

---

STATUTORY INSTRUMENTS

---

**1996 No. 2465 (S.194)**

**FOOD  
MILK AND DAIRIES**

**The Dairy Products (Hygiene) (Scotland)  
Amendment Regulations 1996**

<i>Made</i>	- - - -	<i>23rd September</i> <i>1996</i>
<i>Laid before Parliament</i>		<i>25th September 1996</i>
<i>Coming into force</i>	- -	<i>16th October 1996</i>

The Secretary of State, in exercise of the powers conferred on him by sections 6(4), 16(1) and (3), 17(1), 18(1), 19, 26 and 48(1) of, and paragraph 5 of Schedule 1 to, the Food Safety Act 1990<sup>(1)</sup> and of all other powers enabling him in that behalf, after consultation in accordance with section 48(4) of the said Act with such organisations as appear to him to be representative of interests likely to be substantially affected by the Regulations, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Dairy Products (Hygiene) (Scotland) Amendment Regulations 1996 and shall come into force on 16th October 1996.

**Amendment of the Dairy Products (Hygiene) (Scotland) Regulations 1995**

2. The Dairy Products (Hygiene) (Scotland) Regulations 1995<sup>(2)</sup> shall be amended in accordance with regulations 3 to 13 below.

3. In regulation 2(1) (interpretation)–

(a) in paragraph (1)–

(i) after the definition of “collection centre” there shall be inserted the following definitions:–

---

(1) 1990 c. 16; “the Minister” is defined in section 4(1) of the Act; section 6(4)(a) was amended by the Deregulation and Contracting Out Act 1994 (c. 40), Schedule 9, paragraph 6.  
(2) S.I.1995/1372.

““Commission Decision 95/165” means Commission Decision [95/165/EC](#) establishing uniform criteria for the grant of derogations to certain establishments manufacturing milk-based products<sup>(3)</sup>;

“Commission Decision 95/340” means Commission Decision [95/340/EC](#) drawing up a provisional list of third countries from which Member States authorise imports of milk and milk-based products and revoking Decision [94/70/EC](#)<sup>(4)</sup>, as amended by Commission Decision [96/106/EC](#)<sup>(5)</sup>”;

(ii) for the definition of “EEA State” there shall be substituted the following definition:–

““EEA State” means a State which is a Contracting Party to the EEA Agreement but does not include Iceland;”;

(iii) in the definition of “limited production” there shall be substituted for the words “300,000 litres” the words “2 million litres”;

(iv) the definition of “low capacity dairy establishment” shall be omitted;

(v) after the definition of “raw” there shall be inserted the following definition:–

““risk analysis principles” means the principles referred to in Article 14(1) of Council Directive 92/46;”;

(b) in paragraph (2) there shall be inserted at the end the words “and Commission Decisions 95/165 and 95/340.”.

**4.** In regulation 3 (exemptions) there shall be substituted for paragraph (3) the following paragraph:–

“(3) Notwithstanding the exemption in paragraph (2) above the requirements of–

(a) Parts II to IV of Schedule 6 (as read with regulation 9(1)(d) and (6)) shall apply in relation to the handling in and sale from any catering establishment or shop premises of any heat-treated cream;

(b) regulation 9(9) and Parts V and VI of Schedule 6 shall apply in relation to the handling in and sale from any catering establishment or shop premises of any ice-cream; and

(c) regulation 12 shall apply in relation to raw or thermised drinking milk and raw or thermised cream;

and the other provisions of these Regulations shall apply to the extent necessary for the enforcement of those requirements.”.

**5.** In regulation 6 (approvals)–

(a) in paragraph 1(b) there shall be substituted for the words “paragraph 3(a) or (9) below” the words “this regulation”;

(b) there shall be substituted for paragraph (9) the following paragraphs:–

“(9) Notwithstanding that a dairy establishment which manufactures milk-based products does not comply with all or any of the requirements of Parts I and II of Schedule 2, the food authority may approve that establishment as a dairy establishment if the criteria set out in paragraph (9A) below are satisfied.

