

THE DAIRY INDUSTRY BILL 2024

ARRANGEMENT OF CLAUSES

PART I—PRELIMINARY

- 1— Short title and commencement
- 2—Interpretation
- 3—Object and purpose
- 4—Application
- 5—Guiding principles

PART II—THE KENYA DAIRY AUTHORITY

- 6—Establishment of the Authority
- 7—Function of the Authority
- 8—Powers of the Authority
- 9—Board of the Authority
- 10—Qualifications for appointment to the Board
- 11—Functions of the Board
- 12—Conduct of business and affairs of the Board
- 13—Tenure of office
- 14—Vacancy in the Board
- 15—Removal from office
- 16—Delegation by the Board
- 17—Remuneration of members of the Board
- 18—Director-General of the Authority
- 19—Appointment of staff

PART III—ROLE OF COUNTY GOVERNMENTS

The Dairy Industry Bill, 2024

20—Development of the dairy industry

21—Registration of primary producers

22— Licensing

23— County government to maintain register

**PART IV—DAIRY BUSINESS OPERATORS, DAIRY EQUIPMENT SUPPLIERS
AND DAIRY PROCESSING AIDS SUPPLIERS**

24—Registration

25—Register of permit holders

26—Regulatory permit

27—Suspension or cancellation of permit

28—Appeals relating to permits

PART V—QUALITY AND SAFETY OF DAIRY PRODUCE

29—Compliance with standards

30—Record of dairy produce

31—Traceability and recall plan

32—Standards of equipment and processing aids

33— Packaging and labelling

34—Risk analysis

35—Data, reports and returns by dairy business operators

PART VI— SALE OF DAIRY PRODUCE

36— Requirements for sale of raw milk

37—Contract for sale of milk

38—Guaranteed minimum producer price

39—Quality-based pricing

40—Import and export of dairy produce

The Dairy Industry Bill, 2024

41—Dairy produce in transit

PART VII— FINANCIAL PROVISIONS

42—Funds of the Authority

43—Financial year

44—Annual estimates

45—Accounts and audit

46—Investment of funds

47—Power to borrow

PART VIII—DAIRY INDUSTRY TRIBUNAL

48—Establishment of the Tribunal

49—Proceedings of the Tribunal

50—Powers of the Tribunal

51—Quorum

52—Appeal to the Tribunal

53—Appeal to the High Court

54—Immunity

55—Remuneration of members of Tribunal

56—Secretary to the Tribunal

57—Staff of the Tribunal

PART IX—MISCELLANEOUS

58—Respective roles of national and county governments

59—Power to impose levy

60—Power to charge cess

The Dairy Industry Bill, 2024

61—Protection from personal liability

62—Civil proceedings against the Authority

63—Protection of name of the Authority

64—Compliance officers

65—Duties and powers of a compliance officer

66— Seizure, forfeiture and disposal of dairy produce or processing aid

67—Offences by authorised officers

68—Offences by body corporate

69—Offence of giving false or misleading information

70—Offence of obstruction

71—General penalty

72—Dispute resolution

73—Power to make regulations

PART X—REPEAL, SAVINGS AND TRANSITION

74—Repeal of the Dairy Industry Act

75—Savings and transition

SCHEDULE

THE DAIRY INDUSTRY BILL 2023

A Bill

for

AN ACT of Parliament to provide for the regulation of the dairy industry; to establish the Kenya Dairy Authority; to provide for the functions and powers of the Authority; to make provisions for the safety and quality of dairy produce, to provide for the promotion and development of the dairy industry; to provide for the role of county governments in the dairy industry; and for connected purposes.

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

1. Short title and commencement

This Act may be cited as the Dairy Industry Act, 2023 and shall come into force upon publication in the *Gazette*.

2. Interpretation

In this Act, unless the context otherwise requires—

“**aggregator**” means a person who collects milk from a primary producer for the purpose of bulking, and includes a dairy business operator who bulks for resale;

“**Authority**” means the Kenya Dairy Authority established under section 6;

“**authorized officer**” means the Director-General, a compliance officer, or any other person appointed in writing by the Director-General for the purpose of enforcing this Act;

“**Board**” means the Board of the Authority established under section 9;

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to the dairy industry;

“**compliance officer**” means a person who is appointed by the Authority under section 64, or a public officer as contemplated under the Public Health Act.

“**consumer**” means a person who buys dairy produce for own consumption and not for resale;

“**cooperative society**” has the meaning assigned under the Cooperative Societies Act (No. 12 of 1997);

“**dairy business operator**” means a person who handles dairy produce as a business but does not include a primary producer, a wholesaler or a retailer of a packaged dairy produce;

The Dairy Industry Bill, 2024

“**dairy equipment**” means a milk dispenser, milk cooler, pasteurizer, can for transporting dairy produce, or such other equipment as may be prescribed.

“**dairy equipment supplier**” means a person who sells or offers for sale dairy equipment;

“**dairy premises**” means land and building situated on the land, and includes any vehicle, conveyance or vessel that is used for production, processing or storage of dairy produce for sale;

“**dairy processing aid**” means food grade additives, including stabilizers, colours, fortifiers, cultures, enzymes, acidifiers, anti-oxidants or any other aid permitted by or under the relevant standards and applied to dairy produce;

“**dairy processing aid supplier**” means a person who imports or sells dairy processing aids;

“**dairy produce**” means any product in which milk is the main ingredient and is prepared or purporting to be prepared in accordance with the requirement of the relevant standard;

“**develop**” means, with respect to the dairy industry, any activity that is undertaken towards improved or enhanced dairy production, productivity, or value addition for improved livelihoods;

“**Director-General**” means the Director-General of the Authority appointed under section 18;

“**distributor**” means a person who buys dairy produce for resale;

“**equivalence**” means the capability of different inspection and certification systems to meet the same objectives;

“**guaranteed minimum producer price**” means the milk price prescribed under section 38;

“**industry**” means the dairy industry and includes the production, collection, bulking, transportation, processing, packaging, refining, marketing, dispensing, selling and distribution of dairy produce;

“**Kenya Dairy Board**” refers to the Kenya Dairy Board established under the Dairy Industry Act, chapter 336 of the Laws of Kenya (repealed);

“**licence**” means a business licence issued by a county government;

“**milk**” means the normal mammary secretion obtained from a cow, buffalo, goat, camel, donkey, sheep, or from any other animal as the Cabinet Secretary may by notice in the *Gazette* declare to be milk for the purpose of this Act;

“**own consumption**” with respect to the use of dairy produce, means consumption by the individual who produces the dairy produce together with their family members, but does not include consumption by persons in a gathering where members of the public are invited or allowed access;

“**package**” includes cask, keg, crate, can, box, case wrapper, tin, bottle, carton, cup,

The Dairy Industry Bill, 2024

sachet and every other receptacle or covering used for the packaging of dairy produce;

“**permit**” means a regulatory permit issued by the Authority to a dairy business operator to engage in dairy business;

“**person**” includes a natural person, company or an association or body of persons, corporate or unincorporated;

“**potable water**” means water that is clean and safe for human consumption and meets relevant standards;

“**prescribed**” means prescribed by regulations made by the Cabinet Secretary pursuant to the powers granted under section 73;

“**primary producer**” means a person who produces milk for sale;

“**process**” means to treat, prepare or manufacture dairy produce;

“**processor**” means a person who processes dairy produce;

“**promote**” with respect to the dairy industry, includes establishing and implementing strategies, processes or actions aimed at fostering the growth and sustainability of the dairy industry;

“**raw milk**” means milk free of colostrum, adulteration or any form of extraction that has not been subjected to any process except cooling;

“**recall**” means process of withdrawing dairy produce from the supply chain if there is evidence that the dairy produce poses or is likely to pose health risk to a consumer, or does not meet a requirement of the relevant standard;

“**register**” means a register kept in pursuant to this Act;

“**relevant standard**” means a standard relating to the quality and safety of dairy produce, processing aid, product, or dairy equipment, determined or adopted by the Government or relevant government agency;

“**repealed Act**” means the Dairy Industry Act (chapter 336);

“**retailer**” means a person who purchases dairy produce for resale to consumers;

“**sell**” includes offering for sale, advertising, keeping, exposing, transmitting, conveying, delivering or preparing, for sale and any exchange or disposal for consideration;

“**stakeholder**” means any person or entity involved in or affected by the dairy industry, and includes a primary producer, a dairy business operator, an equipment supplier, a processing aids supplier, a consumer of dairy produce, or an association of any of the foregoing groups, or relevant government agency;

“**traceability**” means the ability to trace, follow and identify dairy produce;

“**withdrawal**” with respect to dairy produce, refers to the act of removing from the market or stoppage of further transaction in, or distribution of, the dairy produce in accordance with this act.

