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STATUTORY INSTRUMENTS

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**1990 No. 2486**

**The Food Safety Act 1990 (Consequential Modifications) (England and Wales) Order 1990**

**PART VI**

**MODIFICATIONS RELATING TO MILK**

**Consequential modifications to the Milk and Dairies (General) Regulations 1959**

**11.**—(1) The Milk and Dairies (General) Regulations 1959<sup>(1)</sup> shall have effect subject to the following amendments.

(2) In regulation 2(1) there shall be inserted at the appropriate place the following definition—  
““cream” means that part of the milk rich in fat which has been separated by skimming or otherwise;”.

(3) After regulation 2(2) there shall be inserted the following paragraph—

“(3) The provisions of these Regulations which apply in relation to cream, other than provisions relating to the registration of dairymen and dairies, shall also apply in relation to reconstituted cream, that is, a substance which, not being cream, resembles cream in appearance and contains no ingredient not derived from milk, except—

(a) water, or

(b) ingredients (not added fraudulently to increase bulk, weight or measure, or conceal inferior quality) which may lawfully be contained in a substance sold for human consumption as cream.”.

(4) In regulation 3 after the word “regulations” where it first appears, there shall be inserted the words “10A,”.

(5) After regulation 3 there shall be inserted the following regulation—

“**3A.** It shall be the duty of the Ministers to enforce these Regulations except as provided in regulation 3 above.”.

(6) In regulation 5, paragraph (2) shall cease to have effect.

(7) In regulation 8(3) for the words “Part I of the Second Schedule to the Food and Drugs Act 1955” there shall be substituted the words “Part III of the Schedule”.

(8) After regulation 10 there shall be inserted the following regulation—

**“Sale of milk from diseased cows**

**10A.**—(1) A person is guilty of an offence who—

(a) sells, or offers or exposes for sale, for human consumption, or

(b) uses in the manufacture of products for sale for human consumption, the milk of any cow which he knows or suspects is affected with tuberculosis of the udder or is giving tuberculous milk, or is affected with tuberculous emaciation, or is excreting or discharging tuberculous material, or is affected with a chronic cough and shows clinical signs of tuberculosis or any other disease of cows to which this regulation applies.

(2) In proceedings under this regulation, the defendant shall be deemed to have known that a cow had given tuberculous milk, or was suffering as mentioned above, if he could with ordinary care have ascertained the fact.

(3) The diseases of cows to which this regulation applies are—

Acute Mastitis

Actinomycosis of the udder

Suppuration of the udder

Any infection of the udder or teats which is likely to convey disease

Any comatose condition

Any septic condition of the uterus

Anthrax

Foot-and-mouth.”.

(9) For paragraph (7) of regulation 20 there shall be substituted the following paragraph—

“(7) Any disputed question as to the right or amount of any compensation payable under these Regulations shall be determined by arbitration.”.

(10) In the Schedule, for the title to Part I there shall be substituted the following title—

“Constitution of Tribunals”.

(11) In the Schedule after paragraph 12 there shall be added the following Part—

### “PART III

#### REGISTRATION OF DAIRYMEN UNDER REGULATION 8

1. If it appears to an authority by whom dairymen are registered in pursuance of Milk and Dairies Regulations, other than the Minister, that the public health is, or is likely to be, endangered by any act or default of a person who has applied to be, or, is so registered by the authority, being an act or default, committed whether within or without the authority’s district, in relation to the quality, storage or distribution of milk, they may serve on him a notice—

(a) stating the place and time, not being less than 21 days after the date of the service of the notice, at which they propose to take the matter into consideration; and

(b) informing him that he may attend before them, with any witnesses whom he desires to call, at the place and time mentioned, to show cause why they should not, for reasons specified in the notice, refuse to register him or cancel his registration, as the case may be, either generally or in respect of any specified premises.

2. A person entitled under paragraph 1 of this Part to appear before any authority—

(a) may appear in person or by counsel or a solicitor or any other representative; or

(b) may be accompanied by any person he may wish to assist him in the proceedings.

