

PARLIAMENT  
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EXPLANATORY  
MEMORANDUM

**SCHEDULE**  
**[Section 8]**

**EXPLANATORY MEMORANDUM**  
**TO**  
**THE SUGAR DEVELOPMENT LEVY ORDER, 2025**

**PART I**

<b>Name of the Statutory Instrument:</b>	The Sugar Development Levy Order, 2025
<b>Name of the Parent Act:</b>	The Sugar Act No. 11 of 2024
<b>Enacted Pursuant to:</b>	Section 40 of the Sugar Act No. 11 of 2024
<b>Name of the Ministry/Department:</b>	Ministry of Agriculture and Livestock Development
<b>Gazetted on:</b>	
<b>Tabled on:</b>	

**PART II**

**1. Purpose of the Statutory Instrument**

The statutory instrument is concerned with the implementation of the Sugar Development Levy Order, 2025 and specifically to provide for imposition of a levy on domestic sugar and imported sugar. The Specific objective of this instrument is to:-

- a) Specify the amount of levy imposed on domestic sugar and imported sugar
- b) Identify who collects the levy imposed on domestic sugar and imported sugar
- c) Stipulate the time when levy imposed on domestic sugar and imported sugar will be due.

**2. Legislative Context**

The Fourth Schedule to the Constitution of Kenya provides the delineation of roles between the National Government and County Governments. It *inter alia* provides for devolution of specific functions in agriculture to the County Governments. The National Government retains the executive function of policy decision-making under Part I Section 29 of the Fourth Schedule, while the Counties take up the implementation of the policies made by the National Government. Further, it stipulates that the two levels of government

shall conduct their mutual relations based on consultation and cooperation (*C.f* Article 6 and Article 189 (1) (b) (c)). Due to the importance of agriculture to economic development and the realization of the Constitutional requirements, it is necessary to have an Agricultural Policy that guides the development of the entire Agricultural Sector and unbundles National and County Government functions. The roles of County Governments in implementation of Agricultural policy include crop husbandry, implementation of programmes in the agricultural sector to address food security in the county, development of programmes to intervene in soil and water management and conservation of the natural resource base for agriculture and others.

Section 40 (1) of the Sugar Act provides that the Cabinet Secretary shall in consultation with the Board, by order in the *gazette*, impose a levy on domestic sugar not exceeding four *per centum* of the value and a four *per centum* of CIF value on imported sugar to be known as the Sugar Development Levy. Further, the Order shall provide the time at which any amount payable by way of the levy shall become due. In consideration of the above, the Cabinet Secretary in consultation with KSB prepared the draft Sugar Development Levy Order, 2025. This is a statutory instrument which seeks to boost and streamline the collection of levy on domestic sugar and imported sugar. It is likely to impose costs to consumers in the short term.

### **3. Policy Background**

The Kenya Sugar Authority Order, 1973 (Cap. 318) established the Kenya Sugar Authority to promote and foster the effective and efficient development of sugarcane for the production of white sugar in Kenya; and advise on the rules and regulations necessary to enable the effective and efficient functioning and development of the sugar industry. In the year 2001, the Parliament enacted the Sugar Act which established the Kenya Sugar Board, a successor to the Kenya Sugar Authority which was responsible for regulating the sugar industry.

The objects of the Act were to promote the sugar industry, coordinate industry activities, and ensure equitable access to industry resources. It provided for the development of the sugar industry, including the regulation of sugarcane cultivation.

However, the Sugar Act was repealed by the Crops Act, 2013. The Crops Act sought to streamline agricultural regulations by integrating the oversight of various crops, including sugarcane, under a single legislative framework. Consequently, this led to shift from a dedicated Sugar Board to the Agriculture and Food Authority (AFA), which was given broader responsibilities for regulating the agricultural sector.

Although, the Act intended to increase efficiency in gains in management of the sugar sector, the same were not realized due to issues which included a lack of a Board of Directors, operational inefficiencies, and financing challenges compounded by the revocation of crop levies in 2016.

The Sugar Directorate under AFA faced many challenges that led to it becoming ineffective and inefficient. As a result, public sugar companies were unable to pay farmers, there was increased production costs, decline in land under sugar cultivation, decline in research and trainings, decline in cane development and productivity enhancement and decline in factory development and rehabilitation.

