

THE CLIMATE CHANGE (DUTIES AND INCENTIVES) REGULATIONS, 2021

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY

- 1—Citation
- 2—Interpretation

PART II – DUTIES OF PUBLIC ENTITIES

- 3—Imposing of climate change duties on public entities
- 4—Public awareness and consultation
- 5—Adaptation duties for public entities
- 6—General duties of public entities
- 7—Unsatisfactory performance
- 8—Recommendations and proposed actions by the National Assembly
- 9—County climate change funds

PART III – DUTIES OF PRIVATE ENTITIES

- 10 —Imposing of climate change duties on private entities
- 11 —General climate change duties of private entities
- 12 —Reporting by private entities
- 13 —Duties of public benefit organisations
- 14 —Duty to track and report on climate finance
- 15 —Duties of individuals

PART IV – INCENTIVES FOR THE PROMOTION OF CLIMATE CHANGE INITIATIVES

- 16 —Nature of incentives
- 17 —Conditions for the grant of incentives
- 18 —Withdrawal of incentives
- 19 —Training
- 20 —Accreditation of trainers

PART V – GENERAL PROVISIONS

- 21 —Offences and penalties
- 22 —Confidentiality
- 23 —Fees

FORM D1 – REPORTING TEMPLATE BY PRIVATE ENTITIES FOR DEVELOPMENT EXPENDITURE DATA FOR CLIMATE RELATED PROJECTS AND PROGRAMMES

FIRST SCHEDULE – LIST OF SPECIALISED TRAINING INSTITUTES

THE CLIMATE CHANGE ACT*(No. 11 of 2016)*

IN EXERCISE of the powers conferred by Section 36 of the Climate Change Act, 2016, the Cabinet Secretary for the Environment and Forestry makes the following regulations—

THE CLIMATE CHANGE (DUTIES AND INCENTIVES) REGULATIONS, 2021**PART I – PRELIMINARY****1. Citation**

These Regulations may be cited as the Climate Change (Duties and Incentives) Regulations, 2021.

2. Interpretation

In these Regulations, unless the context otherwise requires-

“Act” means the Climate Change Act, 2016;

“capital equipment” means physical assets that a person uses in the production process to manufacture products and services that consumers will later use and may include buildings, machinery, equipment, vehicles and tools, they are not finished goods but instead utilised in the making of finished goods;

“climate change risks” means the combination of the likelihood of a climate change event and its consequences, whose adverse effects can be lessened by adaptation and mitigation measures; and,

“large scale commercial farming” means farms or farming activities generating KES 10,000,000 or more in annual product sales that are involved in the commercial production of large quantities of either or both of crops and livestock, intended for widespread distribution to wholesalers or retail outlets;

PART II – DUTIES OF PUBLIC ENTITIES**3. Imposing of climate change duties on public entities**

- (1) These Regulations shall impose climate change duties on public entities in the national and county governments.

- (2) The Council may, in consultation with the Cabinet Secretary, by notice in the Gazette, revoke or vary the duties in these Regulations, or impose any additional duties on public entities that would be subject to these Regulations, the Act and aid in achieving the sustainable development goals of the nation.

4. Public awareness and consultation

- (1) Any imposition, revocation or varying of these duties shall be preceded by public awareness and consultations.
- (2) The public awareness and consultation mentioned in sub-paragraph (1) shall be in accordance with Section 24 of the Act and any Regulations in force that govern this matter.

5. Adaptation duties for public entities

Each public entity at any level of government shall bear the duty to enhance the nation's adaptation ambition by mainstreaming and integrating any adaptation duties as outlined in the National Climate Change Action Plan, the Nationally Determined Contribution and National Adaptation Plan that are currently in force, into its laws, policies, programs, projects, plans and any additional relevant activities.

6. General duties of public entities

- (1) In addition to the duties set out in Section 15(5) and 19 of the Act, each public entity at both the national and county governments shall –
 - (a) set out its strategy and objectives on climate change mitigation and adaptation;
 - (b) perform its activities in a manner that increases awareness of the need to mitigate against and adapt to climate change;
 - (c) build the capacity of its staff and stakeholders to assess risk and implement action related to climate change in decision making;
 - (d) dedicate an amount in its annual budget that shall be directed towards climate change activities;
 - (e) assess itself against the Climate Change Assessment Tool;
 - (f) determine its capability and performance in relation to the public entity's climate change duties;
 - (g) implement oversight mechanisms over all projects to ensure that they comply with climate change laws and policies.
- (2) The annual report on the status and progress of performance and implementation of climate change duties in Sections 15(5)(f) and 19(5) of the

Act and the duties in sub-paragraph (1), shall be submitted to the Directorate on or before 31 March each year.