3. Object and purpose

The object and purpose of this Act is to—

The Dairy Industry Bill, 2024

- (a) regulate and oversight the dairy industry;
- (b) promote safety of dairy produce and to enhance consumer protection;
- (c) promote and develop the dairy industry;
- (d) promote domestic and international trade in dairy produce;
- (e) provide mechanisms for collection and collation of data and information in the dairy industry; and
- (f) promote a sustainable and competitive dairy industry.

4. Application

- (1) This Act applies to—
 - (a) the production, collection, cooling, bulking, transportation, processing, packaging, distribution, storage, marketing and sale of dairy produce, whether produced locally or imported;
 - (b) dairy equipment;
 - (c) dairy processing aids; and
 - (d) dairy premises.
- (2) The Act does not apply to the production of dairy produce for own consumption.

5. Guiding principles

In discharging its functions and in the exercise of its powers under this Act, the Authority shall be guided by the following principles:

- (a) promotion of safety of dairy produce through risk analysis and management;
- (b) when trading or transacting with another country, the principle of equivalence will be applied in determining the level of measures taken by the other country to ensure safety of dairy produce;
- (c) ensuring sustainability in its operations and use of resources;
- (d) adherence to national values and principles of governance as set out under Article 10 of the Constitution; and
- (e) coordination, collaboration and cooperation between and amongst the Authority, county governments and other stakeholders in the dairy industry.

PART II—THE KENYA DAIRY AUTHORITY

6. Establishment of the Authority

- (1) There is established a body to be known as the Kenya Dairy Authority.
- (2) The Authority shall be a body corporate with perpetual succession and a common seal, and shall, in its corporate name, be capable of—
 - (a) suing and being sued;
 - (b) taking, purchasing, acquiring, holding, or disposing of movable or immovable

The Dairy Industry Bill, 2024

- property;
- (c) entering into contracts; and
- (d) doing or performing such other acts as the Authority may consider necessary for the proper performance of its functions under this Act.

7. Function of the Authority

(1) The Authority shall, subject to the Fourth Schedule to the Constitution, exercise general supervision and co-ordination of matters of the dairy industry and shall be the principal agent of government in implementing policies on the dairy industry.

- (2) Without prejudice to the generality of sub-section (1), the Authority shall—
- (a) regulate and promote quality and safety of dairy produce;
 - (b) regulate imports and exports of dairy produce;
 - (c) advise on development and implementation of dairy industry standards;
 - (d) advise the Cabinet Secretary on the formulation of dairy policies and strategies for the national and county governments;
 - (e) enforce requirements and standards in the dairy industry;
 - (f) undertake research, investigation or surveys on dairy matters, and disseminate the findings;
 - (g) establish and maintain a national database for the dairy industry;
 - (h) establish and provide laboratory testing services;
 - (i) promote competitive and stable prices of dairy produce;
 - (j) provide advice to the Government of Kenya on matters of the dairy industry at international and regional level;
 - (k) provide advice and technical assistance to county governments on matters of the dairy industry;
 - (l) establish mechanisms including a fund to stabilize the supply and demand for dairy produce, and manage surpluses and deficits in the dairy industry;
 - (m) facilitate coordination and monitoring frameworks at national and county levels by providing appropriate dairy policy guidance;
 - (n) build capacity in the dairy industry and co-ordinate the development of dairy infrastructure;
 - (o) Promote climate change mitigation and adaptation measures in the dairy industry;
and
 - (p) perform such other functions as are incidental or conducive to the exercise by the Authority of any, or all, of the functions provided under this Act.

8. Powers of the Authority

- (1) The Authority shall have the powers necessary for the performance of its function.
- (2) Without prejudice to the generality of sub-section (1), the Authority shall have power to—
- (a) modify, suspend or revoke, a permit issued under this Act;
 - (b) approve or review a contract, tariff or charges for co-processing;
 - (c) issue or enforce a direction or order for compliance with this Act or a condition in a permit;
 - (d) impose a sanction or fine as may be prescribed, for contravention of an order or direction issued by the Authority;
 - (e) investigate or resolve a complaint or dispute relating to a permit;
 - (f) enter, inspect or search premises at which an undertaking relating to the dairy industry is carried on, or in which an offence is being or is suspected of being committed;
 - (g) inspect any facility, machinery or equipment used for dairy purpose;
 - (h) manage, control or administer assets of the Authority in such manner and for such purpose as best promote the object for which the Authority is established;
 - (i) enter into association with any other institution, person, body or organization within or outside Kenya as the Authority may consider desirable or appropriate, in furtherance of the objects of this Act;
 - (j) establish and make contributions to a pension, superannuation fund, or a medical insurance fund or scheme, for the benefit of its officers or staff, and may require the officers or staff to contribute to the fund or scheme;
 - (k) pay or reimburse a member of a committee or sub-committee, not being staff of the Authority, traveling and other expenses incurred by the member at the rates approved by the relevant government agency;
 - (l) open a bank account or a special account, as it may consider necessary;
 - (m) borrow money, mortgage or charge any of its assets with prior written approval of the Cabinet Secretary responsible for the National Treasury;
 - (n) receive a gift, grant, donation or endowment on behalf of the Authority;
 - (o) invest money, that is not immediately required, in securities or other income generating activities as the Cabinet Secretary to the National Treasury may approve;
 - (p) establish a fund, consistent with the Public Finance Management Act (No. 18 of

The Dairy Industry Bill, 2024

- 2012), for the purpose of promoting the objects of this Act;
- (q) engage in any lawful income-generating activity in furtherance of the purpose and objects of this Act;
 - (r) obtain, from any public body or other organization, collate and publish relevant data and information;
 - (s) establish or provide laboratory testing services;
 - (t) offer its services to any person upon such terms as the Authority may from time to time determine, and to charge a fee for such services;
 - (u) impose a penalty against a person for contravening this Act or as may be prescribed;
 - (v) enforce any other written law to which dairy produce is subject; and
 - (w) subject to this Act, impose a levy.

(3) A levy, fee or penalty payable to the Authority under this section or any other provision is a civil debt and may be recoverable summarily under the Debts (Summary Recovery) Act (chapter 42 of the Laws of Kenya).

9. Board of the Authority

- (1) There shall be a Board of the Authority which shall consist of—
- (a) the chairperson, appointed by the President;
 - (b) the Principal Secretary in the Ministry for the time being responsible for dairy matters, or authorized representative;
 - (c) the Principal Secretary in the Ministry for the time being responsible for the National Treasury, or authorized representative;
 - (d) four persons, not being public officers, appointed by the Cabinet Secretary from amongst primary producers;
 - (e) two persons, not being public officers, appointed by the Cabinet Secretary from amongst dairy business operators;
 - (f) the Secretary of the Intergovernmental Relations Technical Committee established under the Intergovernmental Relations Act (No. 2 of 2012); and
 - (g) the Director-General, who shall be an *ex-officio* member.

(2) The Cabinet Secretary shall, in making the appointments under paragraph (d) and (e) of sub-section (1), consider gender equity and regional balance and shall, to the extent possible, ensure equitable representation of primary producers dealing in various dairy species.

(3) In sub-section (2), “dairy species” means cows, camels, goats, and sheep, or any other species that may be prescribed.

10. Qualification for appointment to the Board

A person is qualified to be appointed as a member of the Board if the person—

- (a) has attained at least tertiary level of education;
- (b) has business management skills or relevant professional experience;
- (c) has not been an employee of the Authority in the five years immediately preceding the date of appointment; and
- (d) meets the requirements of chapter six of the Constitution and the Leadership and Integrity Act (No. 19 of 2012).

