

**EXPLANATORY MEMORANDUM TO THE PUBLIC HEALTH (PREVENTION,
CONTROL AND SUPPRESSION OF COVID-19) RULES, 2020**

The Purpose of the Rules

1. The general purpose of the *Public Health (Prevention, Control and Suppression of Covid-19) Rules, 2020* is to prevent the spread of COVID-19.

The specific objectives of the Rules are as follows:

- (i) to establish a framework by which the Cabinet Secretary may declare an area to be an area a COVID-19 infected area;
- (ii) to provide a framework for the designation of facilities for purposes of handling and treating COVID-19 patients;
- (iii) to provide for the notification of infected persons and premises;
- (iv) to provide for the search, inspection and disinfection of infected premises;
- (v) to provide for the removal and disposal of bodies of persons who dies from COVID-19; and
- (vi) to provide for the testing and quarantine of persons having, or reasonably suspected to be having, COVID-19.

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2. The Legislative Context

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 said Act gives the power to make rules to prevent the spread of a formidable epidemic, endemic or infectious disease. The present rules have therefore been made in this context.

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 15th April 2020, there were a total of two hundred and twenty five (225) confirmed cases of COVID-19 in Kenya, with ten (10) deaths and fifty three (53) 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.

4. **Public Consultations**

These rules have taken into account the views of a number of stakeholders, including the judiciary, the Office of the Director of Public Prosecutions, the Law Society of Kenya, the Council of Governors, the Kenya National Commission on Human Rights, the County Assemblies Forum, the Kenya Human Rights Commission, the Institute for Social Accountability and the Katiba Institute. Given the urgent need to have a suitable framework in place and in view of the social distancing and stay-at-home advisories that had already been issued, public participation was engaged through email. The Office of the Attorney General, on behalf of the Ministry of Health, invited nearly one hundred selected stakeholders, among them government agencies, professional bodies and civil society organizations, to provide their views and comments. The invitation email was sent out on the morning of 2nd April 2020, with a requirement that comments and views be submitted by 10 am on 3rd April 2020. Various stakeholders submitted their views through memoranda and letters.

From an analysis of the views and comments as submitted, there was consensus on the general legal direction adopted by the rules. The views and comments proposed a number of ways through which some of the

measures proposed under the rules could be ameliorated, while others suggested additional measures to the rules. These views and comments have been incorporated in the published rules.

5. Guidance

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.

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 16th April, 2020.



Hon. Mutahi Kagwe, EGH
CABINET SECRETARY

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THE PUBLIC HEALTH ACT

(Cap. 242)

THE PUBLIC HEALTH (PREVENTION, CONTROL AND
SUPPRESSION OF COVID-19) RULES, 2020

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THE PUBLIC HEALTH ACT

(Cap. 242)

THE PUBLIC HEALTH (PREVENTION, CONTROL AND SUPPRESSION OF COVID-19) REGULATIONS, 2020

IN EXERCISE of the powers conferred by section 36 (m) of the Public Health Act, the Cabinet Secretary for Health makes the following Rules—

THE PUBLIC HEALTH (PREVENTION, CONTROL AND SUPPRESSION OF COVID-19) REGULATIONS, 2020

1. These Rules may be cited as the Public Health (Prevention, Control and Suppression of COVID-19) Rules, 2020. Citation.

2. Every owner, person in charge of, or occupier of premises, and every employer and head of a household, who suspects that any person who is residing on his or her premises or who is in his or her employment, is suffering from COVID-19, shall notify a medical officer, public health officer, a medical practitioner and or the nearest administrator or take that person to a medical officer, medical practitioner or health facility for treatment. Responsibility for notification.

3. (1) Every medical officer of health, public health officer or medical practitioner who attends to, or who is called in to visit a patient, shall immediately, on becoming aware or suspecting that the patient is suffering from COVID-19, transfer the patient to the nearest health facility. Medical officer of health and medical practitioner to notify.

(2) Every medical officer of health, public health officer or medical practitioner who becomes aware, by post-mortem examination or otherwise, that any person has died of COVID-19, shall immediately inform the head of the household, or the occupier of the premises, or any person who has been in attendance on or contact with the deceased person, of the infectious nature of COVID-19 and of the precautions to be taken to prevent its transmission to other persons.

4. Where any case of COVID-19 is transferred to a health facility, the medical officer of health or public health officer shall immediately visit and inspect the premises where that person resides and may— Powers for the control of COVID-19.

(a) order all persons who have attended to or been in contact with the person to remain on the premises where the person was at the time of infection; or

(b) cause those persons to be removed to a health facility or other suitable place provided for the reception of persons suffering from COVID-19 or for quarantine.

5. (1) A medical officer of health, public health officer or a health inspector, or other person acting on the written instructions of a medical officer of health, may enter any premises in order to search for Power of search.

any case of COVID-19, or to inquire whether there is or has been on the premises, any case of COVID-19.

(2) Where any public health officer or health inspector or other person discovers any case of COVID-19, he or she shall report the discovery to a medical officer.

6. Where a building, premises or conveyance has signs of contamination with COVID-19 or where a medical officer of health has information of contamination of a building, premises or conveyance, the medical officer of health may decontaminate or cause the decontamination of the affected building, premises or conveyance. Power of medical officer of health or public health officer to disinfect premises.

7. Where a building, premises or conveyance has signs of contamination with COVID-19 or where a medical officer of health or public health officer has information of contamination of a building, premises or conveyance, the medical officer of health or public health officer may direct the manner in which that building, premises or conveyance may be used and may, in that regard, direct the evacuation of that building, premises or conveyance, or prohibit entry into that building, premises or conveyance, for such duration as may be necessary to decontaminate or cause the decontamination of that building, premises or conveyance. Power of medical officer of health or public health officer to direct the use of building.