- (3) All levels of government shall consult and cooperate to ensure the achievement of the nation's climate change objectives and priorities, including cooperation between county governments.
- (4) The Council may develop guidelines and set standards relevant to the duties of public entities.

National Government

7. Unsatisfactory performance

- (1) Where unsatisfactory performance is disclosed by a statutory public entity in the report under Section 15(5)(f) of the Act, the Council shall within six months of receiving the report, communicate in writing to the statutory public entity's relevant State Department and request it to undertake investigations into the unsatisfactory performance.
- (2) A State Department shall have thirty days from the receipt of written communication from the Council to process, investigate and report its findings to the Council.
- (3) The investigating State Department shall report its findings, recommendations and any proposed or undertaken actions to correct the unsatisfactory performance by the statutory public entity.
- (4) The Council shall, within three months, communicate in writing its approval or disapproval of the report submitted by the State Department in sub-paragraph (3).
- (5) Where the Council communicates its disapproval of the report submitted by the State Department, the Directorate and the statutory public entity shall within 60 days jointly develop an action plan to address the concerns in the report.

8. Recommendations and proposed actions by the National Assembly

- (1) Where the National Assembly provides recommendations and proposed actions to the Council, the Cabinet Secretary, the Directorate, a State Department or a statutory public entity, the Directorate shall–
 - (a) collate and coordinate the dissemination of the proposed recommendations and actions to the relevant officials, authorities or public entities; and

- (b) within thirty days after receipt of the recommendations and actions by the National Assembly, communicate them in writing to the relevant officials, authorities or public entities.
- (2) A State Department or a statutory public entity that receives the communication in sub-paragraph (1) from the Directorate shall have six months to either:
 - (a) implement the proposed recommendation or action;
 - (b) communicate its written reasons for not implementing the proposed recommendation or action to the Directorate.
- (3) A State Department or a statutory public entity that implements the proposed recommendation or action under sub-paragraph (2)(a) shall report on this activity as part of its subsequent annual report to the Council.

County Governments

9. County climate change funds

- (1) Nothing in these Regulations shall prevent a county government from establishing climate change funds at the county level through any of the following mechanisms–
 - (a) legislation enacted by the county government;
 - (b) county-controlled funds for financing climate change initiatives identified and prioritized by the county government;
- (2) County governments shall be required to ensure that climate change funds comply with the relevant laws on public finance and are developed in consultation with the Cabinet Secretary and the National Treasury.

PART III – DUTIES OF PRIVATE ENTITIES

10. Imposing of climate change duties on private entities

- (1) The general duties imposed by these Regulations shall apply to private entities that are–
 - (a) publicly listed companies;
 - (b) producers of electricity for supply to the public;

- (c) categorized as Commercial and Industrial Consumers based on the latest Schedule of Tariffs for the Supply of Energy by the Energy and Petroleum Regulatory Authority;
 - (d) refiners of oil and gas;
 - (e) manufacturers of chemical products;
 - (f) carrying out large-scale commercial farming, including forestry;
 - (g) directly involved in a climate mitigation or adaptation project implemented for more than 2 years and whose budget is not less than KES 5,000,000.
- (2) The Council may at any time in consultation with the Cabinet Secretary and relevant State Departments impose through notice in the Gazette, climate change duties on other private entities, by including them to the list of entities in sub-paragraph (1)

11. General climate change duties of private entities

- (1) Every private entity listed under Regulation 10 (1) shall –
- (a) set out its objectives on climate change mitigation and adaptation in its strategy, plans and other guiding documents;
 - (b) align its mitigation and adaptation objectives to national climate change priorities;
 - (c) build the capacity of its staff and stakeholders to assess climate risk and implement action related to climate change in decision making;
 - (d) commit a financial contribution to efforts directed at climate change mitigation and adaptation;
 - (e) undertake efforts aimed at climate change mitigation to reduce the level of greenhouse gas emissions, if any, from their establishment, and where specific emission reduction targets have been set by the Council, to comply with the targets set;
 - (f) invest in research and design to encourage innovations in the use of social and technical measures suitable for climate change adaptation and mitigation;
 - (g) undertake resource efficiency measures in all sectors of involvement including, logistics, energy consumption, packaging and waste management;

- (h) provide annual training on climate change to all staff and analyse skill gaps;
 - (i) collaborate with public entities to synergize technical and finance support for climate change mitigation and adaptation at both the national and county level; and,
 - (j) engage in joint initiatives with other private entities to identify climate change risks, response measures and adaptation needs.
- (2) The Council may, in consultation with the Cabinet Secretary, develop guidelines and set standards relevant to the duties of private entities.