(9A) The criteria referred to in paragraph (9) above are–

(a) in the case of an application by the occupier of the dairy establishment for an approval under this regulation, the occupier holds documents which can be

---

(3) OJ No. L108, 13.5.95, p.84.

(4) OJ No. L200, 24.8.95, p.38.

(5) OJ No. L24, 31.1.96, p.34.

used to determine the quantity of milk processed by the establishment during the previous year and can produce these documents for inspection by the food authority;

- (b) the dairy establishment processed during the previous year a quantity of milk of less than 2 million litres or the occupier of, or a person proposing to occupy, the dairy establishment gives an undertaking in writing to the food authority that the quantity processed annually will not exceed that amount;
- (c) the application for an approval under this regulation—
  - (i) states the name and address of the establishment,
  - (ii) states the quantity of milk processed by it during the year preceding that in which the application is made or contains an undertaking not to process a quantity in excess of 2 million litres annually,
  - (iii) states the nature of the documents which can be used to determine the quantity of milk processed by the establishment,
  - (iv) states the type and quantity of milk-based products manufactured by the establishment during the year preceding that in which the application is made,
  - (v) specifies those provisions of Part I and II of Schedule 2 in respect of which exemption is sought,
  - (vi) contains an undertaking to notify the food authority immediately in writing where the establishment, having been approved in accordance with paragraph (9) above, processes a quantity of milk in excess of 2 million litres in any year, and
- (d) the hygienic conditions of production in the dairy establishment will not be affected.

(9B) In the case of a dairy establishment approved in accordance with paragraph (9) above, it shall not be necessary for that establishment to comply with those requirements of Parts I and II of Schedule 2 in respect of which it has been exempted under that paragraph if and so long as—

- (a) the establishment processes a quantity of milk not exceeding 2 million litres in any year, or
- (b) the occupier of the establishment produces to the food authority for inspection, when reasonably requested to do so, documents which can be used to determine the quantity of milk processed by the establishment during the previous year, and
- (c) conditions of production in the establishment are hygienic.

(9C) In paragraphs (9A) and (9B) above, “process” means use for the manufacture of milk-based products and related expressions shall be construed accordingly.”

6. In paragraph (3) of regulation 8 (revocation and appeal) for the words “(a) or (b)” there shall be substituted the words “(i) or (ii)”.

7. In regulation 18 (offences and penalties), after paragraph (4) there shall be added the following paragraph:—

“(5) In any proceedings for an offence against regulation 12 of these Regulations, it shall be a defence for the accused to prove that the milk in respect of which the offence is alleged to have been committed was intended for export to a place outside Scotland which has legislation analogous to these Regulations and that it complies with that legislation.”

**8.** In regulation 22 (imports from third countries and EEA States), there shall be substituted for paragraph (4) the following paragraphs:–

“(4) In the case of dairy products produced or manufactured in any third country–

- (a) subject to paragraph (4A) below, they shall have been produced or manufactured in a third country included in the list in the Annex to Commission Decision 95/340 or, where part only of that third country is included in the list, in that part, it being indicated in the list (as read with Articles 1 to 3 of that Decision) that importation of dairy products of the type concerned is permitted from that country or, as the case may be, that part;
- (b) they shall be accompanied by a health certificate or certificate as specified by Article 23(2)(b) or 25(1) of Council Directive 92/46; and
- (c) conditions at least equivalent to those laid down in Chapter II of Council Directive 92/46 for Community production are satisfied.

(4A) Paragraph (4)(a) above shall not apply in the case of thermised milk or thermised milk products.”.

**9.** In Schedule 1 (conditions for licensing of production holdings) in Part IA (general conditions of hygiene for production holdings), there shall be omitted from paragraph 5 the words “regularly as”.

**10.** In Schedule 4 (requirements for drinking milk) in Part III (heat-treated drinking milk), paragraph 2 shall be amended–

- (a) by omitting from the end of sub-paragraph (b) the word “and”;
- (b) by inserting at the end the words–
  - “and
  - (d) have a plate count at 30EC not exceeding 100,000 per ml in any random sampling checks carried out immediately before any second heat-treatment.”.

