

Laid by the Majority Leader
11/12/2014
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EXPLANATORY MEMORADUM

EXPLANATORY MEMORADUM TO THE TOBACCO CONTROL REGULATIONS

2014 NO.....

PART I



Name of the statutory Instrument: Tobacco Control Regulations 2014

Name of the Parent Act: Tobacco Control Act 2007

Enacted pursuant to: Section 53. (1) (a), (b), (c), and (2) (a) and (b)

Name of the Ministry/Department: Ministry of Health

Gazetted on:

Tabled on:

1. Purpose of the statutory instrument

1.1 These regulations are to make effective the Tobacco Control Act 2007 for the control of the production, manufacture, sale, labeling, advertising, promotion, sponsorship and use of tobacco products including exposure to tobacco smoke.

2. Legislative Context

There are seven parts of the regulations.

2.1 Part 1: Basically contains citations and interpretations.

2.2 Part 2: Contains expected regulations on packaging and labelling of tobacco and tobacco products. This part seeks to implement the following as required in TCA;

- a) Use of both health messages and pictorial warnings
- b) Stipulates that health messages to be on both wrapper and packet
- c) Requires health messages, pictures or pictogram not to be damaged, concealed etc.
- d) Requires rotation of specified health warnings and messages in accordance with Section 21(3) of TCA

- e) Stipulates a standard format of health warnings and messages
- f) Prohibition on certain product descriptions e.g. any name, brand name, text, trademark or pictorial or any other representation or sign which suggests that that tobacco product is less harmful to health than other tobacco products.
- g) Requires tobacco industry to have product identification markings e.g. code marking to determine among others country of origin or manufacture.
- h) Technical repository for pictorial health warnings shall be the Cabinet Secretary for Health
- i) Stipulates the display of signs at point of sale prohibiting sale of tobacco products to persons under the age of 18yrs.

2.4 Part 3: Stipulates the information to be given by tobacco industry to the Cabinet Secretary for health. The information required shall include product disclosure e.g. ingredients and industry disclosure e.g. production, sales, revenue etc. It shall be an offence to give false information.

2.5 Part 4: Stipulates regulations with regard to protection of the public from second hand tobacco smoke.

- a) Prohibits smoking in private vehicles and near public place
- b) Stipulates the requirement of a notice in prohibited area.
- c) Stipulates the need for supervision of non-smoking area by the owner or manager of the prohibited area
- d) There shall be need for certification of compliance of designated smoking area in accordance with Section 35 of TCA.
- e) The Cabinet Secretary for health shall maintain a technical repository for required no smoking warnings.

2.6 Part 5: This part seeks to domesticate Article 5.3 of WHO Framework Convention on Tobacco Control. It stipulates requirements to be fulfilled in interactions of public authorities with the tobacco industry. This includes;

- a) Limiting interactions
- b) Need for disclosure of prior interactions or intentions of such interactions
- c) Code of conduct to be prescribed by the Cabinet Secretary for health.

- d) Public officer to declare and divest interest with the tobacco industry
- e) Prohibition of participation by the tobacco industry as Kenyan delegation in conference of Parties
- f) Prohibits public officers or public authorities from receiving non-monetary and monetary gifts from the tobacco industry or its agents.
- g) Public authority shall prevent interference by the industry in fulfilling its mandate
- h) No preferential treatment of tobacco industry
- i) Annual reports of public authorities involved in tobacco control.
- j) Offences committed by public officers and by the tobacco industry under this part.

2.7 Part 6: This part stipulates matters relating to tobacco control fund.

- a) Stipulates the Solatium contributions payable to the fund by tobacco industry
- b) Stipulates action to be taken in forfeiture of property to the fund

2.8 Part 7: Enforcement

- a) Stipulates the authorized officers to enforce the regulations
- b) Prescribed forms (A-G) to be used in discharging their duties are stipulated

2.9 Part 8: Miscellaneous

- a) Public Hearings: Annual public hearings shall be convened by the board at National and County Level.
- b) Access to information: Information on implementation of the Act shall be accessible to the public.
- c) Monitoring and reporting: The board shall monitor implementation of the Act and submit annual reports to the Cabinet Secretary for health
- d) Public reporting: Mechanisms to report contravention of the Act shall be developed by public authorities involved in tobacco control.