11. Functions of the Board

The Board shall—

- (a) formulate policies to achieve the mandate of the Authority;
- (b) provide strategic direction, leadership and oversight to the management of the Authority;
- (c) approve annual budget and annual procurement plan; and
- (d) undertake such activities as may be necessary for the discharge of the Authority's function and the exercise of its powers.

12. Conduct of business and affairs of the Board

(1) The conduct and regulation of the business of the Board shall be as provided in the Schedule.

(2) Except as provided in the Schedule, the Board shall regulate its own procedures and the procedures of any committee constituted under the Act.

13. Tenure of office

(1) A member of the Board appointed under paragraphs (a), (d), and (e) of section 9(1) shall hold office for a term of three years, renewable once.

(2) In making the appointments, the Cabinet Secretary shall promote the principle that the tenure of Board members should not end at the same time.

14. Vacancy in the Board

(1) The office of the chairperson or of a member of the Board appointed under section 9 shall become vacant if the holder—

- (a) resigns in writing, addressed, in case of the chairperson to the President, and in the case of a member, to the Cabinet Secretary;

The Dairy Industry Bill, 2024

- (b) is adjudged bankrupt by a competent court or enters into a composition or scheme of arrangement with a creditor;
- (c) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months without the option of a fine;
- (d) accepts employment as staff of the Authority;
- (e) ceases to be a member of the category of stakeholders by virtue of which the member is appointed to the Board; or
- (f) dies.

(2) Where a vacancy occurs in the membership of the Board, the appointment procedure provided under section 9 shall apply.

15. Removal from office

- (1) The chairperson or a member of the Board may be removed from office—
- (a) for violating the Constitution or any other written law;
 - (b) for gross misconduct;
 - (c) by reason of physical or mental incapacity that renders the member unable to perform the functions of the office;
 - (d) for incompetence or neglect of duty;
 - (e) if the member fails to attend three consecutive meetings of the Board without informing the chairperson or, if the member is the chairperson, without the consent of the Cabinet Secretary; or
 - (f) if the member becomes ineligible to hold office pursuant to chapter six of the Constitution or relevant legislation.

(2) Where a vacancy occurs in the membership of the Board as a result of removal from office, the appointment procedure provided under section 9 shall apply.

16. Delegation by the Board

Subject to this Act, the Board may, by resolution either generally or in any particular case, delegate to a committee, member of the Board, an officer, staff or agent of the Authority, the exercise of any of the powers or the performance of a function of the Authority under this Act.

17. Remuneration of members of the Board

The chairperson and a member of the Board shall be paid such remuneration, fee, allowance or reimbursement of disbursements for expenses as may be approved from time to time by the relevant Government agency.

18. Director-General of the Authority

(1) The Board shall appoint a Director-General who shall be the chief executive officer of the Authority and shall, subject to the directions of the Board, be responsible for the day to day management of the Authority.

(2) The Director-General under shall be appointed through a competitive recruitment process.

(3) A person qualifies for appointment as Director-General if the person—

(a) is a citizen of Kenya;

(b) holds a master's degree from a university recognized in Kenya;

(c) has attained ten years of work experience, five of which must be in a senior management position; and

(d) satisfies the requirements of chapter six of the Constitution and the Leadership and Integrity Act (No. 19 of 2012).

(3) The Director-General shall hold office for a term of three years, renewable once upon satisfactory performance.

19. Appointment of staff

The Authority may appoint such professional, technical and administrative staff as may be necessary for the proper discharge of its functions on such terms as the Board may determine, subject to any guidelines from relevant government agencies.

PART III—ROLE OF COUNTY GOVERNMENTS IN THE DAIRY INDUSTRY

20. Development of the dairy industry

(1) A county government shall, subject to this Act, facilitate the development and growth of the dairy industry in the respective county.

(2) Without prejudice to the generality of sub-section (1), a county government shall—

(a) develop and implement county dairy industry policy in line with national dairy policies and standards;

(b) register primary producers;

(c) license and control dairy business operators;

(d) promote dairy production, including through provision of animal health services, appropriate animal feeding and breeding, animal welfare and control;

(e) provide capacity building of primary producers, including dairy extension services;

(f) collect and share with the Authority county dairy data and information;

(g) collaborate with relevant national government agencies and the private sector for the development and growth of the dairy industry;

The Dairy Industry Bill, 2024

- (h) provide technical and other support to the dairy business operators, including aggregating, bulking, cooling and marketing of dairy produce;
- (i) enforce legislation and standards in the county relating to the dairy industry;
- (j) use legislative and other mechanisms for effective performance of its mandate as contemplated in Part 2 of the Fourth Schedule to the Constitution;
- (k) undertake such functions and responsibilities as may be conferred on the county government by national or county legislation.

21. Registration of primary producers

(1) A person who intends to produce milk for sale shall apply in the prescribed form to the relevant county government to be registered as a primary producer.

(2) No fee is payable as a requirement for registration under this section, and the person so registered does not require any subsequent renewal of registration.

(3) Registration is not required where production of milk is for own consumption.

(4) Any person who offers for sale or sells milk without being registered in accordance with this section, or the sale is not exempted under this Act, commits an offence.

22. Licensing

(1) A person who applies to a county government for a licence in relation to a dairy business shall, in addition to any other requirement under a county legislation, provide evidence that there is in force, with respect to the dairy business, a valid regulatory permit, issued in accordance with section 26.

(2) A county government shall issue the licence upon the applicant complying with sub-section (1).

23. County government to maintain register

(1) A county government shall maintain a register of primary producers registered under section 21.

(2) Every county government shall submit to the Authority a copy of the updated register at least once every six months.

(3) A primary producer may at any time in writing request the relevant county government to remove their name from the register, if the primary producer has ceased, or intends to cease operating as a primary producer.

PART IV—DAIRY BUSINESS OPERATORS, DAIRY EQUIPMENT SUPPLIERS AND DAIRY PROCESSING AIDS SUPPLIERS

24. Registration

(1) A person shall not carry on the business of dairy business operator, dairy equipment

The Dairy Industry Bill, 2024

supplier, or dairy processing aids supplier, unless the person is registered by the Authority.

(2) The procedure for making an application and registering under sub-section (1) shall be as prescribed.

(3) A person who contravenes sub-section (1) commits an offence.

25. Register of permit holders to be maintained

(1) The Authority shall maintain a national register of dairy business operators, dairy equipment suppliers and dairy processing aids suppliers registered under section 24.

(2) Where the Authority has reasonable cause to believe that a dairy business operator, dairy equipment supplier or dairy processing aids supplier has ceased to operate as such, the Authority may, after giving the operator or supplier at least seven days' written notice of its intention, remove the operator or supplier from the register.

(3) The register maintained under this section shall be prima facie evidence of the fact that a person is registered under this Part.

26. Regulatory permit

(1) Subject to this Act, a person who intends to carry on the business of—

- (a) dairy business operator;
- (b) dairy equipment supplier; or
- (c) dairy processing aids supplier,

shall apply to the Authority in a prescribed form for a regulatory permit, and shall pay the prescribed fee.

(2) A regulatory permit shall be valid for a period of twelve months from the date of issue.

(3) The Authority may, in issuing a regulatory permit, impose a condition or conditions, consistent with the Act, to be complied with by the permit holder.

(4) Where a dairy business operator processes, or intends to process dairy produce in more than one premises, each premises shall require a separate regulatory permit.

(5) Sub-section (4) does not apply to premises which are used by a dairy business operator only for the purpose of storage or holding of packaged dairy produce.

(6) The Authority shall maintain and publicise on its website list of dairy business operators who have been issued with regulatory permit.

(7) A person who contravenes sub-section (1), or sub-section (4), or fails to comply with a condition imposed under sub-section (3), commits an offence.

27. Suspension or cancellation of permit

The Dairy Industry Bill, 2024

(1) The Authority may suspend or cancel a regulatory permit if the Authority is satisfied that a dairy business operator, dairy equipment supplier or dairy processing aids supplier—

- (a) has failed to comply with a condition specified in the permit;
- (b) has contravened a written law relevant to the permit; or
- (c) has been removed from the register as provided under section 25(2).

