

**EXPLANATORY MEMORANDUM**  
(s. 5A of the Statutory Instruments Act, No. 23 of 2013)

**THE DAIRY INDUSTRY (MILK SALE CONTRACT) REGULATIONS,  
2020**



**PART I**

**Name of Statutory Instrument:** Dairy Industry (Milk Sale Contract) Regulations, 2020

**Name of the Parent Act:** The Dairy Industry Act, Chapter 336

**Enacted Pursuant to:** Section 19 of the Dairy Industry Act, Chapter 336

**Name of the Ministry/Department:** Ministry of Agriculture, Livestock, Fisheries & Irrigation

**Gazetted on:**


**Tabled on:**

**PART II**

**1. Purpose of the Statutory Instrument**

The purpose or object of Dairy Industry (Milk Sale Contract) Regulations, 2020 is to ensure that there is fair trade in the sale of milk, and to protect the investment interests of both the buyer and seller of milk. Specifically, the Regulations provide that every sale contract in relation to milk shall be by way of a binding contract containing, at minimum —

- 1.1 details of parties to the contract;
- 1.2 duties and responsibilities of parties;
- 1.3 price per kilogram;
- 1.4 quantities;
- 1.5 oversupply or undersupply terms;
- 1.6 quality specifications;
- 1.7 testing and rejection terms;
- 1.8 transfer of ownership;
- 1.9 time of collection or delivery;
- 1.10 frequency of collection or delivery;
- 1.11 contractual period;

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| <br><b>THE NATIONAL ASSEMBLY<br/>PAPERS LAID</b> |                          |
| <b>DATE:</b> 23 MAR 2021                                                                                                              |                          |
| <b>DAY:</b> Tuesday                                                                                                                   |                          |
| <b>TABLED BY:</b>                                                                                                                     | LDM<br>Hon. Amos Kimunya |
| <b>CLERK-AT THE TABLE:</b>                                                                                                            | M. Lemuna Page   1       |

- 1.12 terms of payment, including payment of interests on late payments;
- 1.13 confidentiality;
- 1.14 waivers and amendment terms;
- 1.15 terms of termination of contract;
- 1.16 indemnification and insurance;
- 1.17 sanctions for failure to honor contractual obligations;
- 1.18 notices and demands;
- 1.19 *force majeure*;
- 1.20 dispute resolution mechanism.

The Regulations also provide for enforcement of the milk sale contracts, by providing for inspection by compliance officers, at any time, of such contracts to ensure that the terms of the contract are being complied with by both parties. It is an offence for failing to comply with the Regulations.

## **2. LEGISLATIVE CONTEXT**

- 2.1 These Regulations are intended to address the challenges and shortcomings arising from the liberalization policies of the 1990s. The Regulations are also consistent with the Constitution and other relevant laws and regulations governing standards and food safety, including the Public Health Act, Chapter 242 of the Laws of Kenya, Food, Drugs and Chemical Substances Act, Chapter 254 of the Laws of Kenya, Standards Act, Chapter 496 of the Laws of Kenya, Environmental Management and Coordination Act, Chapter 387 of the Laws of Kenya, Pest Control Products Act, Chapter 355 of the Laws of Kenya, Cattle Cleansing Act, Chapter 358 of the Laws of Kenya, Veterinary Surgeon and Veterinary Para Professionals Act, No. 29 of 2011, Animal Diseases Act, Chapter 364 of the Laws of Kenya, Animal Technicians Act, No. 11 of 2010 and the Weights and Measures Act, Chapter 513 of the Laws of Kenya.
- 2.2 The earliest legal instrument to regulate the dairy industry is the Dairy Industry Act ("the Act"). The Act was assented to on 11th August 1958. Since that time, there have been about 13 amendments to the Act, the last one being in 2006.
- 2.3 Under the Act, there have been subsidiary instruments by way of regulations and orders. The main concerns of the amendments have been something to do with trying to help the dairy farmer obtain good prices for the milk, to ensure that dairy industry is competitive and to assure safety of the dairy produce to the consumer;
- 2.4 The Dairy Industry Act, by section 19, empowers the Cabinet Secretary to make regulations to provide for detailed matters and procedures that cannot appropriately be part of the Act. Amongst the issues to be regulated by the Cabinet Secretary are matters of registration of farmers, licensing of various actors in the industry, matters of contracts for sale of milk, and the imposition of cess and levy;

- 2.5 With the promulgation of the Constitution of Kenya 2010, it becomes necessary for the Board to give room for the County governments to perform their part in the industry while the Board retains regulatory and oversight functions over the industry;
- 2.6 There have never been regulations on the subject matter herein (milk sale contracts) and this is the first time the law will require parties in milk sales to enter into written contracts.
- 2.7 These Regulations are made pursuant to s. 19 of the Dairy Industry Act and are meant to fully operationalise the Dairy Industry Act.

