
STATUTORY INSTRUMENTS

1983 No. 1563

FOOD

The Importation of Milk Regulations 1983

<i>Made - - - -</i>	<i>24th October 1983</i>
<i>Laid before Parliament</i>	<i>26th October 1983</i>
<i>Coming into Operation</i>	<i>16th November 1983</i>

The Minister of Agriculture, Fisheries and Food and the Secretary of State for Wales, acting jointly, in exercise of the powers conferred on them by section 1 of the Importation of Milk Act 1983 (a), and of all other powers enabling them in that behalf, hereby make the following regulations:—

Title, commencement and extent

1.—(1) These regulations may be cited as the Importation of Milk Regulations 1983 and shall come into operation on 16th November 1983.

(2) These regulations extend to England and Wales.

Interpretation

2.—(1) In these regulations, unless the context otherwise requires—

“authorised officer” means an officer of any port health authority (or relevant local authority) which is approved for the time being for the purposes of these regulations by the Minister, or any person authorised by the Minister to act for the purposes of these regulations;

“catering establishment” means a restaurant, canteen, club, public house, school, hospital or other establishment (including a vehicle or a fixed or mobile stall) where, in the course of a business (as defined in section 135(1) of the Food and Drugs Act 1955 (b)), food is prepared for delivery to the ultimate consumer for immediate consumption;

“consignment” means the total quantity of milk to which a single certificate (as described in regulation 4(1)(a)(iv)) relates;

“cream” has the meaning given to it in the Milk and Dairies (Heat Treatment of Cream) Regulations 1983 (c);

“designated place” means any place designated by an authorised officer;

“exportation” means removal to a place outside the United Kingdom;

“human consumption” includes the preparation of food for human consumption;

(a) 1983 c.37.

(b) 1955 c.16, to which there are amendments not relevant to these regulations.

(c) S.I. 1983/1509.

“importer”, in relation to imported milk, includes any person who, whether as owner, consignor, consignee, agent or broker, is in possession of the milk or in any way entitled to the custody or control of it, and “import” shall be construed accordingly;

“milk-based drink” has the meaning given to it in the Milk-based Drinks (Hygiene and Heat Treatment) Regulations 1983(a) ;

“milk” includes cream and milk-based drink;

“the Minister” means the Minister of Agriculture, Fisheries and Food;

“officer of Customs and Excise” includes any person acting under the authority of the Commissioners of Customs and Excise;

“place of entry” means a port, aerodrome or other place of entry;

“port health authority” and “port health district” have the meanings respectively given to them in Part I of the Public Health Act 1936(b) ;

“relevant local authority” means the council of any district or London borough or the Common Council of the City of London;

“semi-skimmed milk” and “skimmed milk” have the meanings respectively given to them in the 1973 regulations;

“standardised whole milk” means cows’ milk (not being cream or milk-based drink) having a fat content of not less than 3.83%;

“the 1973 regulations” means the Milk and Dairies (Semi-skimmed and Skimmed Milk) (Heat Treatment and Labelling) Regulations 1973(c) ;

“ultimate consumer” means any person who buys otherwise than for the purpose of resale, of a catering establishment or of a manufacturing business;

“working day” means a day which is not a public holiday, Saturday or Sunday.

(2) Any reference in these regulations to a numbered regulation or schedule shall, unless the reference is to a regulation of, or schedule to, specified regulations, be construed as a reference to the regulation or schedule so numbered in these regulations.

Prohibition on importation

3.—(1) Subject to regulation 4, no person shall import into England and Wales milk intended by him for human consumption.

(2) For the purposes of these regulations milk imported into England and Wales shall be presumed, until the contrary is proved, to be intended by the importer for human consumption.

(a) S.I. 1983/1508.

(b) 1936 c.49; section 2 was amended by S.I. 1949/2393, Schedule 2, the London Government Act 1963 (c.33), section 41(3), and the Customs and Excise Management Act 1979 (c.2), Schedule 4, paragraph 12, Table, Part I.

(c) S.I. 1973/1064, amended by S.I. 1982/1358, 1702, 1983/1511.