(2) The Authority may not suspend or cancel a regulatory permit unless the permit holder has been given opportunity to make representations in response to the intended action, in accordance with the Fair Administrative Action Act (No. 4 of 2015).

(3) Suspension of a permit under this section may be lifted if the Authority is satisfied that the permit holder has complied with the relevant law or condition in the permit.

28. Appeals relating to permits

(1) A dairy business operator, dairy equipment supplier, or dairy processing aids supplier, who is aggrieved by a decision of the Authority—

- (a) refusing to grant or renew a permit;
- (b) varying or altering a condition in a permit; or
- (c) suspending or revoking a permit,

may appeal to the Board within thirty days after the date on which the dairy business operator, dairy equipment supplier or dairy processing aids supplier, receives notice, or in the absence of notice, becomes aware, of the decision.

(2) The Board shall decide the appeal, setting out reasons for its decision, and shall communicate the decision in writing within 14 days after the appeal is lodged.

(3) Any person who is dissatisfied with the decision of the Board may appeal to the Tribunal within 14 days after notification of the decision, in accordance with the procedure of the Tribunal.

PART V— QUALITY AND SAFETY OF DAIRY PRODUCE

29. Compliance with standards

(1) A person shall not offer for sale or sell any dairy produce unless the dairy produce meets the relevant standard or standards.

(2) A primary producer shall use inputs that comply with the relevant standard or standards for quality and safe production of milk.

(2) A primary producer or a dairy business operator shall ensure that the dairy produce offered for sale, sold, processed, or consumed, is safe, wholesome, free from adulteration, and complies with relevant standards.

(3) A dairy business operator must have adequate sanitary facilities, including potable

The Dairy Industry Bill, 2024

water as may be prescribed.

(4) A person who contravenes any of the provisions of this section commits an offence and is liable, on conviction, to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

30. Record of dairy produce

(1) A primary producer shall maintain a record relevant to production of milk.

(2) A dairy business operator shall maintain a record of dairy produce received, processed, stored, transported, distributed or sold, as may be prescribed.

(3) The record shall be retained—

(a) for at least three months; or

(b) until the relevant dairy produce is reasonably expected to have been consumed or until there is no likelihood of a claim or complaint relating to the dairy produce.

31. Traceability and recall plan

(1) The process or method of tracing or identifying dairy produce, and any action required to withdraw any dairy produce from the market under this Part, shall be as prescribed.

(2) Despite sub-section (1), a dairy business operator shall establish a recall plan in relation to the dairy produce released or distributed to the market.

(3) A dairy business operator shall withdraw, or order the withdrawal or recall of dairy produce from the supply chain if there is evidence that the dairy produce poses, or is likely to pose, a health risk to consumers.

(4) A dairy business operator shall, in the event of a recall of dairy produce, —

(a) determine defect leading to the recall;

(b) take necessary steps to resolve or correct the defect;

(c) dispose of the dairy produce in accordance with the relevant legislation, where the defect cannot be resolved or corrected;

(d) notify the Authority in writing within such time as may be prescribed; and

(e) where the defect concerns safety of the dairy produce, immediately notify other relevant authorities.

(5) Despite this section, the Authority may at any time order withdrawal or recall of dairy produce if there is evidence that the dairy produce poses, or is likely to pose, health risk to consumers.

(6) Where dairy produce is recalled by the Authority, the dairy business operator may be liable to pay to the Authority a penalty as may be prescribed.

(7) A dairy business operator who contravenes any of the provisions of this section commits an offence.

The Dairy Industry Bill, 2024

(8) In sub-section (4) (e), “relevant authorities” means government agencies that enforce food safety standards at national or county levels.

32. Standards of dairy equipment and processing aids

(1) A dairy business operator shall ensure that the dairy equipment or dairy processing aid used in connection with the production, transportation, bulking, aggregating, storage or sale of dairy produce comply with the relevant standards.

(2) A dairy equipment supplier and a dairy processing aids supplier shall comply with relevant standards.

(3) A person who contravenes sub-section (1) or sub-section (2) commits an offence.

33. Packaging and labelling

(1) A person shall not offer for sale, sell, or transport, any dairy produce unless the dairy produce is offered for sale, sold, or transported, in compliance with the product and labelling standards.

(2) This section does not apply to raw milk.

34. Risk analysis

(1) The Authority shall establish a system to assess and manage food safety risks relating to dairy produce by—

- (a) undertaking, or directing the undertaking of risk analysis by a dairy business operator in respect of specific dairy produce;
- (b) providing guidelines for undertaking risk analysis and implementing necessary measures to address the identified risk; and
- (c) requiring a dairy business operator to establish risk management strategies.

(2) Whenever a dairy business operator is required to act as provided under paragraphs (a) and (c) of sub-section (1), the dairy business operator shall submit a report to the Authority within such time and in the format as prescribed.

35. Data, reports and returns by dairy business operators

(1) A dairy business operator shall—

- (a) maintain records, data and information relating to their dairy operations as prescribed; and
- (b) submit to the Authority such records, reports or returns as may be prescribed.

(2) The Authority shall develop mechanisms to facilitate submission and sharing of relevant data, reports, returns and statistics with County governments and other stakeholders.

(3) The Authority, a county government and any person who handles receives data,

reports, returns and statistics under this Act shall comply with the Data Protection Act.

PART VI— SALE OF DAIRY PRODUCE

36. Requirements for sale of raw milk

(1) Except as provided under this Act, a person shall not offer for sale, sell or cause to be offered for sale or sold raw milk to a consumer.

(2) This section does not apply to a primary producer who offers to sell or sells raw milk to a dairy business operator.

(3) A person who contravenes sub-section (1) commits an offence and is liable on conviction to a fine not exceeding twenty thousand shillings or imprisonment for a term not exceeding two months or to both such fine and imprisonment.

37. Contract for sale of milk

(1) A dairy business operator shall not buy milk from a producer organization or registered entity representing primary producers, for processing, distribution or sale, unless the dairy business operator has a written contract with the seller.

(2) A primary producer is not required to, but may, enter into a written contract with a buyer.

(3) Subject to section 38, a milk sale contract shall contain at least—

- (a) the names of parties to the contract;
- (b) the respective obligations of the parties;
- (c) the milk price per unit of measure;
- (d) the quantity to be sold or bought;
- (e) the applicable terms in case of oversupply or undersupply;
- (f) the specifications on agreed quality;
- (g) the testing and rejection terms;
- (h) the time of actual transfer of ownership;
- (i) the time of collection or delivery;
- (j) the frequency of collection or delivery;
- (k) the duration of the contract;
- (l) the terms of payment;
- (m) the need to keep the contract confidential;
- (n) the terms of waivers and amendment;
- (o) the terms of termination of contract;
- (p) the indemnity or insurance;

The Dairy Industry Bill, 2024

- (q) the sanction for default by either party;
- (r) the manner of issuing notices or demands;
- (s) the circumstances that constitute *force majeure*;
- (t) the dispute resolution mechanism.

(4) A dairy business operator shall promptly pay primary producers for milk delivered within 30 days after the end of the month in which the milk supply is made.

(5) The Authority or, where there is no conflict of interest, a county government, may upon request by either party, both or all parties to a contract, intervene and assist the parties to resolve a dispute relating to implementation of a contract.

(6) The Cabinet Secretary may in consultation with the Authority prescribe a standard form contract for sale of milk to serve as a template with or without additional requirements.

38. Guaranteed minimum producer price

(1) The guaranteed minimum producer price for raw milk shall be as prescribed, and shall be on the basis of different animal species.

(2) A dairy business operator who buys or offers to buy milk from a primary producer shall not pay or offer to pay a price that is below the guaranteed minimum producer price.

(3) A contract for sale or purchase of milk that is inconsistent with this section is void to the extent of the inconsistency.

(4) A producer organization or other registered entity acting on behalf of primary producers, shall maintain a record of the milk purchased and sold, and shall disclose to the primary producers associated with the organization or other entity, by way of a monthly statement, —

- (a) the payout price; and
- (b) deductions made to arrive at the producer price.

(5) A person who contravenes any of the provisions of this section commits an offence.

39. Quality-based pricing

The Authority shall—

- (a) promote quality-based pricing of dairy produce.
- (b) in consultation with relevant stakeholders, prescribe different grades of raw milk for the purpose of quality-based pricing.