### 3. POLICY BACKGROUND

- 3.1 The Constitution of Kenya 2010 provides a broad policy framework for the agriculture sector by assigning different roles to the National Government and the County governments with respect to agriculture, which is the sector to which the dairy industry belongs.
- 3.2 There has been a policy specifically on the dairy industry, which was adopted by Parliament through a *Sessional Paper* in 2013. The objectives of the policy are to —
  - a) improve the productivity and competitiveness of Kenya's dairy and dairy Products;
  - b) positively contribute to the livelihoods of milk producing households;
  - c) increase domestic consumption of milk and milk products;
  - d) contribute to national food security;
  - e) transform the industry into an exporter of dairy animals and products;
  - f) maximize dairy exports in the regional and global markets; and
  - g) re-orient milk processing towards long life dairy products.
- 3.3 However, the Ministry has embarked on coming up with policy on the entire livestock industry. At the moment, there is a draft policy awaiting adoption: the *Draft Livestock Policy 2019* ('draft Policy').
- 3.4 The draft Policy, which is wider in scope than the *Sessional Paper No 5 of 2013*, also notes<sup>1</sup> that the Kenya Dairy Board has been performing both the regulatory and developmental roles. Some of the roles are now shared roles and the Regulations seek to attain this.
- 3.5 It is important to observe that despite the revision of the dairy industry policies, there has not been a corresponding review of the relevant legislation, which has left the policies less effective as they lack supportive legislation.
- 3.6 The standards for marketed milk in the regional markets are in place but the main challenge has always been the weak enforcement mechanism. The standards currently enforced are those of East African Community (EAC) which COMESA member countries have been advocating for adoption since 2007 for purposes of expanding the dairy industry trade in the region. Adherence to the EAC standards by the all actors in

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<sup>1</sup> See page 68

the value chain presents the path to ensuring quality products in the regional market. The introduction and enforcement of these dairy industry regulations will promote quality, clean and safe milk production and handling at all levels of the value chain.

- 3.7 Furthermore, the Regulations provide synergy and focus among the actors in the animal resource industry as they perform their respective roles while addressing animal health and food safety issues in livestock.
- 3.8 The Regulations are expected to revitalize the dairy sub-sector and guarantee the sustainability of dairy farming as a major economic thrust in the country and enhance Kenya's leadership position in dairy production within the region and beyond.

#### **4. CONSULTATION OUTCOME**

- 4.1 As required under Article 10 of the Constitution of Kenya 2010 as well as under sections 6 and 7 of the Statutory Instruments Act, the Cabinet Secretary and the Board have held consultative fora involving stakeholders in March, 2020, as detailed under clause 4.3 below.
- 4.2 The following stakeholders have been involved in the development of the Regulations: dairy producers; transporters and distributors, dairy processors, importers and exporters of dairy, County governments, members of County assemblies in the in various regions, and other dealers in dairy and related products.
- 4.3 All the 47 counties were invited to participate in the consultations at different venues shown above. There were stakeholders' consultative meetings in different regions on the following dates and venues:
  - a) 9<sup>th</sup> March 2020: Nyeri; Muranga;
  - b) 9<sup>th</sup> March 2020: Garissa;
  - c) 9<sup>th</sup> March 2020. Kitale;
  - d) 9<sup>th</sup> March 2020: Kakamega;
  - e) 10<sup>th</sup> March 2020: Kisumu;
  - f) 10<sup>th</sup> March 2020: Uasin Gishu; Elgeyo Marakwet & Nandi;
  - g) 10<sup>th</sup> March 2020: Makueni;
  - h) 11<sup>th</sup> March 2020: Marsabit;
  - i) 12<sup>th</sup> March 2020: Nakuru & Baringo;
  - j) 12<sup>th</sup> March 2020: Kisii;
  - k) 13<sup>th</sup> March 2020: Nyandarua & Laikipia;
  - l) 13<sup>th</sup> March 2020: Meru;
  - m) 13<sup>th</sup> March 2020: Mombasa, Kwale, Kilifi;
  - n) 13<sup>th</sup> March 2020: Kericho, Bomet & Narok.
- 4.4 The key problems being addressed by the Regulations are: there is no mechanism for protecting the vulnerable in contractual relationships relating to milk sales; brokers have been exploiting the farmers thus reducing their profit margins, and making dairy farming not attractive.