As a result of these inefficiencies, Parliament enacted the Sugar Act, No. 11 of 2024 which re-established the Kenya Sugar Board and conferred it with the mandate among others of collection of the sugar development levy. The levy is to be imposed on the domestic sugar and imported sugar. It allows a levy of *up to* four per centum on domestically produced and imported sugar which is to be primarily used to support the development of the Kenyan sugar industry.

Further, the Act provides that the levy collected by the KSB is allocated to various areas such as factory development, cane development, research, and industry infrastructure. The funds are to be distributed as follows: 15% towards factory development and

rehabilitation, 15% allocated to sugarcane-producing regions on a pro-rata basis based on production capacity for infrastructural development and maintenance; 10% for the administration of the Board; and 5% to the functions of sugarcane farmers' organizations.

Specifically cane farmers will benefit from 40% to cane development and 5% to support sugarcane farmers' organizations.

The Kenya Sugar Research and Training Institute will benefit from 15% of the development levy, empowering the institute to advance research and improve training standards. This investment in knowledge and skills aims to strengthen Kenya's competitiveness in both local and global sugar markets.

Additionally, the Kenya's Vision 2030 identifies manufacturing as a key enabler for driving the country to a globally competitive and prosperous country with a high quality of life by the year 2030. The goal is to generate an additional KES. 30 billion to GDP by producing consumer goods that compete with imports. This is achievable through research which part of the development levy is intended for.

Further, the Kenya National Trade Policy, 2016 outlines its mission as to facilitate Kenya's transformation into a competitive export led economy, enhance regional integration and widen participation in both domestic and international trade. It enumerates one of its objectives as creation of an enabling environment for trade and investment to thrive. Kenya Sugar Board will play a critical role by enhancing the production of sugar upon utilization of the Sugar Development Levy.

#### **4. Consultation Outcomes**

Article 10 of the Constitution of Kenya enumerates the National values and principles of governance that inform public service including the law-making processes. It mandates any public institution making any law to undertake public participation before enacting and implementing any public policy decision or law.

Article 232 of the Constitution of Kenya provides the values and principles of public service. It requires the involvement of the people in the process of policymaking and participation, transparency and provision to the public of timely and accurate information.

With regard to the subsidiary legislation making process, under Section 5 of the Statutory Instruments Act, CAP 2A it requires that the regulation-making authority to make consultations before making the statutory instrument in question and in particular where the proposed Order is likely to have a direct, or a substantial indirect effect on business or restrict competition.

The Cabinet Secretary in consultation with KSB prepared a draft Order in December 2024 which was subsequently publicized on the KSB website on 8<sup>th</sup> January 2025. Further, the Chief Executive Officer published a notice in the newspapers inviting the public to submit comments on the proposed Sugar Development Levy Order, 2025, as outlined in the draft Gazette Notice within 14 days.

On 6<sup>th</sup> January 2025, the CEO sent out letters to all Sugarcane Farmers' Organizations communicating itinerary for the public participation on the proposed Order. On 9<sup>th</sup> January 2025, the CEO sent updated letters communicating the itinerary for the public participation on the proposed Order.

On 13<sup>th</sup> January 2025, the Board together with the representatives from the Ministry of Agriculture conducted consultative and public participation in Mumias Sugar (2021) Ltd, West Kenya Olepito Unit, West Valley Sugar Company and Soin Sugar Company.

On 14<sup>th</sup> January 2025, the Board together with the representatives from the Ministry of Agriculture met with farmers, public and representatives from Butali Sugar Mills, West Kenya Sugar Company, Muhoroni Sugar Company and Chemelil Sugar Company.

On 15<sup>th</sup> January 2025, the Board together with the representatives from the Ministry of Agriculture met with farmers, public and representatives from Nzoia Sugar Company, West Kenya - Naitiri Unit and Kibos Sugar & Allied Industries Ltd.

On 16<sup>th</sup> January 2025, the Board together with the representatives from the Ministry of Agriculture conducted consultative and public participations in Busia Sugar Industries and Sukari Industries Ltd.

On 17<sup>th</sup> January 2025, the Board together with the representatives from the Ministry of Agriculture met with farmers, public and representatives from South Nyanza Sugar Company, Transmara Sugar Company, Kwale International Sugar Company and sugar importers.

The feedback from these forums demonstrated an overwhelming endorsement of the proposed Sugar Development Levy, with stakeholders emphasizing its potential to advance the growth and sustainability of the sugar industry. It is worth noting that some stakeholders, particularly importers who represent a minority within the sugar value chain, expressed a preference for the levy to be implemented in a graduated manner or replaced with flat-rate fees. Their feedback was acknowledged, underscoring the Board's commitment to inclusivity and open dialogue.