40. Import and export of dairy produce

(1) A person who intends to export or import dairy produce shall apply to the Authority for export or import permit.

The Dairy Industry Bill, 2024

(2) An application for a permit and the fee payable to the Authority shall be as prescribed.

(3) A person who imports or seeks to import dairy produce shall ensure that the dairy produce imported or intended to be imported meets the requirements of relevant standards.

(4) Notwithstanding any other legislation, a person who applies for a permit to export dairy produce shall satisfy the Authority that the dairy produce complies with relevant standards, and meets the requirements, if any, of the destination country.

(5) Before granting an export or import permit, the Authority shall consider—

- (a) the need to avoid the dumping of dairy produce into the country;
- (b) whether there is deficit or surplus of the dairy produce in the Kenyan market;
- (c) the risk involved in the importation or exportation of the dairy produce; and
- (d) any other relevant factor that the Authority may think necessary to consider.

(6) Any person who contravenes sub-section (1) or sub-section (3) commits an offence and is liable upon conviction to a fine not exceeding five million shillings, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

41. Dairy produce in transit

(1) A person shall not transport or move dairy produce through Kenya or any part of Kenya destined to another country unless the person has obtained a transit permit from the Authority.

(2) No transit permit is required to be issued by county government for dairy produce in transit through the county to another country.

(3) Any person who contravenes sub-section (1) commits an offence and is liable on conviction to a fine not exceeding five million shillings or to imprisonment to a term not exceeding three years or to both such fine and imprisonment.

PART VII— FINANCIAL PROVISIONS

42. Funds of the Authority

The funds of the Authority shall consist of—

- (a) monies appropriated by Parliament for the purposes of the Authority;
- (b) monies as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;
- (c) monies including levies, fees and penalties as may be payable to the Authority pursuant to this Act; and
- (d) grants, donations, gifts and bequests made to the Authority.

43. Financial year

The financial year of the Authority shall be the period of twelve months commencing

The Dairy Industry Bill, 2024

on 1st July to 30th June of the subsequent year.

44. Annual estimates

(1) The Authority shall, before the commencement of a financial year, cause to be prepared estimates of revenue and expenditure of the Authority for that financial year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Authority for the financial year concerned, and in particular, shall provide for—

- (a) payment of salaries, allowances and other charges in respect of the members of the Board and staff of the Authority;
- (b) payment of pensions, gratuities and other charges in respect to retirement benefits which are payable out of the funds of the Authority;
- (c) proper maintenance, repair, addition and replacement of the equipment, assets and other moveable and immovable property of the Authority;
- (d) any other expenditure to be incurred by the Authority in the exercise of its powers or in the performance of its functions under this Act; and
- (e) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings, assets or equipment, or in respect of such other matters as the Authority may consider appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and, once approved, the estimates shall be submitted to the Cabinet Secretary and to the National Treasury, for approval.

(4) The Authority shall not incur expenditure for the purposes of the Authority except in accordance with the annual estimates approved under sub-section (3), or pursuant to the authorization of the Board with approval of the Cabinet Secretary responsible for National Treasury.

45. Accounts and audit

(1) The Authority shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities of the Authority.

(2) The Authority shall, within three months after the end of the financial year, submit to the Auditor-General the accounts of the Authority together with a statement of—

- (a) income and expenditure during that year; and
- (b) the assets and liabilities of the Authority as on the last day of that year.

(3) The accounts of the Authority shall be audited by and reported upon in accordance with the provisions of the Public Audit Act (No. 34 of 2015).

46. Investment of funds

(1) Subject to any legislation on public investments, the Authority may invest its surplus funds in such manner as the Board may approve.

The Dairy Industry Bill, 2024

(2) The Authority may place on deposit, with such bank or banks as it may determine, any moneys not immediately required for the purpose of the Authority.

47. Power to borrow

The Authority may borrow money that may be required for the execution of its functions and for meeting its obligations upon prior approval in writing of the Cabinet Secretary to the National Treasury.

PART VIII—DAIRY INDUSTRY TRIBUNAL

48. Establishment of the Tribunal

(1) There is established a tribunal to be known as the Dairy Industry Tribunal, which shall consist of the following members—

- (a) a person qualified for appointment as a judge of a superior court in Kenya nominated by the Judicial Service Commission;
- (b) an advocate of the High Court of Kenya of not less than three years standing nominated by the Law Society of Kenya;
- (c) a lawyer with experience in the law relating to the dairy industry; and
- (d) three other persons with demonstrated knowledge, experience and competence in dairy matters.

(2) An appointment to the Tribunal shall be by name and by *Gazette* notice issued by the Cabinet Secretary.

(3) The members of the Tribunal shall be appointed such that the respective expiry dates of their tenure of office fall at different times.

(4) The office of a member of the Tribunal shall become vacant—

- (a) at the expiration of three years from the date of appointment;
- (b) if the member accepts any office the holding of which, if not a member of the Tribunal, would make the member ineligible for appointment to the office of a member of the Tribunal;
- (c) if the member is unable to discharge the functions of their office by reason of physical or mental infirmity or from any other cause;
- (d) if the member resigns in writing addressed to the Cabinet Secretary;
- (e) if the member dies.

(5) The members of the Tribunal shall, in their first meeting, elect from amongst

The Dairy Industry Bill, 2024

themselves a chairperson to the Tribunal from amongst the persons appointed under paragraphs (a), (b) and (c) of subsection (1) and a vice-chairperson to the Tribunal from amongst all members.

(6) The chairperson and vice-chairperson shall be of opposite gender.

(7) In the absence of the chairperson, the vice-chairperson shall serve as the chairperson for the duration of the absence of the chairperson and shall perform such functions and exercise such powers as if that person were the chairperson.

(8) In the absence of both the chairperson and the vice-chairperson, the members of the Tribunal present may nominate, from among themselves, a qualified member to act as chairperson and shall perform such functions and exercise such powers as if that person were the chairperson.

(9) The chairperson may designate the vice-chairperson and two other members to constitute a panel for separate sitting of the Tribunal.

49. Proceedings of the Tribunal

(1) The Tribunal shall not be bound by the rules of evidence as set out in Evidence Act (chapter 80 of the Laws of Kenya).

(2) The Tribunal, upon a reference or appeal made to it in writing by any party or a referral made to it by the Authority on any matter relating to this Act, shall inquire into the matter and make an award, give directions, make orders or decide on the issue.

(3) Every award, direction, order or decision made shall be notified by the Tribunal to the parties concerned, the Authority and any relevant committee thereof, as the case may be.

(4) The Tribunal shall sit at such times and in such places as it may appoint.

(5) The proceedings of the Tribunal shall be open to the public except where the Tribunal, for good cause, otherwise directs.

(6) Except as expressly provided in this Act or the regulations, the Tribunal shall regulate its proceedings as it considers fit, and any procedure made shall be published.

(7) A party to the proceedings before the Tribunal may appear in person or be represented by an advocate.

(8) For the purpose of proceedings before the Tribunal, the Authority or the relevant county department is a competent party.

50. Powers of the Tribunal

(1) The Tribunal may—

The Dairy Industry Bill, 2024

- (a) make such orders for the purpose of securing the attendance of any person at any place where the Tribunal sits, discovery or production of any document concerning a matter before the Tribunal or the investigation of any contravention of this Act as it deems necessary or expedient;
 - (b) take evidence on oath or affirmation and may for that purpose administer oaths or affirmations; or
 - (c) on its own motion summon or hear any person as witness.
- (2) Any person who—
- (a) fails to attend the Tribunal after being required to do so under sub-section (1)(a);
 - (b) refuses to take oath or affirmation before the Tribunal or being a public officer refuses to produce any article or document when lawfully required to do so by the Tribunal;
 - (c) knowingly gives false evidence or information before the Tribunal which they know or ought to know to be misleading; or
 - (d) at any sitting of the Tribunal—
 - (i) willfully insults any member or officer of the Tribunal;
 - (ii) willfully interrupts the proceedings or commits contempt of the Tribunal;
 - (iii) fails or neglects to comply with a decision, order, direction or notice confirmed by the Tribunal,

commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term of one year or to both such fine and imprisonment.