**11.** In Schedule 6 (requirements for milk-based products)–

- (a) in Part I (microbiological criteria), there shall be substituted in paragraph 9 for the words “cheese made from raw milk, thermised milk or soft cheese” the words “cheese made from raw milk or from thermised milk or in the case of soft cheese”;
- (b) in Part II (pasteurised cream), there shall be substituted in paragraph 1 for the words “Pasteurised cream shall be heated–” the words “Pasteurised cream shall be obtained by the cream being heated–”;
- (c) in Part III (sterilised cream), there shall be substituted in paragraph 1 for the words “Sterilised cream shall be heated–” the words “Sterilised cream shall be obtained by the cream being heated–”;
- (d) in Part IV (ultra heat-treated cream), there shall be substituted in paragraph 1 for the words “Ultra heat-treated cream shall be heated–” the words “Ultra heat-treated cream shall be obtained by the cream being heated–”.

**12.** In Schedule 10 (labelling and health marking) in Part II (health mark) there shall be inserted in paragraph 4 after the words “legible form and” the words “(except in respect of paragraph (c) (ii) below)”.

**13.** In Schedule 11 (methods of analysis), paragraph 4 shall be omitted.

### **Amendment of the Food Safety (General Food Hygiene) Regulations 1995**

14. Regulation 3 of the Food Safety (General Food Hygiene) Regulations 1995(6) shall be amended—

- (a) by substituting in paragraph (1) for the words “paragraphs (3) and (4)” the words “paragraphs (3) to (5)”;
- (b) by inserting after paragraph (4) the following paragraph:—

“(5) Notwithstanding paragraph (1)(b), regulations 4 and 5 shall apply to a person carrying on any of the following activities in Scotland, that is to say the handling in or sale from any catering establishment or shop premises of any heat-treated cream or of any ice-cream; and for the purposes of this paragraph the expressions “catering establishment”, “cream”, “handling”, “heat-treated”, “ice-cream”, “sale” and “shop premises” have the same meaning as in the Dairy Products (Hygiene) (Scotland) Regulations 1995.”.

St Andrew’s House,  
Edinburgh  
23rd September 1996

*Lindsay*  
Parliamentary Under Secretary of State, Scottish  
Office

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

---

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which apply to Scotland, amend the Dairy Products (Hygiene) (Scotland) Regulations 1995 (“the principal Regulations”). These Regulations—

- (a) implement Article 2 of, as read with Annex B to, Commission Decision [95/165/EC](#) establishing uniform criteria for the grant of derogations to certain establishments manufacturing milk-based products (regulations 3(a) and 5);
- (b) implement Commission Decision [95/340/EC](#) drawing up a provisional list of third countries from which Member States authorise imports of milk and milk-based products and revoking Decision [94/70/EC](#), as amended by Commission Decision [96/106/EC](#), and as read with Articles 22 and 23(2)(a) of Council Directive [92/46/EEC](#) laying down the health rules for the production and placing on the market of raw milk, heat-treated milk and milk-based products (OJNo. L268, 14.9.92, p.1.) (regulations 3(a) and 8);
- (c) make some corrections to the principal Regulations to reflect provisions in Council Directive [92/46/EEC](#) relating to heat-treated drinking milk (regulation 10) and the health mark (regulation 12);
- (d) provide a defence to a charge of selling raw drinking milk that the milk is intended for export (regulation 7);
- (e) clarify the provisions in the principal Regulations relating to risk analysis principles (regulation 3(a)(v)) and exemptions (regulation 4) and make a few drafting amendments (regulations 6, 9 and 11) and a consequential amendment (regulation 3(a)(iii)).

In addition, these Regulations amend the Food Safety (General Food Hygiene) Regulations 1995 so that those Regulations apply to a person carrying on the handling in or sale from any catering establishment or shop premises of ice-cream or heat-treated cream in Scotland (regulation 14).