

LEGAL NOTICE NO.

THE TRAFFIC ACT
(Cap. 403)

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

THE TRAFFIC (BREATHYLSER) RULES, 2018

Citation.

1. These Rules may be cited as the Traffic (Breathylser) Rules, 2018.

Interpretation.

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

“blood alcohol concentration” means the concentration of alcohol in a person’s blood measured in terms of mass per volume as may be expressed in different units and notations from time to time for the purposes of measurement of intoxication;

“breathalyser” means a device of a type approved by the Cabinet Minister on the advice of the Kenya Bureau of Standards for measuring the proportion of alcohol in a person’s blood from a specimen of breath provided by the person;

“breath test” means a test for the purpose of obtaining an indication of the proportion of alcohol in a person’s breath carried out by a breathalyzer;

“driving under the influence” means driving while intoxicated, drunk driving, drinking and driving or the act of operating or taking control of a motor vehicle after having consumed alcohol, or other drugs to a degree beyond the prescribed limit;

“drug” includes intoxicant other than alcohol;

“drunk driving” means driving, operating, attempting to operate or taking control of a motor vehicle while under the influence of an alcoholic drink or a drug to such an extent as to be incapable of having proper control of the vehicle”;

“fail” includes ‘refuse’;

“prescribed limit” means, as the case may require—

- (a) 35 microgrammes of alcohol in 100 millilitres of breath,
- (b) 80 milligrammes of alcohol in 100 millilitres of blood, or
- (c) 107 milligrammes of alcohol in 100 millilitres of urine,

Alcohol prohibition.

3. (1) No person shall drive, attempt to drive or be in charge of a motor vehicle on a road or other public place if the person has consumed alcohol in such quantity that the blood alcohol concentration in his body is beyond the prescribed limit.

(2) Notwithstanding subsection (2), a person driving or being in charge of, or during any period of duty in connexion with the driving of, a public service vehicle or a commercial service vehicle, shall at all times have a zero Blood Alcohol Concentration at all times while driving

(3) A person who contravenes sub-rule (1) and (2) commits an offence under section 44 (1) and 45 of the Act.

Breath Tests

4. (1) Where a police officer in uniform suspects that a person driving or attempting to drive or who is in charge of a motor vehicle on a road or other public place—

(a) has committed a traffic offence whilst the vehicle was in motion; or

(b) is suspected of having consumed alcohol, or is likely to have alcohol in his body, the police officer may require the person to provide a specimen of breath for a breath test.

(2) A specimen shall be deemed sufficient for purposes of sub rule (1) where—

(a) it is sufficient to enable the test or the analysis to be carried out, and

(b) is provided in such a way as to facilitate the achievement of the objective of the test or analysis.

(3) If an accident occurs owing to the presence of a motor vehicle on a road or other public place, a police officer may require the person whom he has reasonable cause to believe was driving or attempting to drive or was in charge of the vehicle at the time of the accident to provide a specimen of breath for a breath test.

(4) If a driver involved in an accident is at a hospital as a patient he may be required by the police to give a specimen of breath at the hospital but no such requirement may be made unless the medical practitioner in charge of his case-

(i) has been given prior notice of the proposal to make the requirement; and

(ii) does not object to the provision of a specimen on the ground that its provision or the requirement to provide it would be prejudicial to the proper care or treatment of the patient.

(5) A police in uniform may arrest without warrant any person who, as a consequence of a breath test, is found to have a proportion of alcohol in his breath exceeding the prescribed limit but no such arrest may be made while the person is at a hospital as a patient.

Failure to submit to a breath test

(5) Failure to provide a specimen of breath when required to do so by a police in uniform shall be an offence and a person shall be deemed to be over the prescribed limit and subject to the penalty contained in section 44(1)

James Macharia

Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development