3. If a person on whom a notice is served under paragraph 1 of this Part fails to show cause to the authority’s satisfaction, they may refuse to register him or may cancel his registration, as the case may be, and—

- (a) shall forthwith give notice to him of their decision in the matter; and
  - (b) shall, if so required by him within 14 days from the date of their decision, give to him within 48 hours after receiving the requirement, a statement of the grounds of the decision.
4. A person aggrieved by the decision of an authority under this Part to refuse to register him, or to cancel his registration, may appeal to a magistrates' court.
5. The court before whom a person registered as a dairyman otherwise than by the Minister is convicted of an offence under any of the provisions of these Regulations, or under any other Milk and Dairies Regulations, may, in addition to any other punishment, cancel his registration as such.
6. An authority other than the Minister may require a person who applies to them for registration as a dairyman to give to them, before his application is considered, information as to whether he is, or has been, registered as a dairyman, whether by them or the Minister or some other authority, and if an applicant who is so required gives to the authority any information which is false in any material respect, he is guilty of an offence.
7. Where under this Part a person's application for registration is refused, or his registration is cancelled, he shall not be liable for any breach of contract for the purchase of further supplies of milk from any person, if the refusal or cancellation was due to the quality of the milk supplied by that person."

### **Consequential modifications to the Milk and Dairies (Heat Treatment of Cream) Regulations 1983**

12.—(1) The Milk and Dairies (Heat Treatment of Cream) Regulations 1983(2) shall have effect subject to the following amendments.

(2) For the definition of "cream" in regulation 2(1) there shall be substituted the following definition—

““cream” means that part of cows' milk rich in fat which has been separated by skimming or otherwise and includes—

- (a) such cream to which permitted ingredients have been added, and
- (b) reconstituted cream, that is, a substance which, not being cream, resembles cream in appearance and contains no ingredient not derived from milk, except—
  - (i) water, or
  - (ii) ingredients (not added fraudulently to increase bulk, weight or measure or conceal inferior quality) which may lawfully be contained in a substance sold for human consumption as cream.”.

(3) In regulation 7(2) the words “(subject to the proviso at the end of section 87(3) of the Act)” shall cease to have effect.

(4) Regulation 7(3) shall cease to have effect.

### **Consequential modifications to the Milk (Special Designation) Regulations 1989**

13.—(1) The Milk (Special Designation) Regulations 1989(3) shall have effect subject to the following amendments.

(2) In regulation 2(1)—

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(2) [S.I. 1983/1509](#) (to which there are amendments not relevant to this Order).  
(3) [S.I. 1989/2383](#).

- (a) there shall be inserted at the appropriate place the following definition—
    - ““catering sale” means a sale of milk, or of things made from milk or of which milk is an ingredient, as, or as part of, a meal or refreshments; and “caterer” means a person who carries on a business which consists of or comprises making such sales;”;
  - (b) in the definition of “licence held by a retailer for a specified area” for the words “Part II of the Act” there shall be substituted the words “regulation 2B”; and
  - (c) the definition of “specified area” shall cease to have effect.
- (3) After regulation 2 there shall be inserted the following Part—

## “PART IA

### GENERAL PROVISIONS AS TO SPECIAL DESIGNATIONS

#### **Restrictions on the use of special designations**

**2A.**—(1) Subject to paragraph (2) below, no person shall, for the purpose of the sale or advertisement of any milk, use a special designation in any manner calculated to suggest that it refers to that milk, unless he holds a licence authorising the use of that designation in connection with that milk.

(2) For the purpose of a sale or advertisement of milk as, or as part of, a meal or refreshments, a special designation may be used by a person who does not hold a licence authorising the use of that designation in connection with the milk if—

- (a) the milk is milk bought by him; and
- (b) that designation was used for the purpose of the sale of milk to him.