12. Reporting by private entities

- (1) The Council shall place a notice in the Gazette on or before December 31 each year requiring a private entity under Regulation 10 (1) to report on the status of its performance and implementation of climate change duties.
- (2) A private entity required to report on the status of its climate obligations pursuant to a Gazette notice issued under sub-paragraph (1) shall prepare the relevant report and submit it to the Directorate on or before March 31 in the next year after the Gazette notice was issued.
- (3) The contents of the report shall ensure to address all the duties imposed on private entities under the Act and these Regulations and demonstrate how the private entity has fulfilled its duties in the twelve months preceding the date of the Gazette notice.
- (4) Where a private entity fails to comply with the requirement to report on its climate change obligations under this regulation, the Council shall communicate in writing to the private entity requesting it to prepare a report on the non-compliance within 90 days.
- (5) A private entity in receipt of the communication in sub-paragraph (4) shall prepare a report on the actions it has taken, is taking, or intends to take to secure future performance with those duties and submit them in writing to the Directorate within 90 days.
- (6) A private entity that fails to submit a report as required under this regulation commits an offence and is liable, on conviction, to a fine not exceeding ten million shillings or to imprisonment for a period not exceeding five years, or to both.
- (7) A private entity that complies with the requirement to report but submits a report that demonstrates insufficient compliance with its climate change duties shall be placed on a performance improvement plan designed by the Directorate and monitored by the Authority.

- (8) Failure to implement the performance improvement plan within the timeline stipulated by the Directorate shall constitute an offence and a private entity shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a period not exceeding five years, or to both.

13. Duties of public benefit organisations

- (1) Private entities registered under the Public Benefits Organizations Act, 2013, shall report on all climate change activities, projects or programs being implemented as part of their annual reporting to the Public Benefit Organizations Regulatory Authority under Section 31(c) of the Public Benefits Organizations Act, 2013.
- (2) The Cabinet Secretary may request the Public Benefits Regulatory Authority to submit a summary of the climate change activities, projects or programmes by Public Benefit Organizations each year to the Council.

14. Duty to track and report on climate finance

All private entities shall provide to the National Treasury detailed quarterly project and activity level expenditure data for climate projects or programmes in accordance with the template in the Form DI 1 of these Regulations.

15. Duties of individuals

- (1) Every Kenyan citizen shall have a duty to, in their conduct and actions, make decisions and act in a manner that mitigates climate change and enhances climate change resilience to promote sustainable development of the nation.
- (2) The Council shall ensure that the annual public engagement strategy prepared pursuant to Section 30 (1) of the Act is widely circulated to enable all individuals to be informed about climate change action plans and how individuals may contribute to the achievement of the objectives and purposes of the Act.
- (3) Nothing in these Regulations shall prevent individuals from benefiting from the incentives or having the incentives withdrawn as provided for under this law.

PART IV – INCENTIVES FOR THE PROMOTION OF CLIMATE CHANGE INITIATIVES

16. Nature of incentives

- (1) The Cabinet Secretary responsible for finance shall, in collaboration with the Cabinet Secretary, grant fiscal incentives to private entities for the promotion of climate change initiatives, including but not limited to–

- (a) Special deductions from the taxable income of private entities conducting accredited training in programmes that are aimed at climate change mitigation and adaptation; and
 - (b) Tax waivers on the importation of capital equipment, provided that the capital equipment is actually and directly used in the promotion of activities for climate change mitigation or adaptation.
- (2) In addition to the incentives granted in sub-paragraph (1) above, the Cabinet Secretary may, where applicable, grant non-fiscal incentives for the promotion of climate change initiatives, including but not limited to–
 - (a) allowing the use of emission offsets in accordance with any regulations on carbon trading for the time being in force;
 - (b) promoting public-private partnerships for climate initiatives by developing relevant guidelines; and
 - (c) developing award schemes for private entities that have developed scalable innovative climate actions.
- (3) Incentives granted under these regulations shall be in addition to fiscal and non-fiscal incentives already granted or provided under existing laws for the advancement of the elimination of and mitigation against climate change and the effects of climate change.
- (4) Nothing in these Regulations shall be interpreted or construed to diminish or limit, in whatever manner, the incentives granted or provided under existing laws.
- (5) For purposes of this Regulation, climate change initiatives eligible for incentives shall include but not be limited to–
 - (a) energy and resource efficiency activities across sectors;
 - (b) climate smart agriculture activities;
 - (c) low carbon and efficient transportation systems;
 - (d) sustainable waste management systems;
 - (e) clean, efficient and sustainable energy technologies;
 - (f) nature based solutions for mitigation and adaptation;
 - (g) activities to increase tree cover to at least 10% of Kenya’s land area;