- e) General offences: Shall be subjected to penalties stipulated under Section 54 of the Act.

First Schedule: Contains prescribed pictorial health warnings as prescribed in the Act.

Second Schedule: Health warnings for display

Third Schedule: Seizure and sampling forms

Fourth Schedule: Certificate of compliance of designated smoking areas

4. Consultation outcome

4.1 Several consultative meetings were held with various stakeholders. A national stakeholders meeting was held on 18th March 2014. The Industry was also represented. Some of the emerging concerns from the industry were the issues of solatium contribution, product disclosure, and packaging and labeling requirements. It was noted that the concerns are anchored to the Tobacco Control Act 2007. On 14th August 2014, a public forum was held to share the Pictorial Health Warnings under the first schedule on the regulations. There was concern that some of the pictures did not communicate effectively. The Board resolved to review the pictures and input various comments from the public. Pretesting of the pictures was also done in eight Counties namely; Mombasa, Kilifi, Machakos, Kiambu, Nairobi, Nakuru, Kisumu and Kakamega. It was noted that the pictures were very effective and largely understood by various stakeholders who included children in Primary schools, secondary schools, Colleges, Universities and various members of the public. The Ministry further engaged various committees of Parliament to share the regulations and seek views from the members. It was noted that the regulations would effectively implement the Tobacco Control Act 2007. The comments given from the members were considered appropriately and notably pretesting of the pictorial health warnings.

5. Guidance

5.1 The Ministry is in the process of developing guidelines for implementation of the regulations. The guidelines will be submitted to the Library of the National Assembly upon completion and also disseminated to the county governments. The Ministry will also embark on nationwide awareness creation and engage the media to educate the public of the existence of the regulations upon approval by parliament.

6. Impact

6.1 The impact on fundamental Rights and freedoms

The Constitution of Kenya guarantees fundamental rights, which have bearing on tobacco control. These are the-

- (a) Right to life
- (b) Right to the highest attainable standard of health
- (c) Consumer protection
- (d) Right to clean and health environment on which the prevention of second hand smoke is anchored
- (e) Right of children to basic health care and to be protected from harm
- (f) Right of citizen participation in governance and management of public affairs.
- (g) Right to information which empowers the public to access the information held by government on tobacco control

6.2 The impact on Private sector

The regulations will trigger economic development and Healthy workforce because low tobacco consumption will free health related financing to development vote

6.3 The impact on public sector

These regulations will lead to the principle of sustainable development. This principle calls for a convergence between the three pillars of economic development, social equity, and environmental protection in order to meet the

needs of the present generation without compromising the needs of future generations.

6.4 An impact assessment is attached to this memorandum.

7. Monitoring and Review

7.1. The Board shall monitor the implementation of these regulations among other functions as stipulated under section 6(e) of the Act and section 43.

8. Contact

8.1 (Dr. Khadija Kassachoon) and the (Ministry of Health) Tel (020-2717077) or email: (ps@health.go.ke) can answer any queries regarding the statutory instrument

EXPLANATORY MEMORANDUM TO THE CHILD WELFARE SOCIETY OF KENYA ORDER, 2014

PART I

The Child Welfare Society of Kenya Order, 2014

The State Corporation Act, (Cap 446) and the Children Act, 2001

Enacted Pursuant to section 3 of the State Corporations Act

MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES

Gazetted on 23rd May, 2014

Tabled on:

PART II

1. Purpose of the Statutory instrument

1.1 The object of the Bill is to establish a comprehensive legal, institutional and regulatory framework for the effective care, control, protection, welfare and adoption of children in Kenya.

2. Legislative Context

The Child Welfare Society of Kenya was gazetted as an approved society as a Government agency for the purposes of care, protection and control of children vide Gazette Notice No. 1768 of 27th December, 1955. The Society was gazetted as an adoption society vide legal Notice No. 1356 of 28th April, 1969 under the repealed Adoption Act, Cap 143 as the only government agency offering free adoption services, among other children welfare services.