Exceptions to prohibition on importation

4.—(1) The prohibition on importation in regulation 3 shall not apply in respect of—

- (a) milk imported into England and Wales which—
 - (i) is standardised whole milk, semi-skimmed milk, skimmed milk, cream or milk-based drink,
 - (ii) has been heat treated by the ultra high temperature method as specified in Schedule 1, paragraph 1, or sterilised as specified in Schedule 1, paragraph 2,
 - (iii) has been produced in, and is imported from, a member State of the European Economic Community,
 - (iv) is accompanied by, and complies with, such certificate as the Minister may from time to time require by notice published in the London Gazette in relation to milk in general or milk of such description as may be specified in the notice,
 - (v) is neither milk which is unfit for human consumption nor milk which has been rendered injurious to human health by addition of any substance as an ingredient, by abstraction of any constituent or by subjection to any other process or treatment,
 - (vi) is imported in a closed container in which it is to be supplied to the ultimate consumer or to a catering establishment, and
 - (vii) is imported through an authorised place of entry, or
- (b) cream imported into England and Wales which—
 - (i) has been heat treated by being heated to a temperature of not less than 80°C and retained at that temperature for not less than 15 seconds,
 - (ii) has been frozen immediately after that heat treatment,
 - (iii) is imported in a frozen state, and
 - (iv) complies in all respects with the provisions of subparagraph (a)(iii) to (vii) of this paragraph.

(2) In determining for the purposes of this regulation whether particular milk is injurious to human health, regard shall be had not only to the probable effect of that particular milk on the health of a person consuming it, but also to the probable cumulative effect of milk of substantially the same composition on the health of a person consuming such milk in ordinary quantities.

Authorised places of entry

5.—(1) The Minister may by notice published in the London Gazette designate a place of entry as an authorised place of entry either—

- (a) generally or
- (b) specially, in relation to a description of milk specified in the notice.

(2) The Minister may also, by authorisation in writing, designate a place of entry as an authorised place of entry for a consignment of milk specified in the authorisation.

Importation procedure

6.—(1) Schedule 2 shall apply for the procedure for importation of milk into England and Wales.

(2) No person shall import any milk into England and Wales except in accordance with the procedure set out in Schedule 2.

(3) If any person imports any milk into England and Wales otherwise than in accordance with the procedure set out in Schedule 2, an authorised officer may cause that milk to be destroyed or disposed of by such means and in such manner as to prevent it from being used for human consumption in the United Kingdom.

Application of Schedule 3

7. Schedule 3 shall apply for the application of provisions made by or under certain enactments, the exclusion of the application of any such provision, the making of provision corresponding to any such provision and the modification of any such provision, in relation to imported milk.

Powers of authorised officers

8.—(1) The powers under these regulations of an authorised officer who is an officer of a port health authority shall be exercisable only in relation to milk which is imported into England and Wales by entry into the port health district of which that authority is the port health authority, or milk which is or has been in that port health district.

(2) The powers under these regulations of an authorised officer who is an officer of a relevant local authority shall be exercisable only in relation to milk which is imported into England and Wales by entry into such part of the area of that relevant local authority as is not within a port health district, or milk which is or has been in that part of that area.

(3) An authorised officer may, on production if so required of his authority, enter and remain on any premises (other than domestic premises) upon which he reasonably believes imported milk to be situated, at all reasonable hours for any purpose connected with the execution of these regulations.

Offences

9.—(1) Any person who—

- (a) imports milk in contravention of any requirement imposed by or under these regulations,
- (b) where milk is required by or under these regulations to be dealt with by him, does not deal with that milk in accordance with that requirement, or
- (c) in connection with the importation of milk, makes a statement or uses a document which he knows to be false in a material particular or recklessly makes a statement or uses a document which is false in a material particular—

shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

(2) In any proceedings for an offence under these regulations where that offence comprises the importation of milk which is unfit for human consumption, it shall be a defence for the defendant to prove that at the time when he imported the milk he did not know, and could not with reasonable diligence have ascertained, that it was unfit for human consumption.

(3) A prosecution may be brought under this regulation notwithstanding that action may have been or may remain to be taken, in relation to the milk to which the prosecution relates, under regulation 6(3) or Schedule 2.

In Witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 21st October 1983.



Michael Jopling,
Minister of Agriculture, Fisheries
and Food.

Nicholas Edwards,
Secretary of State for Wales.

24th October 1983.

Regulation 4(1)(a)(ii)

SCHEDULE 1

1.—(1) Milk which is standardised whole milk, semi-skimmed milk or skimmed milk is heat treated by the ultra high temperature method by being heated to a temperature of not less than 132.2°C, retained at that temperature for not less than 1 second and packaged aseptically.

