

SCHEDULE

EXPLANATORY MEMORANDUM

**THE CROPS (SUGAR) (IMPORTS, EXPORTS & BY-PRODUCTS)
REGULATIONS, 2018**

PART I

Name of Statutory Instrument:	The Crops (Sugar) (Imports, Exports & By-Products) Regulations, 2018
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 & Irrigation
Gazetted on:	
Tabled on:	

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** the registration of importers and exporters of sugar or sugar by-products;
- 1.2** the procedure for licensing of importers and exporters of sugar or sugar by-products, including conditions for the licence;
- 1.3** the ascertainment of quantities of sugar or by-products required in any given year for purposes of determining the quantity to be imported;
- 1.4** ensuring that only authorised sugar imports reach the Kenyan market;
- 1.5** preventing unauthorised repacking or re-branding of sugar or sugar by-products with a view to circumventing regulations or passing off;
- 1.6** fair procedures for licensing importers and exporters.

2. LEGISLATIVE CONTEXT

- 2.1** Parliament enacted the Crops Act 2013 which came into force on 1st August 2014. By section 40 of 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- 2.2** The Crops Act repealed the Sugar Act 2001 amongst other Acts;
- 2.3** Despite the repeal of the Sugar Act, the subsidiary legislation made under the repealed Act relating to import and export of sugar and by-products of sugar continue operating by dint of section 24 of the Interpretation and General provisions Act,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 s. 40 of the Crops Act and are meant to operationalise the Crops Act as far as sugar as a scheduled crop is concerned.
- 2.5** These Regulations are meant to replace Sugar (Imports, Exports and By-products) Regulations, 2008.

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: West Kenya (1981), Soin (2006), Kibos (2007), Butali (2011), Transmara (2011) and Sukari (2012). The latest entrant into the sugar industry is Kwale International Sugar Company Limited at Ramisi is a private enterprise which started milling cane in 2014. 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 2015, about 203,730 hectares of land in Kenya was under cane farming, mainly confined to Western and Nyanza regions. Of that, 189,390 hectares was under out-grower/small-scale farmers, and only 14,340 hectares was 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 challenges over the years. Though some of the challenges have been addressed, there is a lot to be done to maximise the sub-sector for sustainability. In the *Draft Sugar Industry Policy* being discussed currently, a number of challenges have been identified, and which the law and policy need to resolve.
- 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 into 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 operationalise part of the Crops Act.

4. CONSULTATION OUTCOME

- 4.1** As required under Article 10 of the Constitution of Kenya 2010 as well as 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: all millers; 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: unclear rules on licensing of importers; unfair licensing regime; unfair competition on account of imported sugar and that produced by local millers; illegal entries of "cheap" sugar and by-products into the market; lack of sugar import statistics; and passing off.
- 4.5** The following were as the result of consultations in various meetings with stakeholders:
- a) That the Authority should make available to stakeholders statistics on sugar imports;
 - b) That pre-shipment licences should be issued on quarterly basis and to be valid for 45 days;
 - c) Importation of sugar must be tightly controlled in order to shield growers and millers from unfair competition.

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 or freedoms 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* with regard to decision-making on licensing.
- c) The Regulations do not have negative impact on the environmental rights.

6.2 Impact on the Private Sector

- a) It is anticipated that the Regulations would positively impact on the private sector by increasing participation in the sugar import and export business, as well as related by-products;
- b) There will be protection of the growers and millers against unfair competition through import of sugar and sugar products;
- c) The Regulations leave, to the discretion of the licensing authority, the manner of determining import rights.

6.3 Impact on the Public Sector

- a) Better compliance with the law and better accountability for actions on the part of the sugar importers and exporters;
- b) Increase transparency by providing for reporting and oversight of import and export business;
- c) Provide procedures for licensing exporters and importers and sanctioning malpractices;
- d) The Regulations provide for the Authority to keep statistics on sugar imports and to disseminate the same to the stakeholders;
- e) Ensure that there is no smuggling of illegal or contraband sugar into the country.

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 measuring are undertaken for the purpose of monitoring and review:

- a) The Authority to maintain and update data base of all licensed importers and exporters of sugar and related by-products, and the data or statistics to be published;
- b) Verification of import documents and the actual commodities are necessary;
- c) Inspection and oversight of sugar dealers should be ongoing to ensure that the Regulations are adhered to;
- d) The Authority should carry out regulatory impact assessment in the first three years of these Regulations to ensure that the Regulations have no loopholes, and if there are, to be addressed appropriately by amendment.

8. Contact

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