The laws governing children were consolidated in the Children Act, 2001. Section 200 of the Children Act repeals the Adoption Act but contains a transitional clause 9 (1) in the Seventh Schedule which transits the Child Welfare Society of Kenya. However, the Child Welfare Society is not formally established or anchored in the country's legislation and its functions are not set out in the Children's Act 2001. The Order will restore the functions, responsibilities, mandate and powers of the Child Welfare Society of Kenya which were omitted following the repeal of The Prevention of Cruelty to and Neglect of Children Ordinance (No. 12 of 1955) and the Adoption Act under which the Society was approved.

3. Policy Background

3.1

The National Children Policy that was approved by the Cabinet in 2010 provides a comprehensive framework for addressing issues related to children's rights in a holistic manner. It further provides for the development of institutional, legislative and regulatory framework for addressing children issues.

The Child Welfare Society of Kenya is a Government agency offering free adoption services, among other children welfare services such as foster care, guardianship, tracing and re-unification of children with families as well as provision of temporary places of safety for children in distress, among others. All other registered adoption societies in Kenya are private agencies, hence such a crucial function and obligation of the Government under article 53 of the Constitution to protect children should not be left to private adoption societies only.

The Child Welfare Society of Kenya is funded by the Government and receives budgetary allocation from the National Treasury and it is important to have an effective institutional framework to ensure accountability for public resources.

4. Consultation outcome

4.1 The development of the Child Welfare Society of Kenya Order involved wide stakeholder consultations. Public hearings were held in various parts of the country to get views from the public which is a cardinal requirement under the Constitution for any legislative or policy making process. Public hearings were conducted in Nairobi, Thika, Maragua, Bungoma, Kitale, Kapenguria, Kitui, Isiolo, Nannyuki, Molo, Kisii, Kisumu, Kilifi and Mombasa.

5. Guidance

5.1 The Order was developed with support from the Office of the Attorney General.

6. Impact

6.1 *Impact on Fundamental Rights and Freedoms*

In line with the constitutional mandate of the government under article 53 of the Constitution the Child Welfare Society of Kenya is established as an adoption society and approved to carry out free adoption arrangements on behalf of the government and for the benefit of the financially disadvantaged Kenyans and other well-wishers who intend to adopt and give care to abandoned or homeless children. This ensures that homeless or abandoned children are able to enjoy the right to parental care and protection and other socio-economic rights that are guaranteed in the Constitution, the Children Act and International Human Rights Instruments which Kenya has ratified.

6.2 The impact on the Private Sector

The Order allows the Private Secretary to compliment the Government's efforts in ensuring effective care and protection of children.

6.3 The impact on the public sector

The public sector will greatly benefit from the implementation of the Child Welfare Society of Kenya Order as the Government's burden for taking care of homeless children in Government institutions will be reduced. As the adopted children have a greater chance of having a good education, this will lead to overall socio-economic growth and stability in the country.

6.4 Impact assessment

An impact assessment has not been prepared for this statutory instrument. However, a report on the country baseline survey commissioned by the Child Welfare Society of Kenya on the identification of gaps in law and access to welfare and care for children in relation to the Society prepared by the Legislative and Governance Institute in 2013 identified gaps in access to child welfare services in Kenya. The gaps included lack of a clear structure and roles of the various Government agencies dealing with children matters such as the Department of Children, the National Council for Children Services and the Child Welfare Society and lack of effective institutional framework to offer welfare services to vulnerable children.

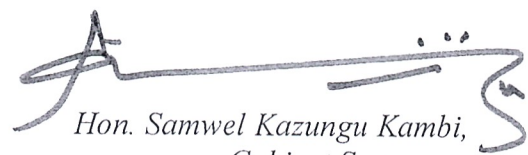
7. Monitoring and review

7.1 Implementation of the Order will be monitored as provided under State Corporations Act and the Children Act and the Order will be reviewed as and when necessary to comply with the Constitution and other relevant laws.

8. Contact

Ministry of Labour, Social Security and Services
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Dated the 12th day of June 2014.



*Hon. Samwel Kazungu Kambi,
Cabinet Secretary,
Ministry of Labour, Social Security and Services.*