Rapid Transport System which shall have designated routes in which PSVs licensed to carry standing passengers can operate. The routes shall be determined depending on the road design and other factors. The routes are not yet operational and

some are yet to be constructed, therefore, it is not possible to stipulate the route in the regulations.

- ii. *Regulation 86A (3) is not clear on the requirement that PSVs comply to the prescribed construction standards of KS372:2014.*

The Kenya Standard KS372:2014 is the national standard for the construction of PSVs, developed and gazetted by KEBS. It is the legal standard in Kenya available to all Kenyans from KEBS. The Regulation only clarifies and reaffirms the applicability of the standard for avoidance of doubt.

- iii. *Regulation 86A(4) is not clear on the requirement to indicate on the license the maximum number of sitting and standing passengers, on whether it will be a different class of license as well as the cost of implications.*

Depending on the class size of the PSVs, the Authority shall indicate on the license how many standing passengers shall be allowed based on the number of hand rails as per the standard

- iv. *Regulation 86A(6) does not state the system that will reconcile the number of passengers on board a PSV at all times.*

The Authority has purposely left it to vehicle owner to install the system they are comfortable with as long as it can reconcile the total number of passengers and display the same.

- v. *Regulation 86A(8) makes reference to Rule 22.*

These are amendments to the Traffic Rules and not separate rules. Rule 22A contains the requirement for seatbelts. This rule was made based on the fact that there would only be seated passengers. Rule 86(A) excludes standing passengers from this requirement.

Following discussions, the following was agreed:

1. Minimum standards in PSVs should be provided to cater for persons with disabilities. The standards should provide for lifting of a wheel chair, and spaces for persons with clutches to enter the PSVs. It was also agreed that provision be made in PSVs for an area designated for persons with disabilities.
2. Public participation, with specific targeting of institutions representing persons with disabilities e.g. KISE, should be carried out, to receive views to assist in providing for persons with disabilities in PSVs.

The Chairperson thanked the NTSA team for attending the meeting and clarifying the issues raised.

MIN. NO. 84/2015

-ANY OTHER BUSINESS

i. NTSA sensitization on the “boda boda” Regulations

Mr. Meja informed the meeting that the NTSA would carry out sensitization on the *boda boda* Regulations on 29th May, 2015. He extended an invitation to the Committee on Delegated Legislation and the Committee on Roads and Transportation to participate in the sensitization.

MIN. NO. 85/2015

-DATE OF NEXT MEETING

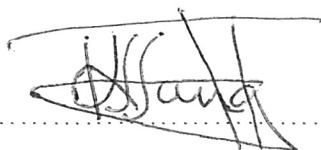
The next meeting would be on Thursday, 14th May, 2015.

MIN. NO. 86/2015

-ADJOURNMENT

The meeting was adjourned at 10.07 a.m.

SIGNED:



(CHAIRPERSON)

DATE:

26/05/2015

MINUTES OF THE 17TH SITTING OF THE SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 7TH JULY, 2015 AT 9.00 A.M. IN THE 2ND FLOOR BOARDROOM, KICC.

PRESENT

1. Sen. Stephen Sang - Chairperson
2. Sen. Godliver Omondi
3. Sen. Liza Chelule
4. Sen. Joy Gwendu
5. Sen. Boy Juma Boy
6. Sen. Daniel Karaba

ABSENT WITH APOLOGY

1. Sen. Judith Sijeny - Vice-Chairperson
2. Sen. (Dr.) Boni Khalwale
3. Sen. Emma Mbura

IN ATTENDANCE

- | | |
|--------------------------|----------------------------------|
| 1. Ms. Josephine Kusinyi | SENATE
- Legal Counsel |
| 2. Mr. Said Osman | - Research Officer |
| 3. Ms. Carol Kirorei | - Committee Clerk |
| 4. Ms. Mercy Mutemi | - Pupil |

MIN. NO. 124/2015

- PRELIMINARIES

The Chairperson called the meeting to order at 9.30 a.m. followed by a word of prayer.

MIN. NO. 125/2015

- ADOPTION OF THE AGENDA

The agenda of the sitting was adopted as presented having been proposed by Sen. Karaba and seconded by Sen. Chelule.

MIN. NO. 126/2015

- CONFIRMATION OF PREVIOUS MINUTES

- i. The minutes of the 14th sitting were confirmed as a true record of the proceedings after being proposed by Sen. Chelule and seconded by Sen. Sang.

- ii. The minutes of the 15th sitting were confirmed as a true record of the proceedings after being proposed by Sen. Chelule and seconded by Sen. Boy.
- iii. The minutes of the 16th sitting were confirmed as a true record of the proceedings after being proposed by Sen. Chelule and seconded by Sen. Sang.

MIN. NO. 127/2015

**-CONSIDERATION OF THE TOBACCO CONTROL
REGULATIONS, 2014**

Sen. Sang briefed Members on the status of the Tobacco Control Regulations, 2014 as follows:

- i. The Chairman, Tobacco Control Board following the meeting with the Committee had indicated that he was not in a position to respond to the issues raised by the Committee, as the Board takes a similar position to that of the Ministry that the matter is *sub judice*;
- ii. The Cabinet Secretary and the Principal Secretary had indicated that they were awaiting the finalization of the scrutiny by the Parliament;

Members considered the Regulations and reviewed the annulments. The Committee was of the opinion that there was need to ensure that as much as possible Regulations that are for the benefit of the health of the citizens of Kenya. Members also noted that stakeholders would want to push for their interests. The Committee resolved to annul the following Regulations:

- 1. Regulation 21
- 2. Regulation 22
- 3. Regulation 23
- 4. Regulation 26
- 5. Regulation 30 (c) and (f)
- 6. Regulation 37
- 7. Regulation 45 (2)

Members resolved to finalize with the Tobacco Control Regulations, 2014. The secretariat was tasked to prepare a brief on the Regulations and circulate hard and soft copies to the Members.

MIN. NO. 128/2015

- CONSIDERATION AND ADOPTION OF REPORTS

Members were taken through pending committee reports as follows:

- i. The Report on The NTSA (Operation of PSVs)(Amendment No. 2) Regulations, 2014;
- ii. The Report on The NTSA (Operation of Motorcycles), (Operation of Tourist Service Vehicles, and the Traffic (Amendment) Rules, 2015;
- iii. The Report on the Draft Kenya Information and Communications (Registration of Sim-Cards) Regulations 2015;
- iv. The Report on the Homa Bay Action Planning Retreat;
- v. The Report on the Lamu and Kilifi County Visits.

Members considered and adopted the above reports as were presented.

MIN. NO. 129/2015

-DATE OF NEXT MEETING

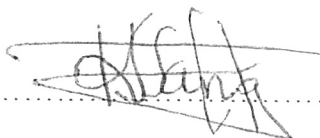
The next meeting would be on notice.

MIN. NO. 130/2015

-ADJOURNMENT

There being no other business, the meeting was adjourned at 10.08 a.m.

SIGNED:



(CHAIRPERSON)

DATE:

21/07/2015