8. (1) The following shall apply in relation to removal and disposal of bodies of all persons who die from COVID-19: Removal and disposal of bodies.

- (a) The person applying for burial or cremation permit shall be regarded as the responsible person for purposes of Section 18 of Public Health Act;
- (b) The burial or cremation ceremony may only take place between 0900 hours – 1500 hours;
- (c) The attendance at the burial or crematorium shall not exceed fifteen persons without prior written consent of a medical officer of health;
- (d) No child under the age of twelve years may enter any cemetery or crematorium unless when accompanied by an adult, or with the medical officer of health;
- (e) No person shall be allowed to carry on or solicit business, hold demonstration, or perform an activity which is not normally associated with a cemetery or crematorium;
- (f) The mode of transport used during the funeral procession at the cemetery or crematorium, must be fumigated immediately after the procession;
- (g) Every person taking part in a funeral procession at the cemetery, or attending a cremation service, must comply with instructions or directions issued by the medical officer of health or public health officer;

(2) Any person who fails and neglects to follow directions issued by medical officer of health or public health officer, commits an offence.

(3) The Cabinet Secretary may designate an area as a burial site for persons whose deaths result from COVID-19.

9. Any health facility that receives a person suffering or suspected of suffering from COVID-19, shall receive and deal with that person in accordance with the directions of the medical officer of health or public health officer. Reception by health facilities.

10. (1) Where a person who is confined in a place designated for isolation or for quarantine for COVID-19 escapes from that place, a medical officer shall immediately notify the police and request the police to apprehend and return the person to the designated place. Escaping from isolation and quarantine.

(2) A person commits an offence if that person —

(a) aids a person who is confined in a place designated for isolation or quarantine for COVID-19, in escaping or attempting to escape from the place; or

(b) conveys anything or causes anything to be conveyed into a place designated for isolation or quarantine for COVID-19 with the intent to facilitate the escape of any person confined in the place.

(3) A person who commits an offence under subparagraph (1) is liable, on conviction, to imprisonment for a term not exceeding two months or a fine not exceeding twenty thousand shillings.

11. (1) In this paragraph, “carrier” includes any person who, although he or she does not at the time present the clinical symptoms of COVID-19, has been proved, or is believed on reasonable grounds, to be harboring the infection and consequently to be liable to cause the spread of COVID-19. Carriers of disease.

(2) Any person who is believed or suspected, on reasonable grounds, by a medical officer of health to be a carrier shall allow, on request to the medical officer of health, or to any person authorized by the medical officer of health in writing, the medical officer of health to obtain from him or her specimens of blood, excreta, discharges or other material required for examination and investigation.

(3) Where a medical officer of health determines that a person is believed or suspected to be a carrier and that the necessary examination and investigations cannot be properly carried out at the house or place of residence of that person, the medical officer of health may direct that person to proceed or to be removed to a hospital or other suitable place for the purpose of examination and investigation and to remain or to be detained in that place for such reasonable period as may be required for that purpose.

(4) Every carrier shall at all times observe and give effect to all reasonable instructions given to him or her by the medical officer of health in regard to the disposal of his or her infectious materials and the cleansing of the articles used by the carrier, and any other precautions for preventing the spread of infection.

(5) Every carrier or patient who so wishes shall, within seven days before the change, inform the the medical officer of his or her intention to change his or her place of residence or work and of his or her intended new place of residence or work.

12. (1) The Cabinet Secretary may, by notice in the Gazette and in a newspaper with a wide circulation, declare any place to be an infected area, and thereupon regulate and/or prescribe such activities and conduct that may be carried out within the infected area where it is deemed necessary for preventing the spread of or for the eradication of COVID-19. Infected area.

Any person who contravenes the directives issues under rule 12 (1) commits an offence and shall be liable to a fine not exceeding twenty thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

(2) The Cabinet Secretary or any medical officer of health may direct any person residing in a declared infected area to undergo such medical inspection or examination as the Cabinet Secretary or medical officer of health may direct and the person so directed shall have to undergo such inspection.

(3) A medical officer of health may keep all or any persons in a declared infected area under observation in any place selected by him or her and under such surveillance as the medical officer of health may consider necessary.

(4) Where any person from a declared infected area is placed under observation or surveillance, the period of observation or surveillance shall be fourteen days.

13. (1) Subject to the conditions to be specified by the Cabinet Secretary by notice in the Gazette, the Cabinet Secretary may depending on the circumstances in an area, whether designated as an infected area or not, designate a private health facility, an educational institution, hotel or any other establishment as he may deem appropriate as a designated facility for purposes of handling and or treatment of COVID-19 patients. Designation of Facilities

(2) A designated facility under this clause that fails to comply with the directions of the Cabinet Secretary as regards the handling and or treatment of COVID-19 cases commits an offence.

14. The Cabinet Secretary may, by notice in the Gazette and in a newspaper with a wide circulation, put in place such measures as may from time to time become necessary to contain and curb the further spread of COVID-19. General powers

15. (1) Except as otherwise provided in these Rules, any person ^{Penalty.} who contravenes the provisions of these Rules shall be liable to a fine not exceeding twenty thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

(2) If the offence, contravention or default referenced under sub-clause 15 herein is of a continuing nature, the person shall be liable to a further fine not exceeding one thousand shillings for each day it continues.

Dated the 3rd April, 2020.

MUTAHI KAGWE,
Cabinet Secretary for Health.