## **5. Impact**

### **5.1 Impacts on Fundamental Rights and Freedoms**

The proposed Regulations shall have a positive impact on fundamental rights and freedoms in the following ways: -

#### **i. Consumer Protection**

**Article 46 of the Constitution** provides for consumer rights and in particular, that consumers have the right to goods and services of reasonable quality, information necessary for them to gain full benefit from goods and services for the protection of their health, safety and economic

interests and to compensation for loss or injury arising from defects in goods or services. The levy that will be collected as a result of the proposed Order will benefit the consumers as it will lead to enhanced cane productivity and development hence good quality of sugar that will be readily available. This will also lead to consistent and continuous supply of sugar hence the consumers will not be faced with sugar shortage leading to higher pricing above what the consumer could comfortably afford.

## ii. Right to Development

**Article 201** has robust provisions on the principles of public finance which are enumerated as follows:

- a. there shall be openness and accountability, including public participation in financial matters;
- b. the public finance system shall promote an equitable society, and in particular—
  - i. the burden of taxation shall be shared fairly;
  - ii. revenue raised nationally shall be shared equitably among national and county governments; and
  - iii. expenditure shall promote the equitable development of the country, including by making special provision for marginalised groups and areas;
- c. the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations; and
- d. public money shall be used in a prudent and responsible way.

The proposed levy will be used for equitable development of sugarcane catchment areas hence leading to benefits to all sugarcane farmers and stakeholders in different catchment areas. This levy will be administered by the Kenya Sugar Board

**Article 209** of the Constitution empowers the national government to impose any tax or duty while **Article 210** requires that any tax or licensing fee imposed, waived, or varied is provided

for in a Legislation. As such the National Government through the Kenya Sugar Board is within its constitutional mandate in imposing the Sugar Development Levy set to revitalize the sugar sector and improve the economic status of the sugarcane farmers.

**Section 4 of the Sugar Act** provides the mandate of the KSB including regulation, development and promotion of the sugar industry.

**Section 40(1) of the Sugar Act** empowers the Cabinet Secretary in consultation with KSB to publish an Order known as Sugar Development Levy in the Gazette on the imposition of a levy on domestic sugar not exceeding four *per centum* of the value and a four *per centum* of CIF value on imported sugar. The levy will be used for the development and promotion of the sugar sector.

### **iii. Right to Fair Administrative Action**

Article 47 of the Constitution and the Fair Administrative Action Act, Cap 7L guarantees the right to fair administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair. The proposed levy Order provides for the timelines in which sugar manufacturers and importers must remit the levy. It further provides penalty for failure to remit levy within the prescribed timelines. However, the Order does not provide grounds for waiver on companies to pay penalties in the event of a failure to remit their levy on prescribed time.

### **iv. A clean and healthy environment**

Article 42 of the Constitution confers every person with the Right to a clean and healthy environment. This protects them from activities and practices that are harmful such as discharge of effluent waste in rivers or emissions of carbon in the air. The development levy will help in factory development that will see to this right being guaranteed to all persons.

## **5.2. Effects on the Public Sector**

The proposed Levy Order will have both direct (immediate) and indirect (incidental) impacts on the public sector in the following ways:

a) **Direct (Immediate) Impacts**

- i. 40% of the levy will be allocated to cane development, which includes support for sugarcane farmers through better seedlings, fertilizers, and extension services. This will translate to increment in sugarcane production leading to increased sugarcane yields and payments from millers which in turn leads to improved livelihood for the farmers.
- ii. 15% of the levy funds has been earmarked for infrastructure development in sugarcane catchment areas. This will translate to the communities around those catchment areas directly benefiting from improved roads, water systems, and community facilities. This enhances access to markets and services, particularly for rural households reliant on the sugar economy.
- iii. The 15% of the levy dedicated to factory development and rehabilitation will create direct employment opportunities, such as farm labor and factory jobs, boosting household incomes in these communities.
- iv. Promote the adoption of food safety, an effective traceability mechanism, and produce quality standards across the sugar industry operations will ensure the production of quality and healthy sugarcane leading to high quality sugar for the local and export markets hence reduce health challenges resulting from the consumption of poor quality and contaminated sugar contributing to reduced local public health provision costs.

b) **Indirect (Incidental) Impacts**

- i. The Successful reinvestment of levy funds could boost domestic sugar production hence reducing import dependence. This will over time lead to stabilization of supply and reduce reliance on costly imports, potentially stabilizing the price volatility for both the farmers and consumers in the long run.
- ii. The improvement of sugarcane production and factory efficiency will lead to increased economic activity which could have a ripple effect in sugarcane catchment areas,

indirectly benefiting the public through more vibrant local markets, small businesses, and service providers catering to a revitalized industry.

