MINISTRY OF AGRICULTURE AND LIVESTOCK DEVELOPMENT

KENYA SUGAR BOARD (KSB)

REGULATORY IMPACT STATEMENT (RIS)

THE SUGAR DEVELOPMENT LEVY ORDER, 2025

APRIL 2025

1.0 Introduction

The Regulatory Impact Statement for the proposed Sugar Development Levy Order, 2025 was prepared pursuant to the provisions of Sections 6 and 7 (1) and (2) of the Statutory Instruments Act, Cap 2A. Section 6 of the Act requires the Regulation Making Authority to prepare a Regulatory Impact Statement for the proposed regulations indicating the costs and benefits of the proposed regulations on the public and stakeholders. Section 7(1) and (2) of the Act set out the contents of a regulatory impact statement for the proposed regulations as follows:

(a) a statement of the objectives of the proposed legislation and the reasons;

(b) a statement explaining the effect of the proposed legislation;

(c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;

(d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and

(e) the reasons why the other means are not appropriate.

2.0 A Statement of the Objectives and Reasons for the Proposed Levy Order

The Proposed Sugar Development Levy Order aims to enumerate provisions to give effect to Section 40(1) of the Sugar Act, 2024 for the benefit and development of the Sugar industry,sugarcane farmers and sugarcane farmers organisation. The specific objectives of these regulations are 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.

3.0 Statement on the Effect of the Proposed Levy Order

3.1 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 which 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 will 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 will 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.

3.2 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 to 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 higher yields and quality hence enhancing the competitiveness in regional markets and opening export opportunities.

ii. The infrastructure development in the sugarane catchment areas will indirectly benefit the private sector by reducing transportation costs and delays for cane and sugar delivery. This will lead to more streamlined operations for millers, distributors, and retailers, enhancing overall sector profitability.

iii. A revitalized sugar sector, supported by development levy, will indirectly draw private investment into milling, processing, and related industries like ethanol production or confectionery which will spur expansion and modernization efforts.

3.3 Effects 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 benefit 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 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.

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.

4.0 Statement on Regulatory & Non-Regulatory Options

4.1 Option 1: Maintaining the *Status Quo*

Before considering new interventions, it is important to consider whether the problem could be resolved by making changes to practices within the existing regulatory framework, thus maintaining the status quo. Examples of this are:

i. Making use of existing laws, regulations and/or guidelines
ii. Simplifying or clarifying existing regulations.
iii. Improving compliance and enforcement of existing regulations; or
iv. Making legal remedies more accessible or cheaper.

It is however noted that the current status of the Sugar Sector has not been conducive nor supportive to revamping the growth of this sector nor demonstrated the capacity to support the sustainable development of the sector into the future despite the increasing demand for sugar and related products both locally and in the global markets. The public sugar companies have been faced with myriad of issues including being unable to pay farmers, increased production costs, declining land under sugarcane cultivation, decline in research and trainings, decline in cane development and productivity enhancement and decline in factory development and rehabilitation. This led to the proposed Sugar Development Levy for development and promotion of the sugar sector.

4.2 Option 2: Administrative Measures

Use of administrative measures to implement Section 40(1) of the Sugar Act, No. 11 of 2024 would be against the letter and spirit of Article 201 and 209 of the Constitution of Kenya.

Notably, Section 40 (1) requires that the Cabinet Secretary makes a Sugar Development Levy Order being the instrument to enable collection of levies.

4.3 Option 3: Enacting the Sugar Development Levy Order, 2025

The enactment of the Sugar Development Levy Order provides 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.

Cane farmers will benefit from 40% to cane development and 15% to factory rehabilitation, to boost productivity, develop infrastructure and directly support cane farmers across sugar-producing regions.

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.