(2) Milk which is cream or milk-based drink is heat treated by the ultra high temperature method by being heated—

(a) to a temperature of not less than 140°C and retained at that temperature for not less than 2 seconds, or

(b) to such other temperature for such other period as has equivalent effect to paragraph (a) of this subparagraph in relation to the rendering of the milk free from viable micro-organisms and their spores—

and packaged aseptically.

2. Milk is sterilised by being heated in a hermetically sealed container in which it is to be supplied to the ultimate consumer or to a catering establishment—

(a) to a temperature of not less than 108°C and retained at that temperature for not less than 45 minutes, or

- (b) to such other temperature for such other period as has equivalent effect to subparagraph (a) of this paragraph in relation to the rendering of the milk free from viable micro-organisms and their spores—

and cooled as soon as practicable thereafter.

SCHEDULE 2

Regulation 6

1. Save as specified in this Schedule—

- (a) an importer shall ensure that, as soon as possible after importation and such examination as may be carried out by an officer of Customs and Excise, imported milk is taken to a designated place;
- (b) no person (other than an authorised officer or a person authorised in writing by an authorised officer) shall remove imported milk from a designated place.

2.—(1) Within a reasonable time after the arrival of a consignment of imported milk at a designated place an authorised officer shall carry out a primary examination (that is to say such examination of the consignment of imported milk as may be carried out without opening any closed container in which it is to be supplied to the ultimate consumer or to a catering establishment, and an examination of any document accompanying that consignment).

(2) If upon that primary examination the authorised officer decides that any of the consignment of imported milk has been imported in breach of these regulations or that human health would be protected if that consignment were not unconditionally authorised to be removed, he shall give notice to the importer in writing that the consignment must not be removed from the designated place for any purpose other than its exportation.

(3) If upon that primary examination the authorised officer does not come to a decision described in subparagraph (2) of this paragraph, he may either—

- (a) unconditionally authorise the importer in writing to remove the consignment, or
- (b) arrange the carrying out of further examination of the consignment in accordance with paragraph 3 of this Schedule.

3.—(1) For the purpose of further examination under this paragraph an authorised officer may, to such extent as is reasonable and within such time as is reasonable—

- (a) remove any imported milk from a designated place,
- (b) open any container of imported milk,
- (c) take samples of imported milk,
- (d) test samples of imported milk,
- (e) analyse samples of imported milk, and
- (f) arrange, by agreement with any other person, for samples of imported milk to be tested and analysed by that other person.

(2) If upon that further examination the authorised officer decides that any of the consignment of imported milk has been imported in breach of these regulations, or that human health would be protected if that consignment were not unconditionally authorised to be removed, he shall give notice to the importer in writing that the consignment must not be removed from the designated place for any purpose other than its exportation.

(3) If upon that further examination the authorised officer does not come to a decision described in subparagraph (2) of this paragraph, he shall unconditionally authorise the importer in writing to remove the consignment.

(4) An authorised officer may unconditionally authorise an importer in writing to remove a consignment notwithstanding that further examination of that consignment has not been completed.

(5) Where further examination of a consignment is being carried out, an authorised officer shall authorise the importer to remove from the designated place such milk as the importer may reasonably require for the purpose of sampling with a view to possible proceedings under these regulations in a magistrates' court.

4. Where notice is given to an importer under paragraph 2(2) or 3(2) of this Schedule that a consignment of imported milk must not be removed from a designated place for any purpose other than its exportation—