(3) No person shall, for the purpose of the sale or advertisement of any milk, refer to that milk by any such description, not being a special designation, as is calculated falsely to suggest—

- (a) that there is in force a licence authorising the use of a special designation in connection with that milk; or
- (b) that the milk is tested, approved or graded by any competent person; or
- (c) that the cows from which the milk is derived are free from the infection of tuberculosis or of any other disease.

(4) In any proceedings taken under paragraph (3) above it rests on the person charged to prove the truth of any suggestion which in the court’s opinion, his acts or conduct, as proved by the prosecution, are or is calculated to convey.

(5) Where there has been a breach of a condition subject to which a licence authorising the use of a special designation is granted, but the licence has not been revoked or suspended, the breach shall not be treated as rendering the use of the designation unauthorised for any of the purposes of these Regulations.

#### **Restrictions on the sale of milk**

**2B.**—(1) Subject to paragraph (2) below, no person shall sell milk either to a caterer or by retail for human consumption unless he uses a special designation in accordance with these Regulations.

(2) Paragraph (1) above shall not apply to—

- (a) a sale by a producer of milk from cows to persons—

- (i) employed by him in or in connection with such production, or
- (ii) employed by him otherwise in agriculture, if he does not engage in any other selling of milk;
- (b) a sale by a caterer if either—
  - (i) he holds a licence authorising him to use a special designation, or
  - (ii) he bought the milk under a sale for the purpose of which a special designation was used;
- (c) a sale to a caterer if the caterer holds a licence authorising him to use the special designation appropriate to that milk;
- (d) a sale to a caterer who buys the milk with a view to subjecting it to a process to which milk is required to be subjected as a condition of the use of a special designation in connection with it, and he is the holder of a licence authorising him to use that designation;
- (e) a sale to a caterer who buys the milk for the purposes of a business of his as a milk dealer or a manufacturer of milk products other than his business as a caterer;
- (f) sale to a caterer where the seller has reasonable cause to believe that the buyer was either not a caterer, or that, if he knows he is a caterer, the conditions in subparagraphs (d) or (e) above are fulfilled;
- (g) a sale made with the consent of the Ministers;
- (h) a sale by a caterer of milk sold to the caterer under a consent given by the Ministers.
- (3) The Ministers may give such consent for the purposes of paragraph (2) above—
  - (a) either generally as respects selling milk in a defined area or restricted to a particular retailer or establishment or otherwise, and
  - (b) either unconditionally or subject to conditions,

as may appear to them to be requisite to meet any circumstance in which the use of a special designation appears to them to be for the time being not reasonably practicable.

### **Breach of retailer's licence**

**2C.—(1)** In the event of a breach of any condition to which this regulation applies of a licence held by a retailer, the holder of the licence shall be guilty of an offence subject to the following provisions.

(2) A person shall not be guilty of an offence under this regulation if the act or omission concerned renders him liable to punishment imposed by or under any enactment other than this regulation.

(3) A person shall not be guilty of an offence under this regulation unless the breach of condition was the later, or a later, of two or more such breaches, occurring within a period of 12 months, of conditions either of that licence or of that licence and a former licence by way of renewal of which that licence was granted, and was committed either—

- (a) after the licensing authority had given him notice in writing as to an earlier of those two or more breaches informing him of his being alleged to have committed it, and warning him of the liability to prosecution imposed by this regulation; or
- (b) after he had been convicted of an offence under this regulation because of an earlier of those two or more breaches.

(4) In any prosecution under this regulation, it is a defence for the holder of the licence to prove (either as to the breach for which he is being prosecuted or as to the earlier breach

relied on for the purposes of paragraph (3) above, unless it is one under which he has been convicted of such an offence)—

