

REPUBLIC OF KENYA



ELEVENTH PARLIAMENT
THE NATIONAL ASSEMBLY – (FOURTH SESSION)
No. 043

COMMUNICATION FROM THE CHAIR
ON DELAYED CONSIDERATION OF STATUTORY INSTRUMENTS

Honourable Members,

Whereas Article 94(1) of the Constitution vests the legislative authority of the Republic, at the national level to Parliament, clauses (4) and (5) of the said Article allows Parliament through Acts of Parliament to delegate legislative power to other persons or bodies to make provisions having the force of law in Kenya. The Statutory Instruments Act, 2013 requires such delegated provisions to be subjected, where applicable, to Parliamentary approval. In fulfillment of the provisions of the said Act, persons and bodies exercising delegated powers continue to make and submit to this House various statutory instruments as required under Section 11 of the Statutory Instruments Act, 2013.

Upon submission to the House, the instruments are effectively committed to the Committee on Delegated Legislation for consideration in accordance with Sections 12 and 13 of the Statutory Instruments Act, 2013. The sequence of approval under the Act is however cast in the negative whereby Parliament is not required to approve the whole of the provisions but is only required to disapprove or annul those provisions that it does not agree to.

Honourable Members, as at today, Tuesday, August 2, 2016, the following statutory instruments have been laid on the Table of this House pursuant to Section 11 of the Act and are yet to be concluded:

1. Legal Notice No. 197 of 2015 on the Mediation (Pilot Project) Rules, 2015 and the Explanatory Memorandum , *laid on the Table of the House on Wednesday, 10th February 2016;*

2. Legal Notice No. 225 of 2015 on Witness Protection Rules, 2015 and the Explanatory Memorandum, *laid on the Table of the House on Wednesday, 10th February 2016*;
3. Legal Notice No. 35 of 2016 on the Capital Markets (Licensing Requirements)(General) (Amendment) Regulations, 2016 and the Explanatory Memorandum, *laid on the Table of the House on Tuesday, 12th April 2016*;
4. Legal Notice No. 36 of 2016 on the Capital Markets (Securities) (Public Officers Listing and Disclosure) (Amendment) Regulations, 2016, and the Explanatory Memorandum, *laid on the Table of the House on Tuesday, 12th April 2016*;
5. Legal Notice No. 37 of 2016 on the Capital Markets (Derivatives Markets) Regulations, 2015 and the Explanatory Memorandum, *laid on the Table of the House on Tuesday, 12th April 2016*;
6. Legal Notice No. 47 of 2016 on the Insolvency Regulations, 2016 and the Explanatory Memorandum, *laid on the Table of the House on Thursday, 14th April 2016*;
7. Legal Notice No. 62 of 2016 on the Traffic (Registration Plates) Rules, 2016 and the Explanatory Memorandum, *laid on the Table of the House on Tuesday, 7th June 2016*;
8. Gazette Notice No. 1420 of 2016 on the Code of Corporate Governance Practices for Issuers of Securities to the Public, 2015, and the Explanatory Memorandum, *laid on the Table of the House on Tuesday, 12th April 2016*; and
9. Gazette Notice No. 1421 of 2016 on the Guidelines on Prevention of Money Laundering and Terrorism Financing in Capital Markets, 2015, and the Explanatory Memorandum, *laid on the Table of the House on Tuesday, 12th April 2016*.

Honourable Members, allow me to remind the House that upon committal of these statutory instruments, the Committee on Delegated Legislation is required under the Act to –

- (a) scrutinize the statutory instruments for compliance with the matters specified under Section 13 of the Act together with such other requirements as may exist in the Interpretation and General Provisions Act (*Cap 2 of the Laws of Kenya*) relating to subsidiary legislation;
- (b) confer with the regulation making authority in the manner contemplated under Section 16 of the Act; and
- (c) table a report in the House containing only a resolution that the statutory instrument or a part of it be revoked as contemplated under Section 15 of the Act.

Honourable Members, you may recall that Section 15 of the Statutory Instruments Act, 2013 was amended through the Statute Law (Miscellaneous Amendment) Act of 2015, which amendment introduced a timeline within which the National Assembly is required to consider any statutory instrument laid before it. For clarity, the new Section 15 of the Act provides as follows in sub-section (2)–

*"Where the Committee does not make the report referred to in sub-section (1) **within twenty eight days** after the date of referral of the statutory instrument to the Committee under Section 12, or such other period as the House may, by resolution approve, the statutory instrument shall be deemed to have fully met the relevant considerations referred to in Section 13."*

Clearly, the twenty-eight days contemplated in the above-mentioned provision in respect of the statutory instruments listed in this communication have expired. Since the Committee has neither reported to this House a proposed annulment of any of the affected statutory instruments nor have they sought any extension of time for consideration of the said statutory instruments as contemplated in the Act, the House is deemed to have had no objection to those statutory instruments and the said statutory instruments have the full force of approval by the House. In this regard, and in accordance with the provisions of the Statutory Instruments Act as read together with Standing Order 210, the Clerk is now required to convey these facts to the respective regulation-making authorities so that they are

notified that the instruments have the force of law as no objections have been made by the National Assembly.

Honourable Members, I hasten to add that this guidance does not apply to specific subsidiary legislation where positive approval of the National Assembly or indeed both houses under the specific statutes is mandatory. In such circumstances, the House would not be time bound unless there is an express provision prescribing the period within which the National Assembly or both Houses ought to approve or reject such subsidiary legislation.

Honourable Members, it is worth noting that in contrast to other Committees which have a wide range of mandate, the Committee on Delegated Legislation **is solely charged with the responsibility of considering delegated legislation.** It is in my view that limiting the mandate of this Committee to considering statutory instruments was guided by the principle and nature of urgency within which such instruments ought to be given Parliamentary approval so as to enjoy the benefit of having the full force of law. This House ought not to abdicate this duty conferred on it by the Constitution by delaying consideration and approval of statutory instruments or allowing such instruments to automatically assume clearance by the House by operation of law albeit without scrutiny as may be in the current case. The Chairperson and Members of this Committee are therefore encouraged to embrace the spirit of Standing Order 183 by establishing sub-committees of itself with a view to expediting consideration of statutory instruments within the specified timelines.

The House and officers of the House are accordingly guided.

I thank you!

THE HON. JUSTIN B. N. MUTURI, E.G.H., MP
SPEAKER OF THE NATIONAL ASSEMBLY

Tuesday, August 2, 2016