SCHEDULE (Section 8)

EXPLANATORY MEMORANDUM

THE CROPS (SUGAR) (GENERAL) REGULATIONS, 2020

PART I

Name of Statutory Instrument:	The Crops (Sugar) (General) Regulations, 2020
Name of the Parent Act:	The Crops Act, No. 16 of 2013
Enacted Pursuant to:	Section 40 of the Crops Act, No. 16 of 2013
Name of the Ministry/Department:	Ministry of Agriculture, Livestock, Fisheries & Cooperatives
Gazetted on:	**27th MAY 2020**
Tabled on:	**TBA**

PART II

1. PURPOSE OF THE STATUTORY INSTRUMENT

The purpose of these Regulations is to provide for the regulation, promotion, development and oversight of the sugar industry. Specifically, the Regulations provide for-

1.1. Registration of umbrella associations for Millers and Growers

1.2. Registration, governance and responsibilities of out-grower institutions;

1.3. Agreement *with* respect to miller-grower, out-grower-miller, harvesting and transporting arrangements;

1.4. Establishment of a Sugarcane Pricing Committee

1.5. Approved standards for products and services
1.6. Cane Development and Processing

2. LEGISLATIVE CONTEXT

2.1. Parliament enacted the Crops Act 2013 which came into force on 1st August 2014. By section 40, the Act delegated regulation-making powers to the Cabinet Secretary who is expected to consult with County Governments;

2.2. The Crops Act repealed the Sugar Act 2001, amongst other Acts;

2.3. Despite the repeal of the Sugar Act, the subsidiary legislation made under the repealed Act continue operating by dint of section 24 of the Interpretation and General Provisions Act, Chapter 2 of the Laws of Kenya;

2.4. These Regulations are made pursuant to section 40 of the Crops Act and are meant to operationalize the Crops Act as sugarcane is a scheduled crop.

3. POLICY BACKGROUND

3.1. After independence, through the *Sessional Paper* No. 10 of 1965, *African Socialism and its Application to Planning in Kenya*, the Government outlined the importance and role of the sugar industry within the context of agriculture development.

3.2. The Government therefore invested in Sugar Industry as part of implementing the vision in the Sessional Paper, by constructing and holding majority shares in five factories: Muhoroni (1966), Chemelil (1968), Mumias (1973), Nzoia (1978), and South Nyanza (1979). Private investors have also built sugar factories: Miwani (1923), West Kenya (1981), Soin (2006), Kibos (2007), Butali (2011), Transmara (2011), Sukari (2012), Kwale (2014), Olepito(2016) and Busia (2017). Mumias Sugar was privatized in 2001 but the Government holds majority shares in the company.

3.3. The Sugar-subsector has been a key contributor to the agriculture sector. As at 2018, about 202,400 hectares of land in Kenya was under cane farming, mainly confined to Western and Nyanza regions. Of that, over 92% was under out-grower/small-scale farmers, and the rest under nucleus estates. About 6 million people derive their livelihood from the sugar subsector either directly or indirectly.

3.4. However, the Sugar Industry has faced some challenges over the years. Though some of the challenges have been addressed, there is a lot to be done to maximize the sub-sector for sustainability. The Draft *Sugar Industry Policy has* highlighted a number of challenges to which the law and policy need to resolve. Further, the President appointed a Sugar industry Taskforce to look into the challenges of the Sugar industry to which they made key recommendations.

3.5. The Agriculture Sector Reforms began in earnest way back in 2003 with the formulation of the Economic Recovery Strategy for Wealth and Employment Creation (ERS) and the Strategy for Revitalization of Agriculture (SRA).

3.6. The Sector reforms were aimed at reviewing, updating and harmonizing the legal framework that would rationalize multiple legislation and regulations governing the sector.

3.7. Prior to the current reforms, the Agriculture Sector had in excess of 100 laws that made the Sector uncompetitive, inefficient and too bureaucratic for a conducive business environment. It was also envisaged that these reforms would make the sector regionally and globally competitive through the overall reduction of cost of production and increased efficiency in service delivery;

3.8. The merger process commenced with consolidation of the Agriculture Sector legislation which culminated in the enactment of three key laws, namely, the Agriculture and Food Authority Act, 2013, the Crops Act, and the Kenya Agricultural and Livestock Research Act, 2013. The Regulations are meant to operationalize part of the Crops Act.