- 4.5 There was need to give incentives to producers to base their milk prices on quality, as this would lead to improvement of milk quality in the industry, which guarantees better returns.
- 4.6 The following were key results of consultations in various meetings with dairy industry stakeholders:
- a) That there is need to ensure that milk sale contracts are not skewed in favour of a party, usually the purchaser;
  - b) That the contracts signed for milk sale should be inspected by the Board;
  - c) That there should be effective disputes resolution mechanisms between parties to milk sale contracts;
  - d) That there should also be a maximum retail prices for milk, in addition to minimum price for buying raw milk.
- 4.7 The views of all the stakeholders were taken into account to improve the Regulations.

## **5. GUIDANCE**

- 5.1 Upon Gazettement of these Regulations, the Ministry shall, through the Board, organize meetings of key players/stakeholders to sensitize them on the requirements of the Regulations and how to ensure their effective compliance and implementation;
- 5.2 The Ministry shall liaise with the relevant Government agency to deal with other matters such as fiscal incentives or disincentives with respect to dairy production. These fiscal incentives will have an impact on the pricing of milk and milk products, and it will positively influence the content of milk sale contracts;
- 5.3 The Ministry will also ensure that there is an approved Dairy Policy document to guide the industry, and the policy will incorporate the views of the stakeholders.

## **6. IMPACT STATEMENT**

### **6.1 Impact on Fundamental Rights and Freedom**

- a) The Regulations are not expected to have a negative impact on fundamental rights of persons or institutions that are subject to the Regulations, but will strengthen the right to property through strengthening the rights of the parties to milk sale contracts.
- b) The proposed Regulations will achieve consumer protection as far as the dairy farmer and the operator are concerned.
- c) The Regulations promote freedom of association for both the primary producers and process by allowing options to choose the manner of associations;
- d) The Regulations do not have negative impact on the environment or environmental rights of the people.

### **6.2 Impact on the Private Sector**

- a) The Regulations would ensure that the investment interests of the farmer and the other players in the industry are secured to ensure reasonable return on investment.
- b) It is anticipated that the Regulations would positively impact on the private sector by increasing productivity upon better harnessing of resources toward milk production and processing;
- c) The Regulations will lead to a more vibrant dairy industry, with the attendant increase in economic activities by the dairy farmers, the processors and other actors in the industry. It is expected that if the Regulations are enforced, they would result in economic and social empowerment of the people through better pricing of dairy produce.

### 6.3 Impact on the Public Sector

- a) The Regulation will have general positive impact on the public sector because written contracts improve quality of dairy produce and hence make it easy for oversight of the sector that is orderly. Consumers are also better protected when the industry is more orderly.
- b) The proposed Regulations would reduce disputes that hitherto have arisen between players by making the terms of engagement more certain. This frees the government from unnecessary engagement to resolve disputes.

## 7. MONITORING AND REVIEW

Regulations are designed to achieve goals which may relate to impact, effectiveness (in terms of cost and usability), net benefit or efficiency and finally, equity or fairness. The following measures shall be undertaken for the purpose of monitoring and review:

- a) The Ministry through the Board shall develop a standard form contract where parties insert few terms, such as price and the rest to be standard terms.
- b) The Board shall ensure that contracts are signed in triplicate, one copy is submitted to the Board;
- c) There will be developed guidelines for resolving disputes arising out of contracts and in the long term, the Ministry shall ensure that there is a tribunal for the Agriculture Sector;
- d) The Board and the relevant county governments shall document all contracts entered into by farmers for effective implementation and monitoring;
- e) The Board will carry out regulatory impact assessment at least once in the first three years of these Regulations to ensure that the Regulations have no loopholes and if there are, to be addressed appropriately.

## 8. Contacts:

- a) [cabinetsecretary@kilimo.go.ke](mailto:cabinetsecretary@kilimo.go.ke) (Ministry of Agriculture, Livestock, Fisheries & Cooperatives).

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