- iii. 15% of the levy dedicated to research and training will contribute to development of healthier and early maturing sugarcane varieties adaptable to specific catchment areas which will indirectly strengthen rural economies, contributing to broader agricultural resilience and food security as farmers diversify income sources.
- iv. The broader agricultural sector and national economy will benefit from the increased volumes of production, regional and export trade from the industry, reduced imports of sugar and thus increased foreign exchange earnings and savings for the country.

### **5.3. Effects on the Private Sector**

The proposed Regulations will have both direct (immediate) and indirect (incidental) impacts on the private sector in the following ways:

#### **a) Direct (Immediate) Impacts**

- i. The 40% of the levy earmarked for the allocation to sugarcane development will directly benefit private sugar millers by improving the availability and quality sugarcane. This will lead to reduction of supply shortages thus enabling the millers to operate closer to their capacity. This will lead to improved profitability of the sugar sector.
- ii. The 15% of levy dedicated to factory development and rehabilitation will directly support the private millers by subsidizing equipment upgrades and maintenance. This will in turn lower the production costs and increase efficiency. The result of this will be extension of the lifespan of ageing facilities, many of which operate below 50% capacity due to the use of outdated technology.
- iii. For private importers and millers, the 4% levy on imported sugar's CIF value directly incentivizes local production by making imported sugar relatively more expensive. This

protects domestic millers from cheaper foreign competition, particularly from COMESA countries hence fostering a stronger local sugar industry.

**b) Indirect (Incidental) Impacts**

- i. The 15% allocation of the levy the Kenya Sugar Research and Training Institute will indirectly benefit the private millers and farmers through innovations in sugarcane varieties, pest management, and farming techniques. This will lead to a higher yield and quality hence enhancing the competitiveness in regional markets and opening export opportunities.
- ii. The infrastructure development in the sugarcane catchment areas will indirectly benefit the private sector by reducing transportation costs and delays for cane and sugar delivery. This will lead to a more streamlined operations for millers, distributors, and retailers, enhancing overall sector profitability.
- iii. A revitalized sugar sector, supported by development levy, could indirectly draw private investment into milling, processing, and related industries like ethanol production or confectionery which will spur expansion and modernization efforts.

**6. Monitoring and Review**

Monitoring and evaluation (M&E) of the Order is important in determining its effectiveness, efficiency, and adequacy in achieving its intended objectives and purpose. It informs the Government and players in the sector whether the instrument is working. Proper use of M&E mechanisms constitutes a major change in the operational style and working culture of regulatory authorities that enables them to set up a process of continuous learning through experience and evidence. A well-functioning system of M&E would directly influence the ability of Order to foster competitiveness and economic growth in the sub-sector. A review of Order will ensure it is consistent and effective in regulating the activities in the sub-sector.

It is expected that the Order shall be a subject of great interest to all stakeholders particularly because of its potential to provide benefits to the sugar industry, farmers, and the broader

economy as enunciated under Section 40 of the Sugar Act, No. 11 of 2024 which includes: 15% towards factory development and rehabilitation, 15% allocated to sugarcane-producing regions on a pro-rata basis based on production capacity for infrastructural development and maintenance; 10% for the administration of the Board; and 5% to the functions of sugarcane farmers' organizations.

Specifically cane farmers will benefit from 40% to cane development and 5% to support sugarcane farmers' organizations.

The Kenya Sugar Research and Training Institute will benefit from 15% of the development levy, empowering the institute to advance research and improve training standards. This investment does not only improve income of stakeholders but it also improves quantity and quality of the sugar products and further create employment, reduce poverty, and enhance the living standards of Kenyans. The Board working together with the respective County Governments will thus work hand in hand to promote research to review the adequacy and effectiveness of the Order towards promoting the growth, and development of the Sugar industry and products.

Overall, the information and details shared by the various stakeholders and the Board may be used to enhance prudent planning and decision-making process. It will also enable the Board and the respective County Governments to conduct a survey of the Sugar sector to find out whether the objectives of the Order have been met and identify areas for improvement.

## **7. Contact**

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