- (a) that notice shall include a statement of the reasons for the giving of the notice;
- (b) that notice shall include a statement that, unless within a time specified in the notice (being not earlier than the end of the next working day after the notice is received) the importer gives to the authorised officer a written undertaking to export the consignment at his own expense within 14 days from the date of the undertaking or a written undertaking to try to prove to a magistrates' court that the decision of the authorised officer (under paragraph 2(2) or 3(2) of this Schedule as the case may be) was incorrect, the consignment may be destroyed or disposed of so that it cannot be used for human consumption in the United Kingdom;
- (c) if within the time specified in that notice the authorised officer has not received any such written undertaking as is described in the notice, or if within that time he has received a written undertaking that the importer will export the consignment at his own expense within 14 days from the date of the undertaking and the importer fails to export it within that period of 14 days, the authorised officer may cause the consignment to be destroyed or disposed of by such means and in such manner as to prevent it from being used for human consumption in the United Kingdom;
- (d) if within the time specified in that notice the authorised officer has received a written undertaking that the importer will try to prove to a magistrates' court that the decision specified in subparagraph (b) of this paragraph was incorrect, the authorised officer shall—
 - (i) apply, by way of complaint to a justice of the peace made no later than the end of the next working day after receipt of the undertaking, for an order of a magistrates' court under paragraph 5 of this Schedule,
 - (ii) authorise the importer to remove from the designated place such milk as the importer may reasonably require for the purpose of evidence in the magistrates' court, and
 - (iii) make available to the importer such information (in relation to any further examination which has taken place under paragraph 3 of this Schedule) as the importer may reasonably require for the purpose of evidence in the magistrates' court.

5. Where, in pursuance of paragraph 4 of this Schedule, an application is made for an order of a magistrates' court—

- (a) if the magistrates' court is satisfied that the importer has failed to prove that the decision of the authorised officer referred to in paragraph 4(b) of this Schedule was incorrect, the court shall order the consignment to be destroyed or disposed of under the supervision of an authorised officer by such means and in such manner as to prevent it from being used for human consumption in the United Kingdom;

(b) if the magistrates' court is satisfied that the importer has proved that that decision was incorrect, the court shall order that the notice under paragraph 2(2) or 3(2) of this Schedule (as the case may be) shall no longer have effect and unconditionally authorise the importer to remove the consignment from the designated place.

6. An authorised officer may with the agreement of an officer of Customs and Excise carry out any examination, or any part of an examination, of a consignment of imported milk before the examination of the consignment by the officer of Customs and Excise has been completed and if, as a result of such an examination, the authorised officer gives the importer unconditional authorisation in writing to remove the consignment, compliance on the part of the importer with paragraph 1(a) of this Schedule shall not be required.

7. An authorised officer may, to such extent as is reasonable for the purpose of protection of human health, at any stage from the time when a consignment of imported milk reaches him for primary examination under paragraph 2 of this Schedule, do anything specified in paragraph 3(1)(a) to (f) of this Schedule notwithstanding that he is not carrying out a further examination under paragraph 3 of this Schedule and may take such action as is reasonable in respect of the destruction or disposal of any milk which he has removed under this paragraph.

8.—(1) Where unconditional authorisation is given under this Schedule to an importer to remove from a designated place a consignment from which milk has been previously removed under paragraph 3(1), 3(5), 4(d)(ii) or 7 of this Schedule, that authorisation shall relate to the remainder of that consignment.

(2) Where under paragraph 2(3)(b) of this Schedule an authorised officer arranges the carrying out of a further examination of a consignment from which milk has been previously removed under paragraph 7 of this Schedule, that further examination (and anything consequent on that further examination) shall relate to the remainder of that consignment.

9. Where a notice under paragraph 2(2) or 3(2) of this Schedule (or under any equivalent provision of legislation having effect in Scotland or Northern Ireland) is in effect in relation to a consignment, an authorised officer may cause any consignment subsequently landed in England and Wales, and including any milk from that previously mentioned consignment, to be destroyed or disposed of by such means and in such manner as to prevent it from being used for human consumption in the United Kingdom.

SCHEDULE 3

Regulation 7

1. In this Schedule "permitted imported milk" means—

(a) milk imported into England and Wales—

(i) pursuant to the disapplication, by regulation 4, of the importation prohibition contained in regulation 3, and

(ii) in accordance with these regulations, and

(b) milk brought into England and Wales from another part of the United Kingdom where that milk has been imported into that other part of the United Kingdom in accordance with legislation in force in that other part of the United Kingdom.

2.—(1) The provisions listed in subparagraph (2) of this paragraph shall not apply in respect of permitted imported milk.

(2) The provisions listed in this subparagraph are—

(a) sections 35 to 46 of the Food and Drugs Act 1955^(a) (which relate to special designations);

^(a) 1955 c.16; sections 42 and 43 were amended by the London Government Act 1963 (c.33), Schedule 18, Part II, and by the Local Government Act 1972 (c.70), section 272(2).

