



REPUBLIC OF KENYA
ELEVENTH PARLIAMENT (SECOND SESSION)
THE NATIONAL ASSEMBLY
COMMUNICATION FROM THE CHAIR

ON TIMELINES FOR CONSIDERATION OF STATUTORY INSTRUMENTS

Honourable Members,

You will recall that on Wednesday, March 26, 2014, I made a communication regarding the procedure for scrutinizing statutory instruments by this House. Whereas the communication, then, focused on providing guidance on the procedure for considering statutory instruments, I also underscored the necessity for the House to, in so far as it is practically possible, have the statutory Instruments considered in good time.

In fulfillment of the requirements of section 11 of the Statutory Instruments Act, 2013, fourteen (14) statutory instruments have since been tabled before the House. As required by section 12(1) of the Act, these instruments effectively stood referred to the Committee on Delegated Legislation for consideration. Upon committal, the Committee on Delegated Legislation is supposed 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 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.

Although it is not expressly provided for in the Act, good practice in other jurisdictions also require the Committee to consult the relevant departmental committee responsible for the subject matter of the statutory instrument before submitting its report to the House.

Section 18 of the Act requires the Committee in tabling the report before the House to state the overall objective of the statutory instrument, identify the portion of the statutory instrument in relation to which the report has been made and indicate the manner in which it offends the criteria set out in section 10 and the recommendations thereof.

Honourable Members,

Standing order 210 (4) outlines two procedural steps to be followed by the committee after consideration of the statutory instrument. Firstly, if the Committee resolves that the statutory instrument, be acceded to, this resolution is conveyed to the Clerk of the Assembly who shall then convey that resolution to the relevant state department or the authority that published the statutory instrument. Secondly, where the committee resolves that a statutory instrument or part of it should not be acceded to, the Committee is then required to recommend to the House that the Assembly resolves that all or any part of the statutory instrument be annulled.

Of the fourteen statutory instruments that have been committed to the Committee on Delegated legislation, the House has only considered the report on instrument namely the Public Finance Management (UWEZO Fund) Regulations. The Committee has since tabled a report on the Constituencies Development Fund Regulations, 2014 which is awaiting approval by the House. The Clerk of the House has not received any resolution from the Committee that any of the remaining instruments be acceded to for the purpose of conveying this resolution to the relevant regulation making authority as contemplated under Standing Order 210(4). This essentially leaves the following twelve (12) statutory instruments still pending with the Committee;-

1. The Environmental Management and Coordination (*E-Waste Management Regulations 2013*;
2. The National Honours Regulations, 2013;

3. The National Transport and Safety Authority (*Operations of Public Service Vehicles*) Regulations, 2014;
4. The National Payments System Regulations, 2014;
5. The Government Financial Management (*Hospital Management Service*) Regulations, 2009;
6. The Environmental Management and Coordination (Waste Tyre Management) Regulations, 2014, plus Explanatory Memorandum, Certificate of Compliance and Regulatory Impact Statement;
7. The Leadership and Integrity Act Regulations, 2014;
8. The National Land Commission Regulations on Review of Grants and Dispositions, 2014;
9. The County Land Management Boards Regulations, 2014;
10. The Child Welfare Society of Kenya Order, 2014;
11. The National Construction Authority Regulations 2014 and;
12. The National Social Security Fund Act Regulations 2014.

Honourable Members,

Statutory instruments formulated by respective regulation-making authorities require approval of this House before they have the force of law. Unless this House approves a statutory instrument, it can neither be implemented nor have the force of law. Our Standing Orders have delegated the approval aspect to the Committee on Delegated Legislation which is required to come back to the House only in those instances where an annulment of a particular or the whole of a statutory instrument is desired. In this respect, the plenary of the House therefore considers only proposals for annulment of the whole or part of the statutory instrument.

Although the Statutory Instruments Act and Standing Order 210 do not expressly specify a time limit within which the Committee must consider the statutory

instrument, it is worth noting that in contrast to other Committees which have a wide range of mandate, this **Committee is solely charged with the responsibility of considering delegated legislation.** It is in my view that limiting the mandate of this Committee to considering delegated legislation was guided by the principle and nature of urgency within which such regulations ought to be given the force of law. This House ought not to abdicate the duty conferred to it by the Constitution by delaying consideration and approval of statutory instruments requiring the force of law.

Honourable Members,

Allow me to draw your attention to Standing Order 127 (4) that obliges Chairpersons of Committees, in respect of matters relating to legislation, to table their reports within 20 calendar days of committal of a Bill to the Committee. If I were to invoke the provisions of Standing Order 1 and impose a similar yardstick, it then follows that the Committee on Delegated Legislation is obliged to either accede to the statutory instrument by notice to the Clerk or table its report recommending for annulment within a similar period of twenty calendar days.

Honourable Members,

In view of the foregoing, I wish to issue the following directions-

1. **THAT**, for those statutory instruments for which the Committee has neither tabled a report recommending annulment as required by section 15 and 17 of the Act nor notified the Clerk of its resolution to accede to the statutory instrument as required by standing Order 210 (4) (a), I direct that the Committee finalizes and reports back to the House where it desires an annulment of the whole or part of the statutory instrument or notify the Clerk of its resolution to accede to the statutory instrument on or before the 15th of July, 2014;
2. In the event that the Committee fails to comply with the timelines under paragraph 1, the Committee shall be deemed to have acceded to the statutory instruments and the Clerk shall, upon the expiry of the specified time, communicate the accession to the relevant regulation-making authority;

3. **THAT**, for purposes of the future practice, I direct in accordance with Standing Order 1 that whenever the Committee fails to notify the Clerk of its resolution to accede to a statutory instrument or table its annulment report to the House within twenty (20) calendar days after committal of the statutory instrument to it, the Committee shall be deemed to have acceded to the statutory instrument and the Clerk shall, upon the expiry of the specified time, communicate the accession to the relevant regulation-making authority.

Thank you!

THE HON. JUSTIN B.N. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY
July 3, 2014