4. CONSULTATION OUTCOME

4.1. As required under Article 10 of the Constitution of Kenya, 2010 as well as under the Statutory Instruments Act, the Cabinet Secretary has held consultative fora involving stakeholders for a considerable period of time, especially between the years 2015 and 2018.

4.2. The following stakeholders have been involved in the development of the Regulations: sugarcane growers through the Kenya National Federation of Sugarcane Farmers, millers, County governments through the Council of Governors as well as directly with counties through County Executive Committee members and other officials, members of county assemblies in sugar growing regions, members of Parliament from sugar growing regions, and other dealers in sugar and related products.

4.3. There were stakeholders' consultative meetings on many dates. Meetings were held between the Ministry, Agriculture and Food Authority, Council of Governors, the defunct Transition Authority, the Attorney-General's Office, the Law Reform Commission as follows: 16th March 2015 (Nairobi), 14th-18th April 2015 (Mombasa), 28th & 30th, May 2015, 2nd & 17th June 2015, and 1st July 2015 (all in Nairobi); 30th October 2015 (Kisumu), 26th February 2016 (Nairobi), 27th May 2016, 23rd September 2016 and 16th November 2017 (Kisumu), 28th – 29th June 2018 (Windsor Golf & Country Club, Nairobi), and 2nd July 2018 (AFA Headquarters).

4.4. The problems being addressed are: low sugar cane productivity; inappropriate marketing of sugar and co-products; inadequate and poor management of the Outgrower institutions; insufficient institutional, legal and regulatory framework and lack of adherence; cultural and social-economic constraints to industry performance; corruption and lack of accountability; poaching of sugarcane among sugar millers.

4.5. The following highlights were as the result of consultations in various meetings with stakeholders:

a) That both the Authority and County governments are key stakeholders in the governance of the sugar industry and will work in a consultative manner;

b) That registration of growers and grower institutions will be introduced;
d) The Authority will prescribe standard contracts between various players. These contracts are legally binding on the signatories;
e) Growers and millers will be allowed to form associations to advocate their respective interests;
f) Pricing of sugar cane shall be determined by a Sugarcane Pricing Committee;

5. GUIDANCE

5.1. Upon Gazettement of these Regulations, the Ministry shall, through the Agriculture and Food Authority, organize meetings of stakeholders to sensitize them on the requirements of the Regulations and how to ensure their effective implementation;

5.2. The Ministry will also ensure that there is an approved Policy document to guide the Sugar Industry.

6. IMPACT STATEMENT

6.1. Impact on Fundamental Rights and Freedom

a) The Regulations are not expected to have negative impact on fundamental rights of persons or institutions that are subject to the Regulations.

b) The Regulations address matters that relate to the Bill of Rights, especially on fair administrative actions and freedom of association.

6.2. Impact on the Private Sector

a) It is anticipated that the Regulations would positively impact on the private sector by increasing productivity upon better harnessing of resources towards sugar production and processing;

b) The Regulations would ensure that there are proper structures of governance within growers' and millers' organizations which will promote efficiency and accountability of actions by those entrusted with responsibilities;
c) The Regulations shall standardize agreements relating to cane growing, harvesting and transportation to ensure that growers are certain about their obligations and the cost of production;
d) The Regulations will eliminate or reduce excessive delays in payment for cane supplied to millers;
e) More participation of the private sector in the management of the sugar industry;
f) More structured methods of discussing and resolving issues relating to sugarcane;
g) Opportunity to have value for money and reasonable return through mechanisms proposed for determining or setting cane prices in a consultative manner.

6.3. Impact on the Public Sector

a) Better compliance with the law and better accountability for actions on the part of the millers, outgrower institutions and growers;
b) Improved Socio-economic development;
c) Better public participation by stakeholders in matters affecting them in line with Article 10 of the Constitution of Kenya, 2010.

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. If they do not lead to these results, then it means they have fallen short of their objectives.

The implementation of the Regulations will achieve good results if the following measures are undertaken for the purpose of monitoring and review:

a) All the registered millers to provide data and information on an annual basis to the Authority and County Governments;

b) The millers and registered out grower institutions shall keep records as may be relevant for the purpose of improving policy and for enforcement of the law and guidelines in the sugar industry. This includes statistics relating to the growers, their inputs and outputs, individual production, etc.;

c) The Authority shall 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. CONTACT

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