- (b) the Public Health (Imported Milk) Regulations 1926 (a);
- (c) the Imported Food Regulations 1968 (b);
- (d) regulation 4 of the Milk and Dairies (Heat Treatment of Cream) Regulations 1983 (c) (which relates to heat treatment);
- (e) regulation 7 of the Milk-based Drinks (Hygiene and Heat Treatment) Regulations 1983 (d) (which relates to heat treatment).

3. Regulation 30(2) of the Milk and Dairies (General) Regulations 1959 (e) (which requires the filling and closing of bottles and cartons on registered premises) shall have effect as if, for the words “a bottle or carton in which cream is imported and is intended to be delivered to consumers” on both occasions where they appear, there were substituted the words “permitted imported milk (as defined in paragraph 1 of Schedule 3 to the Importation of Milk Regulations 1983)”.

4.—(1) Subject to subparagraphs (2) and (3) of this paragraph, the 1973 regulations shall apply to imported milk (other than cream or milk-based drink) as if, for the words “semi-skimmed milk or skimmed milk” wherever they appear in—

- (a) the definition of “presentation” in regulation 2(1) (which relates to interpretation),
- (b) regulations 4 and 4A (which relate to labelling and presentation), or
- (c) Schedule 4 (which relates to labelling)—

of the 1973 regulations, there were substituted the word “milk”.

(2) Regulation 3 of the 1973 regulations (which relates to heat treatment) shall not apply to permitted imported milk except in so far as it prohibits the sale of semi-skimmed milk and skimmed milk in the absence of compliance by a milk purveyor with his obligations under paragraph 2 of Schedule 1 to the 1973 regulations (which relates to records).

(3) Paragraph 2(1)(a) of Schedule 4 to the 1973 regulations shall only apply to imported milk which is semi-skimmed milk or skimmed milk.

(a) S.R. & O. 1926/820, amended by S.I. 1982/1727.
(b) S.I. 1968/97, amended by S.I. 1973/1351, 1979/1426, 1982/1727.
(c) S.I. 1983/1509.
(d) S.I. 1983/1508.
(e) S.I. 1959/277; the relevant amending instrument is S.I. 1977/171.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These regulations prohibit (regulation 3) the importation of milk, cream and milk-based drink into England and Wales unless (regulation 4)—

- (a) it comes from an EEC member State,
- (b) it has been heat treated by the ultra high temperature method or sterilised,
- (c) it is fit for human consumption,
- (d) it is accompanied by an authorised certificate, and
- (e) it is imported through an authorised place of entry.

Regulation 4 also allows importation of frozen cream which has been previously subjected to specified heat treatment provided that it complies with conditions (a), (c), (d) and (e) above.

Details of authorised certificates and authorised places of entry must be published by notice in the London Gazette (regulations 4 and 5), and there is provision (regulation 5) for importation of particular consignments, subject to written Ministerial authorisation, through a place of entry not listed in such a notice.

Milk which may be imported is limited (regulations 2 and 4) to skimmed milk (with a fat content of at most 0.3%), semi-skimmed milk (with a fat content of between 1.5% and 1.8% inclusive) and standardised whole milk (with a fat content of at least 3.83%).

Regulation 6 and Schedule 2 deal with the procedure for examination on importation under the supervision of authorised officers (that is to say officers of approved port health or local authorities or officers authorised by the Minister of Agriculture, Fisheries and Food); there is scope for reference of such an officer's decision to a magistrates' court. An authorised officer's powers of entry are set out in regulation 8(3).

Regulation 7 and Schedule 3 adapt existing legislation to imported milk. As a result of this adaptation—

(1) permitted imported standardised whole milk is exempt from the requirement of being sold under a special designation licence (Schedule 3, paragraph 2(2)(a)),

(2) permitted imported skimmed and semi-skimmed milk, cream and milk-based drinks are exempt from domestic heat treatment requirements (Schedule 3, paragraphs 2(2)(d) and (e) and 4(2)),

(3) containers of permitted imported milk and cream do not have to be filled and closed on registered premises (Schedule 3, paragraph 3),

(4) permitted imported milk, cream and milk-based drinks are exempt from inspection requirements which would duplicate provisions of these regulations (Schedule 3, paragraph 2(2)(b) and (c)), and

(5) labelling provisions which apply to domestically produced milk are applied to imported milk (Schedule 3, paragraph 4(1) and (3)).

Offences against these regulations are punishable on summary conviction by a fine not exceeding £1,000 (regulation 9).

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