51. Quorum of the Tribunal

(1) The quorum for hearing or determining any matter before the Tribunal shall be three members, and such quorum must include at least the chairperson, vice-chairperson or a member who qualifies to be chair or chairperson.

(2) A member of the Tribunal who has an interest in any matter which is the subject of the proceedings before the Tribunal shall not take part in those proceedings.

52. Appeal to the Tribunal

(1) A person who is aggrieved by—

- (a) the grant of a licence or permit or a refusal to grant a licence or permit, or the transfer of a licence or permit;

The Dairy Industry Bill, 2024

- (b) the imposition of any condition, limitation or restriction on the person's permit or licence;
- (c) the revocation, suspension or variation of the person's licence or permit;
- (d) the amount of money required to be paid as a fee, penalty, levy, cess, or other charge pursuant to this Act;
- (e) the imposition by the Authority against the person of a cease and desist order;
- (f) any action relating to seizure, forfeiture or disposal of dairy produce, dairy equipment of dairy processing aid;
- (g) any other decision of the Authority,

may within 14 days after the occurrence of the event against which the person is dissatisfied, appeal to the Tribunal in writing, setting out the grounds for the appeal and the evidence in support of the appeal.

(2) Unless otherwise expressly provided in this Act, where this Act empowers the Director-General, the Authority or committee of the Authority or its agent to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.

(3) Despite the provisions of section 72, a primary producer, a dairy business operator, a dairy equipment supplier or a dairy processing aid supplier may refer a dispute relating to the dairy industry to the Tribunal for adjudication.

(4) Upon any appeal, the Tribunal may—

- (a) confirm, set aside or vary the order or decision in question;
- (b) exercise any of the powers which could have been exercised by the Authority, the Board or an authorised officer in the proceedings in connection with which the appeal is brought;
- (c) if satisfied upon application by any party, issue orders maintaining the *status quo* of any matter or activity which is the subject of the appeal until the appeal is determined or until further orders of the Tribunal;
- (d) if satisfied upon application by any party, review any order made under paragraph (a).

(5) Any *status quo* automatically maintained by virtue of the filing of any appeal prior to the hearing of the appeal shall lapse upon commencement of the hearing, unless the Tribunal, upon application by a party to the appeal, issue fresh orders maintaining the *status quo*.

53. Appeal to the High Court

A person who is aggrieved by a decision or order of the Tribunal may, within thirty days of notification of the decision or order, appeal to the High Court.

54. Immunity

(1) The chairperson or a member of the Tribunal shall not be liable to be sued in a civil court for an act done or omitted to be done or ordered to be done by them in the discharge of their duty as members of the Tribunal, whether or not within the limits of their jurisdiction, if they, at the time, in good faith, believed to have jurisdiction to do or order the act complained of.

(2) No officer of the Tribunal or other person bound to execute the lawful warrants, orders or other process of the Tribunal shall be sued in any court for the execution of a warrant, order or process which they would have been bound to execute if within the jurisdiction of the Tribunal.

(3) Any person who engages in an act or make omission amounting to contempt of the Tribunal commits an offence and the Tribunal may punish such person for contempt in the same way a court of law has power to punish for contempt of court.

55. Remuneration of members of Tribunal

(1) There shall be paid to the chairperson and the members of the Tribunal such remuneration and allowances as the Cabinet Secretary shall determine based on the guidelines from the relevant government agency.

(2) The remuneration and allowances referred to in subsection (1) and any other expenses incurred by the Tribunal in the execution of its functions under this Act shall be paid out of monies voted by Parliament for that purpose.

56. Secretary to the Tribunal

The Cabinet Secretary shall appoint a public officer to be the secretary to the Tribunal who shall be paid such allowances as the Cabinet Secretary shall determine in accordance with guidelines by the relevant government agency.

57. Staff of the Tribunal

There shall be such other staff of the Tribunal as may be necessary for the performance of its functions appointed by the Judicial Service Commission.

PART IX— MISCELLANEOUS

58. Respective roles of national and county governments

(1) Without prejudice to Part III of this Act, each county government shall within its

The Dairy Industry Bill, 2024

area of jurisdiction be responsible, for dairy matters in accordance with Part 2 of the Fourth Schedule to the Constitution.

(2) The National government shall, in accordance with sections 29 and 30 of Part 1 of the Fourth Schedule to the Constitution, be responsible for dairy policy and for assisting the county governments on dairy matters.

(3) Each county government shall, for purposes of ensuring uniformity and national standards in the dairy industry, through its legislation and administrative action, implement and act in accordance with the national dairy policy and guidelines.

(4) Any action required under this Act to be done by the county government shall be deemed to have been done if done by an officer of the county government authorised by that government in that behalf.

59. Power to impose levy

(1) The Authority may, with the approval of the Cabinet Secretary, by notice in the gazette, impose or alter a levy to be payable on specified dairy produce.

(2) An alteration in the rate of levy shall come into force on such date, not being less than two months after the date of the notice, as may be specified in the notice.

(3) Where conversion is required because of the type of dairy produce or unit of measurement used, the Authority shall apply the relevant equivalence in determining the levy payable.

(4) The Authority may charge interest on delayed payment of a levy and such interest shall not exceed the principal amount.

(5) The levy shall be collected by or on behalf of the Authority and shall be paid or collected as directed by the Director-General.

60. Power to charge cess

(1) The Cabinet Secretary in consultation with the Council of Governors may by regulation make provisions for imposition of cess on dairy produce by a county government, subject to sub-section (3).

(2) Despite sub-section (1), the cess collected on dairy produce shall only be used in developing and promoting the dairy industry in the respective the county.

(3) Cess may only be imposed for dairy produce at county of origin.

(4) No cess or other form of charge, levy or fee shall be payable on dairy produce in transit from one county to, or through, another county.

(5) For the purpose of sub-section (3), “county of origin” means the county where the production of the relevant dairy produce occurs.

61. Protection from personal liability

(1) No matter or thing done by a member of the Board or a member of staff or agent of

The Dairy Industry Bill, 2024

the Authority shall, if the matter or thing is done in good faith for executing the functions, powers or duties of the Authority under this Act, render the Board member, member of staff or agent, or any person acting on their instruction or direction on behalf of the Authority, personally liable to any action, claim or demand.

(2) This section shall not relieve the Authority of the liability to pay compensation or damages to any person for injury caused to such person while the Authority is exercising any of the powers or functions conferred by this Act or any other written law.

62. Civil proceedings against the Authority

Civil proceedings instituted against the Authority shall be deemed to be proceedings against the Government, and shall be subject to the Government Proceedings Act (chapter 40 of the Laws of Kenya).

63. Protection of name of the Authority

(1) No person may register or incorporate an entity, for business or otherwise, with the name “Kenya Dairy Authority” or a combination of two or more of the words in the name.

(2) Any person who, without the written consent of the Authority, uses the words “Kenya Dairy Authority” in furtherance of, or as, or in connection with, any advertisement for any trade, business, calling or profession, commits an offence and is liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one million shillings or to both such fine and imprisonment.

64. Compliance officers

(1) The Authority shall appoint such number of qualified persons to be compliance officers as may be necessary for the purposes of this Act.

(2) A compliance officer shall exercise such powers and perform such functions and duties as provided under this Act, any other relevant legislation or the regulations.

(3) Despite sub-section (1), the Authority may authorize in writing any other person to perform any of the functions or duties of a compliance officer.

65. Duties and powers of a compliance officer

(1) A compliance officer shall in executing their functions and duties comply with the requirements of this Act and any other relevant legislation.

(2) Despite the generality of sub-section (1), a compliance officer shall—

- (a) adhere to the provisions of the Fair Administrative Action Act (No. 4 of 2015);
- (b) carry at all times while enforcing this Act, any relevant legislation or regulation, the original document of identification issued by the Authority, and to identify themselves before taking enforcement action; and
- (c) not seize or impound dairy produce or any goods without issuing a copy of the inventory containing the list of seized things to the owner or the person in control

The Dairy Industry Bill, 2024

of the dairy produce or things.

