



**MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND
COOPERATIVES**

REGULATORY IMPACT STATEMENT

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

NOVEMBER, 2020

1. Introduction

Regulatory impact assessment (RIA) involves a range of methods aimed at systematically assessing the negative and positive impacts of proposed and existing regulations. The Statutory Instruments Act, No. 23 of 2013, provides that if a proposed statutory instrument (and the Regulations are a statutory instrument) is likely to impose significant costs on the community or a part of the community, the regulation-making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument.

RIA is an important instrument for improving the quality of regulations and good governance, by ensuring more coherent and transparent policies, and making regulation more effective and efficient. Through RIA, an analysis of proposed regulations is done, and by comparing different options, RIA is a methodological framework and an administrative procedure for better-informed policy-making and legislative enactments. It thereby improves the transparency of governmental decision-making and also increases the quality of political debate.

The Ministry has undertaken an impact assessment of the proposed Regulations after extensive consultations with stakeholders. This Statement is therefore made to fulfill the requirement of section 6 of the Statutory Instruments Act.

2. Purpose and Objects of the Regulations

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 —

- 2.1 details of parties to the contract;
- 2.2 duties and responsibilities of parties;
- 2.3 price per kilogram;
- 2.4 quantities;
- 2.5 oversupply or undersupply terms;
- 2.6 quality specifications;
- 2.7 testing and rejection terms;
- 2.8 transfer of ownership;
- 2.9 time of collection or delivery;
- 2.10 frequency of collection or delivery;
- 2.11 contractual period;
- 2.12 terms of payment, including payment of interests on late payments;
- 2.13 confidentiality;
- 2.14 waivers and amendment terms;
- 2.15 terms of termination of contract;
- 2.16 indemnification and insurance;

- 2.17 sanctions for failure to honor contractual obligations;
- 2.18 notices and demands;
- 2.19 *force majeure*;
- 2.20 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.

3. IMPACT STATEMENT

The Ministry carried out a comprehensive regulatory impact assessment and the findings work in favour of promulgating the Regulations. The assessment considered the likely impact of the Regulations on the fundamental rights of the people, the impact on the economy and the public sector, economic impact on individuals and environmental considerations. The summary of the key findings are as follows:

3.1 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.

3.2 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.

3.3 Impact on the Public Sector

- a) The Regulation will have general positive impact on the public sector because standard 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.

4. Other Practicable Options to Regulations

Prescribing terms of contract through regulation is not the only means of realizing a policy objectives. There are alternatives which are handy in dealing with certain aspects of the dairy industry. Amongst the options that were considered are:

- a) Do nothing: it is also an option to do nothing and let the *status quo* prevail. However, this will not address the many disputes and exploitation of the weaker parties that happen in the dairy industry.
- b) Policy guidelines: the Government ensures that policies decided by the Government are communicated to the persons to apply them, e.g. dairy farmers, distributors, importers and processors;
- c) Using market instruments, e.g. competition may be used to create demand or to moderate prices, or even to discourage certain practices.
- d) Use of fiscal instruments: taxation may be used, for example to deter certain farming practices by making it more costly to carry out a harmful practice; to reduce the cost of production by emanating or zero-rating taxes on dairy inputs; to raise taxes on imported dairy products to discourage importation of dairy products, etc.

The options were considered and it was found necessary that the dairy industry needed regulations immediately but the various other options ((b) to (d) would be used to bolster the implementation of the Regulations as much as possible.

Guidelines only amount to recommendations and cannot assure the competitiveness of the terms of contract between the farmer and the dairy operator.

The ideal option would have been to let the market forces to determine the terms of engagement between the farmer and other operators. But this has not worked due to the oligopolistic dairy industry and other factors that have made it difficult for the market to determine the terms of engagement. The end result is that a farmer is not assured of fair terms of contract.

5. Conclusion

The Ministry conclude that the proposed Regulations are an improvement to the current legal framework for registration and licensing regime and will promote and improve the dairy industry

for the benefit of the farmer, the operator and the general public. Promulgating the Regulations is the only viable option.

6. Recommendation

It is recommended that the Dairy Industry (Milk Sale Contract) Regulations, 2020 be gazetted.