Impact analysis of the Options

Table 1: Regulatory and non-regulatory options

S.No	Impact on Sectors	Option 1: Maintenance of the Status Quo	Option Two: Administrative Measures	Option Three: Enacting the Sugar Development Levy Order, 2025
1.	Cane farmer	Cane farmers continue to face challenges without additional support or development initiatives from the state.	The cane farmers might not receive clear or equitable benefits from administrative actions.	The cane farmer receives direct benefits through cane development funds, potentially increasing productivity and income.

2.	Sugar industry	This would lead to continued inefficiencies and lack of industry development. There will be no new funding for factory rehabilitation, research, or cane development.	This might lead to an ad hoc or inconsistent implementation, potentially worsening the issues the sugar industry is already facing.	It provides a well-structured funding for industry development, research, and infrastructure.
3.	Economy	There are no immediate economic benefits from sugar sector revitalization. This would result potentially into missed opportunities for job creation and economic growth.	The Economic gains and benefits are uncertain due to the lack of structured funding. This would create chaos that lead to confusion or socio-economic challenges affecting economic stability.	It stimulates economic activities through job creation, infrastructure development, and industry growth. It supports broader economic goals like poverty reduction and sustainable agricultural practices and methods.
4.	Consumer	Sugar prices would remain the same, however, high prices might persist	There is a potential for uneven or unexpected price changes if the levy is	It is likely to lead to an increase in sugar prices in the short term, but with potential long-term benefits

		due to inefficiencies.	applied inconsistently.	in quality and sustainability of sugar production.
5.	Legal and Governance	It violates the legal provisions under the Sugar Act. It undermines the legislative process.	It contravenes constitutional principles on taxation and public finance management. There is a risk of potential legal disputes over the legality of levy collection.	This is compliance with legal frameworks, ensuring transparency and accountability in levy collection. It aligns with the spirit of the Sugar Act and constitutional requirements

Preferred Option

Based on the above analysis it is clear the third option (enacting the new Sugar Development Levy Order, 2025) is the preferred option. The benefits and impact of enacting a new Sugar Development Levy Order by far outweigh any estimated cost of its implementation. The other two options have little or no impact in addressing the problems outlined above.

5.0 Costs-Benefit Analysis (CBA)

The analysis of the expected costs and benefits of the proposed Order in this part seeks to answer the question whether the benefits justify the projected costs. This would enable KSB to estimate the total expected cost and benefit of every aspect of the Order. This will in turn inform the decision makers since the cost of government action should be justified by its benefits before action is taken.

However, given the nature of this development levy and the available information, the costing will be qualitative. The task of comparing the benefits and costs associated with the proposed Levy Order and determining whether, and to what extent, there would be a net benefit associated with its adoption is uncertain.

Table 2: Benefits and Costs arising from the new features of the Sugar Development Levy Order, 2025

S.No	Category	Benefits	Cost
1.	Support of cane farmers	Enactment of the Sugar Development Levy will lead to stabilization of the farmer's incomes through better yields and possibly higher cane prices	Adjustments in farming practices to align with any new industry standards proposed by KSB and Kenya Sugar Research and Training Institute might require initial investment
2.	Sugar industry development	The Sugar Development Levy will provide funding for research and innovation in sugarcane cultivation	KSB will incur an administrative costs for collection and management of the levy.
3.	Decent work & Economic Growth	The funds appropriated from this fund to the sugar industry has a potential for job creation in farming and	At the beginning the implementation of the levy will likely lead to increased

		processing. It also has a potential for increased value addition for local and export markets. The realization of the benefits from the increased efficiencies and yields resulting from utilization of the levy will lead to a reduction in the cost of production and hence lower consumer prices	consumer prices for sugar thus affecting purchasing power.
4.	Economic Efficiency	The Sugar industry has a potential to become self-sufficient and competitive.	If the funds collected are not used effectively as stipulated in the law, then it will be inefficient as money may be appropriated to less productive entities and activities.
5.	Environment and Health	It will encourage sustainable farming practices hence reducing negative environmental impacts. Imposition of the levy has a potential for health benefits through better sugar quality control.	There are costs associated with implementing and monitoring sustainable production practices.
6.	Risks and Challenges	Increased transparency in the use of funds could lead to a	There will be costs associated with setting up and

		greater public trust and support for the sugar industry.	implementing structures to ensure transparency and accountability in levy collection and management.