(3) For the purpose of enforcing the provisions of this Act and any other relevant legislation, a compliance officer may—

- (a) seek the services of a police officer for the purpose of arresting a person or impounding dairy produce or other goods;
- (b) enter and search any premises or vessel, and seize, collect and detain evidence and produce such evidence in any proceedings before a court of law;
- (c) subject to this Act and the regulations, seize dairy produce, dairy equipment, or dairy processing aids if the compliance officer reasonably suspects that the owner or the person in charge or control of the dairy produce, dairy equipment, or dairy processing aids has contravened or is contravening any provision of this Act or relevant legislation;
- (d) deal with any seized dairy produce or goods in any manner authorised under this Act or the regulations;
- (e) direct a person who owns, is in charge or in control of dairy produce or other goods to deliver the dairy produce or goods to a police station or to any other place for inspection or custody;
- (f) direct a dairy business operator, a primary producer or other person acting on their behalf, to take certain measures to redress a contravention of this Act or regulations.

(4) In sub-section (3)(a), “police officer” means a police officer as defined under the National Police Service Act (No. 11A of 2011).

66. Seizure, forfeiture and disposal of dairy produce, dairy equipment or processing aids

(1) An authorized officer may seize any dairy produce, dairy equipment or processing aid which is suspected on reasonable grounds of having been imported, or is being exported, or is otherwise being handled, in contravention of this Act.

(2) The dairy produce, dairy equipment or processing aid seized under this section shall be taken in the custody of a police station, until the issue of seizure is resolved by the Authority or is determined by a competent court.

(3) The Director-General or an authorized officer shall, as soon as practicable after the seizure and having regard to the condition of the goods, serve the owner of the goods or the person who has custody or control of the goods immediately before their seizure, a notice in writing—

- (a) identifying the goods;
- (b) stating that the goods have been seized under this section and the reason for seizure;
- (c) setting out the terms for the release or disposal of the goods; and
- (d) stating that the goods maybe forfeited to the Director-General if they are not

The Dairy Industry Bill, 2024

claimed in accordance with sub-section (6).

(4) An authorized officer shall not be required to serve a notice under this section if, after making reasonable enquiries, the Director-General or authorized officer cannot ascertain the owner or the person in control of the seized goods, or the identity of the owner cannot be achieved.

(5) When the Authority is unable to serve the notice on the person who is required to be served under this section, the authorized officer may serve the notice on the person who claims the goods if the person has given sufficient information to enable the notice to be served.

(6) The Authority may restore dairy produce or processing aid to the person on whom a notice has been served upon production of the required documentation or evidence that the dairy produce or processing aid is lawful.

(7) If an authorised officer requests for documents relating to the seized dairy produce or processing aid, and the required documents are not produced within 48 hours, the Authority may detain and dispose of the seized goods.

(8) Where the detention period under sub-section (7) has expired, the dairy produce or processing aid shall be forfeited to the Authority.

(9) The Authority may, subject to sub-section (10), sell or otherwise dispose of the dairy produce or processing aid and apply the proceeds of sale in the following order—

- (a) towards the cost of taking, keeping, and selling the dairy produce or processing aid;
- (b) towards the payment of the applicable levy;
- (c) donating the goods to an institution; and
- (d) the remainder of the proceeds, if any, shall be retained by the Authority.

(10) Where the dairy produce or processing aid so forfeited or retained is not fit for human consumption or use, the Authority shall arrange to dispose them in accordance with the relevant legislation or standards.

(11) When the proceeds of the disposal of forfeited dairy produce or processing aid are less than the total of the levy and costs associated with seizure, the Authority may recover the shortfall from the owner or the person who had custody or control of the goods immediately before they were seized as if the shortfall was a levy payable by that person.

67. Offences by authorised officers

An authorised officer who—

- (a) directly or indirectly solicits for, or receives in connection with the officer's duties, a payment or other reward, whether pecuniary or otherwise, or promises any such payment or reward not being a payment or reward which the officer is lawfully entitled to claim;
- (b) enters into any agreement or arrangement to do, abstain from doing, permit, conceal or connive at any act by which the Authority or a county government is or may be

The Dairy Industry Bill, 2024

defrauded, or which is contrary to the provisions of this Act or the proper execution of the duty of the officer;

- (c) discloses, except for the purposes of this Act or when required to do so as a witness in a court of law or the Tribunal or with the approval of the Director-General, information acquired by the officer in the performance of duties relating to a person, firm or business;

(d) uses their position to improperly enrich themselves or others, commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

68. Offences by body corporate

Where a person in breach of any provision of this Act or any regulations made under this Act is a body corporate, every director, manager, secretary and any other officer of the body corporate who is knowingly a party to the breach is liable to the same punishment upon conviction.

69. Offence of giving false or misleading information

(1) Any person who—

- (a) falsifies or permits to be falsified records required to be kept under this Act;
- (b) fails or refuses to give information that may lawfully be required to be given to an authorised officer;
- (c) gives to an authorised officer false or misleading information knowing or having reason to believe it to be false or misleading,

commits an offence, and is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment to a term not exceeding two months or to both such fine and imprisonment.

70. Offence of obstruction

Any person who—

- (a) without lawful excuse, contravenes any lawful direction issued by a compliance officer, or other person acting pursuant to authority granted under this Act in exercise of the powers or the performance of the functions of the Authority under this Act; or
- (b) willfully obstructs a compliance officer, or other person in executing a function pursuant to authority granted under this Act in the discharge of lawful duties,

commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

71. General penalty

A person who contravenes any provision of this Act for which no penalty is expressly provided commits an offence and is liable on conviction to a fine not exceeding fifty thousand

shillings or to imprisonment for one month or to both such fine and imprisonment.

72. Dispute resolution

(1) Without prejudice to the right to refer a matter to the Tribunal and for the purpose of ensuring expeditious resolution of disputes arising between or amongst primary producers, dairy business operators, dairy equipment suppliers, or consumers, the Authority shall establish structures and procedures to resolve disputes as they arise.

(2) Despite sub-section (1) the Authority shall promote and facilitate the resolution of disputes through conciliation, mediation or arbitration as the Authority may deem appropriate, due regard being had to relevant dispute resolution mechanisms that may be provided in the contracts between, or amongst, parties to the dispute.

(3) A county government may refer a dispute brought before it to the Authority if the county government cannot resolve it amicably or expeditiously.

73. Power to make regulations

(1) The Cabinet Secretary may, in consultation with the Authority, make regulations generally for the better carrying out of the purpose and provisions of this Act.

(2) Without prejudice to the generality of sub-section (1), the Cabinet Secretary may make regulations—

- (a) prescribing the forms for applying for registration, licence or permit;
- (b) prescribing forms of notices, licences, permits issued by the Authority;
- (c) prescribing grades for any form of dairy produce, and minimum standards to which dairy produce shall conform, whether as a condition of importation or exportation or sale within Kenya;
- (d) prescribing the manner of handling, transporting and storing of dairy produce;
- (e) providing for the manner of determining the minimum guaranteed producer price of dairy produce;
- (f) imposing a levy, fee, payable to the Authority on any dairy produce, or imposing different rates on different forms of dairy produce;
- (g) require any person or institution to comply with local content in terms of dairy produce;
- (h) prescribing the conditions for imposing penalties by the Authority for contravention of any regulation or directive issued by the Authority;
- (i) requiring registration and licensing, in a manner and upon payment of fees, as may be prescribed, by processors and distributors of dairy produce, and of premises used for dairy business;
- (j) prescribing the manner and the conditions of importation or exportation of dairy

The Dairy Industry Bill, 2024

- produce;
- (k) requiring monitoring of the procurement, handling and processing of dairy produce;
 - (l) prescribing standard terms to be contained in contracts governing the mutual rights and obligations of parties within the industry;
 - (m) prescribing the material intended for use in connection with dairy produce, including dairy equipment, wrappers or packages intended to contain dairy produce;
 - (n) making further provision on traceability and recall of non-conforming dairy produce;
 - (o) prescribing the procedure which a compliance officer is to follow in dealing with nonconforming dairy produce;
 - (p) providing for procedure for undertaking risk analysis and the form of reporting;
 - (q) providing for the form of packaging and labelling of dairy produce;
 - (r) requiring records to be kept, furnishing of dairy related information, returns, reports, or estimates to the Authority or a county government;
 - (s) specifying the relevant standards for the purpose of this Act; and
 - (t) formulating standards and principles for operationalizing the role of a county government under this Act.