- (a) that neither he nor any servant or agent of his—
    - (i) did or knew of the doing of, any act that constituted the breach or can reasonably be regarded as having been the cause or among the causes of it, or
    - (ii) omitted to do, or knew of the omission to do, any act the omission of which constituted the breach, or the doing of which can reasonably be regarded as a precaution that would have prevented it; and
  - (b) if the breach was in connection with milk that had been sold to him, or had been delivered to him after being subjected to a process to which it was required to be subjected as a condition of the use of the special designation to which his licence related, that that designation—
    - (i) was used for the purpose of the sale to him or in connection with the delivery to him, as the case may be, and
    - (ii) was so used without any breach, discoverable by the exercise of reasonable diligence on the part of himself or any servant or agent of his, of any condition, relating to receptacles, to closing, to fastening or to marking, of a licence to use that designation held by the person who sold the milk to him or subjected it to the process, as the case may be.
- (5) This regulation applies to the following conditions:
- (a) the examination or testing of animals, the inoculation of animals, the keeping of any animal or herd away from other animals, or other measure for detecting the existence of disease in animals or preventing the contracting or spread of it;
  - (b) the marking, or keeping of records, of any animals, or other measures for their identification;
  - (c) the subjection of milk to any process of heat-treatment, or to any cooling or other process, requirements in connection with the subjection of milk to such a process or as to the temperature or other conditions under which it is to be kept afterwards, or the recording or retention of evidence of the observance of such requirements;
  - (d) satisfaction of a test of milk, being a test related to the subjection of milk to such a process as is mentioned above or to the observance of any such requirements as are mentioned above;
  - (e) measures for securing that milk produced, or subjected to a process, as required by any condition is kept away from, and free from admixture with, other milk not so produced or subjected or other things, or is not subjected to some specified process;
  - (f) the manner in which milk produced, or subjected to any process, in accordance with any conditions is to be dealt with or kept as respects the receptacles in which it is to be put or to remain, the closing or fastening of receptacles, or the marking of receptacles, or of things by which they are closed or fastened;
  - (g) the manner of describing milk produced, or subjected to any process, in accordance with any conditions;
  - (h) the making or keeping of records of milk produced, bought, subjected to any process, or sold.

### **Adulteration**

**2D.—**(1) A person is guilty of an offence—

- (a) who adds any water or colouring matter, or any dried or condensed milk or liquid reconstituted from it, to milk intended for sale for human consumption; or
  - (b) who sells, or offers or exposes for sale, or has in his possession for the purpose of sale, for human consumption, any milk to which any addition has been made in contravention of sub-paragraph (a) above.
- (2) For the purposes of paragraph (1)(b) above, a person shall be deemed to retain the possession of milk which is deposited in any place for collection until it is actually collected.
- (3) The treatment of milk by the application of steam shall not be treated for the purposes of this regulation as the making of an addition of water to that milk if it is done in accordance with Schedule 4.”
- (4) In regulations 2(1), 9(1) and (2), 10(1), (4) and (6), 16(1) and (2), and 17(1), (2)(f), (3) and (5)(c) the words “for a specified area” shall cease to have effect, and in regulation 21(1) the words “for specified areas” shall cease to have effect.
- (5) In regulation 9(1), 10(1), 16(1), 17(1) and 21(1) for the words “section 45 of the Act” there shall be substituted the words “regulation 2C”, and in regulations 9(1) and 16(1) for the words “section 45” there shall be substituted the words “regulation 2C”.
- (6) In regulation 9(1)(b) and 16(1)(b), for the words “that section” there shall be substituted the words “that regulation”.
- (7) In regulations 9(1)(b) and 16(1)(b) for the words “section 39, 40 or 41 of the Act” there shall be substituted the words “regulation 2A or 2B”.
- (8) Paragraph (3) of regulation 12, paragraph (3) of regulation 14 and paragraph (2) of regulation 21 shall each cease to have effect.
- (9) In regulation 21 after paragraph (1) there shall be inserted the following paragraphs—
- “(1A) The provisions of regulations 2A (except in so far as it applies to anything done in relation to raw milk by the producer of the milk), 2B and 2D shall be enforced—
  - (a) in any metropolitan district or London borough by the council of that district or borough;
  - (b) in any non-metropolitan county, by the council of that county;
  - (c) in the City of London (including the Temples) by the Common Council.
  - (1B) The provisions of Regulations 2A (except as enforced under paragraph (1A) above) and 2C (except as enforced under paragraph (1) above) shall be enforced by the Ministers.”.
- (10) After regulation 21 there shall be inserted the following Regulations—

#### **“Penalties**

**21A.** A person guilty of an offence under these Regulations is liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; and
- (b) on conviction on indictment to a fine or imprisonment for a term not exceeding two years or to both.