5.1 Assessment of Return on Investment (Benefit)

Passing and operationalization of the proposed levy Order will be critical in facilitating the development, promotion, and regulation of the sugar sector for the benefit of the sugarcane farmers and other stakeholders in the sugar sector in the country. This will significantly transform especially the development and rehabilitation of the sugar factories which are in a deplorable state hence leading in decline in sugar production thus resulting to losses for sugarcane farmers as they cannot take their sugarcane to the failed factories.

The levy collected will also seek to promote crop research and crop development and improve farmers' access to quality planning materials. This coupled with enhanced capacity building of farmers on good agricultural practices (GAPs) and other key technical areas in sugarcane production including crop harvesting and post-harvest management of the produce through the provision of industry-targeted agricultural advisory is expected to increase sugarcane production and the productivity of farmers'sugarcane fields as well to improve quality of the produce while reducing the current high post-harvest losses.

This will result in increased volumes of quality sugar available for the market, meaning increased earnings for the farmers, traders, dealers, agents and processors and also increased foreign exchange earnings for the country. The increased availability of affordable sugar in the local market will reduce the need for the importation of cheap sugar substitutes and thus save the country's foreign exchange.Infact, the country will have supplus that could be exported hence earning foreign exchange.

Further, the levy will be used furtherance and exercise of the functions of sugarcane farmers organisations which will give the farmers better negotiating positions enabling bargaining for better prices for their sugarcane and other terms of trade and thus allowing them to benefit from the economies of scale in the marketing their produce collectively.

5.2 Reasons Why Other Regulatory Options Are Not Appropriate

5.2.1 Option 1: Maintaining the *Status Quo*

Before considering new interventions, it is important to consider whether the problem could be resolved by making changes to practices within the existing regulatory framework, thus maintaining the status quo. Examples of this are:

v. Making use of existing laws, regulations and/or guidelines
vi. Simplifying or clarifying existing regulations.
vii. Improving compliance and enforcement of existing regulations; or
viii. Making legal remedies more accessible or cheaper.

It is however noted that the current status of the Sugar Sector has not been conducive nor supportive to revamping the growth of this sector nor demonstrated the capacity to support the sustainable development of the sector into the future despite the increasing demand for sugar and related products both locally and in the global markets. The public sugar companies have been faced with myriad of issues including being unable to pay farmers, increased production costs, declining land under sugar cultivation, decline in research and trainings, decline in cane development and productivity enhancement and decline in factory development and rehabilitation. This led to the proposed Development levy which is set for development and promotion of the sugar sector.

5.2.2 Option 2: Administrative Measures

Use of administrative measures to implement Section 40(1) of the Sugar Act, No. 11 of 2024 would be against the letter and spirit of Article 201 and 209 of the Constitution of Kenya. Notably, Section 40 (1) requires that the Cabinet Secretary makes a Sugar Development Levy Order being the instrument to enable collection of levies.

5.2.3 Option 3: Enacting the Sugar Development Levy Order, 2025

The enactment of the Sugar Development Levy Order provides 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.

Cane farmers will benefit from 40% to cane development and 15% to factory rehabilitation, to boost productivity, develop infrastructure and directly support cane farmers across sugar-producing regions.

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.

Impact analysis of the Options

Table 3: Regulatory and non-regulatory options

S.No	Impact on Sectors	Option 1: Maintenance of the Status Quo	Option Two: Administrative Measures	Option Three: Enacting the Sugar Development Levy Order, 2025
1.	Cane farmer	Cane farmers continue to face challenges without additional support or development initiatives from the state.	The cane farmers might not receive clear or equitable benefits from administrative actions.	The cane farmer receives direct benefits through cane development funds, potentially increasing productivity and income.