- (h) activities to enhance adaptive capacity, climate resilience and loss and damage across all sectors of the economy;
- (i) activities to increase the uptake of adaptation technology amongst women, youth and additional groups in vulnerable situations; and
- (j) any other activities or climate related initiatives.

17. Conditions for the grant of incentives

Incentives granted under this section shall be applicable to any of the following–

- (a) private entities, including individuals, who promote climate change initiatives within the Republic of Kenya at the sub-county, county or national-level; and
- (b) activities related to climate change mitigation or the building of resilience and adaptive capacity against the effects of climate change.

18. Withdrawal of incentives

The Cabinet Secretary may, by Gazette notice, withdraw any incentives granted to and enjoyed by a person who does any of the following–

- (a) provides false information when applying for the grant of an incentive;
- (b) fails to fulfil the conditions of the incentive granted under this Regulation;
- (c) conducts themselves in a manner contrary to the objectives of eliminating or mitigating against climate change that merited the grant of an incentive;
- (d) contravenes any provisions of these Regulations, the Act or any additional law granting similar incentives.

19. Training

- (1) The Cabinet Secretary shall, in consultation with the Kenya Institute of Curriculum Development, and the public agencies responsible for regulating universities and tertiary institutions curricula, ensure that the development of curriculum and training programmes build skills that address climate change in line with the Ministry Guidelines for Mainstreaming Climate Change in Curricula at all Levels of Education and Training and international best practice.

- (2) The Cabinet Secretary shall, in consultation with the specialized training institutes in different sectors listed in the First Schedule, ensure that the necessary training programmes are developed for skills training, assessment and certification that support the advancement of low carbon climate resilient development.
- (3) The Directorate shall, in collaboration with the National Industrial Training Authority and the State Department responsible for training and skills development prepare national reports every two years to identify needed skills and training programs for low carbon climate resilient development.
- (4) The Directorate shall provide technical guidance to informal and non-formal training initiatives on climate change where a request in writing is made to the Directorate for support.

20. Accreditation of trainers

Any trainer providing training to address climate change under these Regulations shall be jointly accredited by the Directorate and the relevant sector appropriate accreditation body or bodies.

PART V – GENERAL PROVISIONS

21. Offences and penalties

Any person who contravenes these Regulations commits an offence and shall be liable as provided under Sections 17(3) and 33 of the Act.

22. Confidentiality

A person that provides information under these Regulations may submit with the information a written request, with supporting justifications, that the information be treated as confidential for one or more of the following reasons:

- (a) the information constitutes a trade secret;
- (b) the disclosure of the information would likely cause material financial loss to, or prejudice to the competitive position of, the person;
- (c) the disclosure of the information would likely interfere with contractual or additional negotiations being conducted by the person.

23. Fees

- (1) The Council shall publish a schedule of fees that the Council may charge for any authorised activities under these Regulations.

- (2) The Council shall regularly update the fee schedule as necessary to comply with the Regulations and to facilitate an effective regulatory system.

Dated the ____ of _____, 2021

CABINET SECRETARY FOR
THE ENVIRONMENT AND FORESTRY

DRAFT

FORM DI 1

(r. 14)

REPORTING TEMPLATE BY PRIVATE ENTITIES FOR DEVELOPMENT EXPENDITURE DATA FOR CLIMATE RELATED PROJECTS AND PROGRAMMES

Name of the Organization:

Telephone Number:

Email Address:

Name of Accounting Officer/ CEO/ Director:

Name and contact details of technical person (in case of any clarifications)

Financial Year (FY):

PROJECT NAME	PROJECT DESCRIPTION	PROJECT OBJECTIVES	PROJECT ACTIVITIES	ACTUAL EXPENDITURE (KES)				SOURCE OF FUNDS	IMPLEMENTING ENTITIES/ PARTNERS
				Q1	Q2	Q3	Q4		

FIRST SCHEDULE

(r. 19 (2))

LIST OF SPECIALIZED TRAINING INSTITUTES

Kenya Forestry College

Kenya School of Agriculture

Kenya School of Government

Kenya Water Institute

National Industrial Training Institute