#### **Time limits for prosecutions**

**21B.** No prosecution for an offence under these Regulations shall be begun after the expiry of—

- (a) three years from the commission of the offence; or
- (b) one year from its discovery by the prosecutor, whichever is the earlier.

### **Application of provisions of the Food Safety Act 1990**

**21C.** The following provisions of the Act shall apply for the purposes of these Regulations as they apply for the purposes of section 8, 14 or 15 of the Act and unless the context otherwise requires any reference in them to the Act shall be construed as a reference to these Regulations—

- section 2 (extended definition of “sale” etc.);
- section 3 (presumptions that food intended for human consumption);
- section 20 (offences due to fault of another person);
- section 21 (defence of due diligence);
- section 22 (defence of publication in the course of business);
- section 33 (obstruction etc. of officers);
- section 36 (offences by bodies corporate); and
- section 44 (protection of officers acting in good faith).”.

### **Consequential modifications to the Milk and Milk Products (Protection of Designations) Regulations 1990**

**14.—**(1) The Milk and Milk Products (Protection of Designations) Regulations 1990(4) shall have effect subject to the following amendments.

(2) After regulation 1 there shall be inserted the following regulation—

#### **“Interpretation**

**1A.** In these Regulations—

“the Act” means the Food Safety Act 1990;

“food authority” means—

- (a) in England, for each non-metropolitan county, metropolitan district and London borough, the council of that county, district or borough, and for the City of London and the Inner Temple and the Middle Temple, the Common Council of the City of London;
- (b) in Wales, the county councils.”.

(3) In regulation 2(2) for the words “food and drugs authority” there shall be substituted the words “food authority”.

### **Consequential modifications to the Milk and Dairies and Milk (Special Designation) (Charges) Regulations 1990**

**15.—**(1) The Milk and Dairies and Milk (Special Designation) (Charges) Regulations 1990(5) shall have effect subject to the following amendments.

(2) In regulation 2(1), in the definition of “served” for the words “section 125” there shall be substituted the words “section 50”; and

(3) In regulation 3(3)(c) for the words “section 42 of the Act” there shall be substituted the words “regulation 2B of the Milk (Special Designation) Regulations 1989”.

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(4) [S.I. 1990/607](#).

(5) [S.I. 1990/1584](#).



### **Miscellaneous modifications and revocations of provisions relating to milk**

16.—(1) In the Milk and Dairies (Channel Islands and South Devon Milk) Regulations 1956<sup>(6)</sup> in regulation 2(1), in the definition of “specified description”, the words from “(being in each case” to the end of that definition shall cease to have effect.

(2) In the Drinking Milk Regulations 1976<sup>(7)</sup> regulation 9 shall cease to have effect.

(3) In the Milk-based Drinks (Hygiene and Heat Treatment) Regulations 1983<sup>(8)</sup> paragraph (3) of regulation 10 shall cease to have effect.

(4) In paragraph 3(a) of Schedule 3 to the Importation of Milk Regulations 1988<sup>(9)</sup> for the words “sections 38 to 47 of the Food Act 1984 (which relate to special designations)” there shall be substituted the words “the Milk (Special Designation) Regulations 1989”.

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<sup>(6)</sup> S.I. 1956/919; relevant amending instrument is S.I. 1962/1288.

<sup>(7)</sup> S.I. 1976/1883 (to which there are amendments not relevant to this Order).

<sup>(8)</sup> S.I. 1983/1508 (to which there are amendments not relevant to this Order).

<sup>(9)</sup> S.I. 1988/1803.