PART X—REPEAL, SAVING AND TRANSITION

74. Repeal of the Dairy Industry Act

The Dairy Industry Act, chapter 336 is repealed.

75. Savings and transition

Despite the repeal of the Dairy Industry Act (chapter 336 Laws of Kenya)—

- (a) All rights, duties, obligations, assets and liabilities of the Kenya Dairy Board shall automatically be transferred to and vest in the Authority at the commencement of this Act, and any reference to Kenya Dairy Board in any contract or other document shall, for all purposes, be construed as a reference to the Authority;
- (b) A person who immediately before the commencement of this Act was an employee or a member of the Board of directors of the Kenya Dairy Board shall, at the commencement of this Act, be an employee or a member of the Board on their current or improved terms and conditions of service, or the remainder of their terms;
- (c) A licence, permit, direction, or authorization issued pursuant to the repealed Act shall continue to be valid for the unexpired period and any renewal of permit or licence shall be in accordance with this Act and any regulations made under this Act.

CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. Meetings

(1) The Board shall meet not less than four times in a financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) The chairperson may, and upon request in writing by at least five members shall, convene a special meeting of the Board at any time for transaction of the business of the Board.

(3) Unless three quarters of all members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be two thirds of the members of the Board.

(5) The chairperson shall preside at every meeting of the Board but, in the absence the chairperson, the members shall elect one of their members to preside, who shall with respect to that meeting and the business, have all the powers of the chairperson.

(6) The chairperson shall promote resolution of issues, including decision-making, by consensus unless in any particular case it becomes necessary to vote.

(7) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present with the right to vote.

(8) In the case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

(9) Subject to paragraph (4), the proceeding of the Board shall not be invalid by reason only of a vacancy among the members thereof, or a person who is not a member of the Board being present during deliberations and decision-making.

(10) The Board shall cause minutes of all proceedings and resolutions of meetings of the Board to be entered in books kept for that purpose.

2. Disclosure of interest

(1) If a member is directly or indirectly interested in any contract, proposed contract or any other matter before the Board for deliberation and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, the member shall, at the meeting or as soon as reasonably practicable after the commencement

The Dairy Industry Bill, 2024

thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made and in a specific conflict of interest register signed by the members at every meeting.

3. The common seal

(1) The affixing of the common seal of the Board shall be authenticated by the signature of the chairperson and the chief executive officer and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signature of the chairperson and the chief executive officer.

(2) The Board shall, in the absence of either the chairperson or the chief executive officer in any particular matter, nominate one member to authenticate the seal of the Board on behalf of either the chairperson or the chief executive officer.

4. Contracts and instruments

Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to enact a new law to govern the dairy industry to replace the Dairy Industry Act that was enacted before independence. The Bill seeks to re-establish the Kenya Dairy Board as an Authority with regulatory and oversight powers and to recognise the role of county governments in the dairy industry as set out in Part 2 of the *Fourth Schedule* to the Constitution. The Bill seeks to enhance the quality and safety of dairy produce by introducing provisions on traceability and recall of dairy produce. To support the farmer and other operators in the industry, the Bill entrenches mechanisms to guarantee minimum returns for sale of dairy produce. To enhance trade in dairy produce, the Bill provides for imports and exports and ensures that as much as imports are necessary for the economy, they should not be done in a manner that undermines the economy, hence there are safeguards.

Noting that the dairy matters have been devolved while policy matters of the dairy industry are left to the National government, the Bill sets out broadly the matters over which the county governments should oversee, principally, to develop and promote the dairy industry. The representation of the county government is also entrenched in the Board of the Authority. Additionally, keepers of cows, camels, goats and sheep are recognised as an important constituency and are represented in the Board of the Authority.

The Bill provides for enforcement of the relevant law by the Authority and county governments but makes provisions to avoid arbitrary exercise of the powers by compliance officers. The Bill also provides for disputes resolution that fosters efficient working of the industry. The Bill mandates the Authority to provide laboratory testing services that will support effective enforcement of the legislation, and also make it possible to ensure quality and safety of the dairy produce.

Finally, it is important to mention that the Bill provides for the establishment of the Dairy industry Tribunal to be a specialised agency for resolving dairy industry disputes.

The Bill therefore seeks to modernise the dairy industry and contribute to the economy and food security of the country as outlined in the *National Dairy Development Policy (Sessional Paper No. 5 of 2013)* and other guidelines.

Part I—Preliminary provisions

Clause 1 sets out the short title and provides for the commencement date of the Act.

Clause 2 interprets certain expressions used in the Bill.

Clause 3 sets out the purpose and objects of the Bill.

Clause 4 provides for the scope of the Act.

Clause 5 provides for the guiding principles in interpreting and applying the Act.

Part II—The Kenya Dairy Authority

Clauses 6-19 provide for the establishment of the Kenya Dairy Authority, the functions and powers, the governance structure of the Authority, vacancies and removal from office, the appointment of Director-General and other staff of the Authority.

Part III-Role of county governments in the dairy industry

Clauses 20-23 provide for the role of county governments, consistent with the *Fourth Schedule* to the Constitution. The Bill provides that county governments are responsible for the development of the dairy industry and in particular registers primary producers and providers assistance to the producers and dairy business operators.

Part IV—Dairy business operators and equipment suppliers

Clauses 24-28 provide for the regulation of the dairy business operators through registration and issuance of regulatory permit. The Authority only issues regulatory permit and deals with matters of safety. The Bill also provides for redress for appeals relating to permits.

Part V—Quality and safety of dairy produce

Clauses 29-34 deal with standards in the dairy industry relating to safety and quality. The Bill provides for record keeping to facilitate supervision and traceability of products for the purpose of enforcement. The Bill introduces a new concept of risk analysis in the dairy industry as a way to bolster safety and quality of dairy produce. It provides for packaging and labelling of dairy produce.

The Bill requires submission of reports and other information by various actors in the industry.

Part VI-Sale of dairy produce

Clauses 36-41 provides for matters of contracts for sale of milk, guaranteed minimum price for the producer (producer price, quality-based pricing, import and export of dairy produce and matters of transportation, packaging and labelling of dairy produce.

Part VII—Financial provisions

Clauses 42-47 deal with the budget of the Authority, approvals by the Board and the National Treasury, record-keeping, accounts and audit of the funds of the Authority.

Part VIII—Dairy Industry Tribunal

Clauses 48-57 provides for the establishment of the Dairy Industry tribunal to resolve

The Dairy Industry Bill, 2024

disputes in the industry. The Part provides for the appointment of members of the Tribunal, proceedings, powers, quorum of the Tribunal. It also sets out the types of appeals to go to the tribunal, the High Court, as well as immunity of members of the Tribunal. The Bill also provides for matters of remuneration of members and staffing of the Tribunal.

Part IX—Miscellaneous

Clauses 58-73 provide for diverse matters general roles of national and county governments as provided under the *Fourth Schedule* to the Constitution, matters of cess and imposition of levy, matters of legal proceedings against the Authority or officers of the Authority, appointment of compliance officers, duties and powers of compliance officers, seizure of non-conforming dairy produce or processing aids, dispute resolution mechanisms and the power to make regulations.

The Bill also provides for various offences by authorised officers, other persons and body corporate.

Part X-Repeal, saving and transition

Clauses 74-75 deal with matters of repeal and how to transit from the previous law.

Statement on limitation of fundamental rights

The Bill does not limit fundamental rights and freedoms.

Statement on delegation of legislative powers

The Bill delegates certain powers to the Cabinet Secretary to make regulations to implement the Act. The delegation is in line with Article 94(6) of the Constitution.

Statement as to matters concerning county governments

The Bill concerns county government, within the meaning of Article 110 of the Constitution and recognises the role of county governments as set out in the *Fourth Schedule* of the Constitution.

Statement on whether the Bill is a ‘money Bill’ within the meaning of Article 114 of the Constitution.

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 7th June, 2024.

The Dairy Industry Bill, 2024

*CABINET SECRETARY,
Ministry of Agriculture and Livestock Development*