2.	Sugar industry	This would lead to a continued inefficiencies and lack of industry development. There would be no new funding for factory, research, or cane development.	This might lead to an ad hoc or inconsistent implementation, potentially worsening the issues the sugar industry is already facing.	It provides a well-structured funding for industry development, research, and infrastructure.
3.	Economy	There are no immediate economic benefits from sugar sector revitalization. This would result potentially into missed opportunities for job creation and economic growth.	The Economic gains and benefits are uncertain due to the lack of structured funding. This would create chaos that lead to confusion or legal challenges affecting economic stability.	It stimulates economic activities through job creation, infrastructure development, and industry growth. It supports broader economic goals like poverty reduction and sustainable agricultural practices and methods.
4.	Consumer	Sugar prices would remain the same, however, high prices might	There is a potential for uneven or unexpected price changes if the levy	It is likely to lead to an increase in sugar prices, but with potential long-term benefits in quality

		persist due to inefficiencies.	is applied inconsistently.	and sustainability of sugar production. The realization of the benefits from the increased efficiencies and yields resulting from utilization of the levy will lead to a reduction in the cost of production and hence lower consumer prices
5.	Legal and Governance	It violates the legal provisions under the Sugar Act. It undermines the legislative progresses.	It contravenes constitutional principles on taxation and public finance management. There is a risk of potential legal disputes over the legality of levy collection.	This is compliance with legal frameworks, ensuring transparency and accountability in levy collection abd disbursment. It aligns with the spirit of the Sugar Act and constitutional requirements

Preferred Option

Based on the above analysis it is clear the third option (enacting the new Sugar Development Levy Order, 2025) is the preferred option. The benefits and impact of enacting a new Sugar Development Levy Order by far outweigh any estimated cost of its implementation. The other two options have little or no impact in addressing the problems outlined above.

6.0 Conclusion

The proposed Levy Order if effectively implemented will support the promotion and development of the sugar industry for the benefits of the sugarcane farmers and other stakeholders.

This will significantly transform especially the development and rehabilitation of the sugar factories which are in a deplorable state hence leading to decline in sugar production thus resulting to losses for sugarcane farmers as they cannot take their sugarcane to the failed factories. The levy collected will promote crop research and crop development using high-quality sugarcane varieties and improve farmers' access to quality planting materials. This coupled with enhanced capacity building of farmers on good agricultural practices (GAPs) and other key technical areas in sugarcane production including crop harvesting and post-harvest management of the produce, through the provision of industry-targeted agricultural advisory is expected to increase sugar production and the productivity of farmers' sugarcane fields as well as to improve quality of the produce while reducing the current high post-harvest losses.

Based on the above analysis, the following matters are apparent:

(a) **Regulatory-Making Authority and the legal mandate:** Section 40(1) of the Sugar Act, No. 11 of 2024, empowers the Cabinet Secretary in consultation with the Kenya Sugar Board (KSB) 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. The Cabinet Secretary and KSB therefore have the required legislative powers to propose the Sugar Development Levy Order, 2025.

(b) **Requirements of the Statutory Instruments Act:** Section 5 requires that a regulation-making authority conducts public consultations and draws on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and to ensure that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content. Sections 6 and 7 require that a RIA be prepared where a statutory instrument is likely to impose significant costs on the community. The RIA must contain certain key elements namely:

a) a statement of the objectives of the proposed legislation and the reasons,

b) a statement explaining the effect of the proposed legislation,

c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;

d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and

e) the reasons why the other means are not appropriate.

The RIA structure requirements have been fully met. Public consultation requirements have been fully adhered to.

(c) **Other existing legal frameworks**: The draft Sugar Development Levy Order, 2025 proposes to promulgate a new legislation. It is in harmony with other laws making its implementation more effective.

(d) **The draft:** The draft Sugar Development Levy Order, 2025 as drafted is clear, consistent, comprehensible and comprehensive enough to cover all matters.

7.0 Recommendation

The Regulatory Impact Assessment recommends the Sugar Development Levy Order, 2025 be approved and adopted.