

2008 No.1317

FOOD, ENGLAND

The Drinking Milk (England) Regulations 2008

Made - - - - *13th May 2008*

Laid before Parliament *19th May 2008*

Coming into force - - *1st July 2008*

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972(a) and it appears to the Secretary of State that it is expedient for the references to the provisions of Article 114(2) of, and Annex XIII to, Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)(b) to be construed as references to those provisions as amended from time to time.

As required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(c), there has been open and transparent public consultation during the preparation and evaluation of the following Regulations.

In accordance with section 48(4A) of the Food Safety Act 1990(d), the Secretary of State has had regard to relevant advice from the Food Standards Agency.

(a) 1972 c. 68.

(b) OJ No L 299, 16.11.2007, p 1.

(c) OJ No. L 31, 1.2.2002, p 1, as last amended by Commission Regulation (EC) No. 575/2006 amending Regulation (EC) No. 178/2002 of the European Parliament and of the Council as regards the number and names of the permanent Scientific Panels of the European Food Safety Authority (OJ No. L100, 8.4.2006, p 3).

(d) 1990 c.16. Section 48(4A) is inserted by section 40(1) of, and Schedule 5, paragraph 21, to, the Food Standards Act 1999 (c.28) ("the 1999 Act").

The Secretary of State makes the following Regulations in exercise of powers conferred by paragraph 1A of Schedule 2 to the European Communities Act 1972(a) and sections 6(4), 16(1), 17(2), 26(1) and (3) and 48(1) of the Food Safety Act 1990(b) and now vested in the Secretary of State(c).

Title, commencement and application

1.—(1) These Regulations—

- (a) may be cited as the Drinking Milk (England) Regulations 2008;
- (b) come into force on 1st July 2008; and
- (c) apply only in England.

Interpretation

2.—(1) In these Regulations—

“the 1990 Act” means the Food Safety Act 1990;

“the Annex” means Annex XIII to the Council Regulation;

“Article 114(2)” means Article 114(2) of the Council Regulation;

“the Council Regulation” means Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation);

“drinking milk” has the meaning given in point I(b) of the Annex;

“food authority” does not include the appropriate Treasurer referred to in section 5(1) of the 1990 Act;

“milk” has the meaning given in point I(a) of the Annex; and

“sell” includes possess for sale and offer, expose or advertise for sale.

(2) Other expressions used in these Regulations and in the Council Regulation which are not defined in these Regulations have the same meaning in these Regulations as they have in the Council Regulation.

(3) References in these Regulations to Article 114(2) and the Annex are references to Article 114(2) and the Annex as amended from time to time.

Sale or delivery of milk and use of sales description

3. No person may—

- (a) sell or deliver milk; or
- (b) use or omit to use a sales description for any product,

(a) Paragraph 1A was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51).

(b) Section 6(4) is amended by section 31 of, and Schedule 9, paragraph 6, to, the Deregulation and Contracting Out Act 1994 c. 40 and section 40(1) of, and Schedule 5, paragraph 10(1) and (3), to, the 1999 Act; section 16(1) is amended by section 40(1) of, and Schedule 5, paragraphs 7 and 8, to, the 1999 Act; section 17(2) is amended by section 40(1) of, and Schedule 5, paragraphs 7, 8 and 12, to, the 1999 Act; section 48(1) is amended by section (40)(1) of, and Schedule 5, paragraphs 7 and 8, to the 1999 Act.

(c) Functions formerly exercisable by “the Ministers” (being, in relation to England and Wales and acting jointly, the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales and, in relation to Scotland, the Secretary of State) are now exercisable in relation to England by the Secretary of State pursuant to paragraph 8 of Schedule 5 to the 1999 Act. Those functions, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act and thereafter transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 c. 32. Those functions, so far as exercisable in relation to Scotland, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 c. 46. as read with section 40(2) of the 1999 Act.

in contravention of Article 114(2) or point II(1) and (2) of the Annex as read with point III of the Annex.

Importation of products from outside the European Community for sale as drinking milk

4. No person may import into England from outside the Community any product for sale as drinking milk in contravention of point IV of the Annex.

Enforcement

5.—(1) Each food authority must enforce the provisions of these Regulations within its area.

(2) Each food authority must give such assistance and information to any other food authority in Great Britain as that other food authority may reasonably require for the purpose of carrying out its duties under these Regulations or an equivalent provision.

(3) In this regulation, “equivalent provision” means a provision in Regulations made in Scotland or Wales for the purpose of implementing Article 114(2) or the Annex.

Offences and penalties

6. Any person who fails to comply with regulation 3 or 4 is—

- (a) guilty of an offence; and
- (b) liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Application of provisions of the 1990 Act

7.—(1) The provisions of the 1990 Act set out in paragraph (3) apply for the purposes of these Regulations.

(2) For the purposes of these Regulations, any reference in those provisions to the 1990 Act or to a Part of the 1990 Act must be construed as a reference to these Regulations.

(3) The provisions are—

- (a) section 2 (extended meaning of “sale” etc.)(a);
- (b) section 3 (presumptions that food intended for human consumption);
- (c) section 20 (offences due to fault of another person);
- (d) section 21 (defence of due diligence)(b);
- (e) paragraph (8) of section 30 (analysis etc. of samples);
- (f) section 33 (obstruction etc. of officers);
- (g) paragraphs (1) to (3) of section 35 (punishment of offences) in so far as the paragraphs relate to offences under paragraphs (1) and (2) of section 33(c);
- (h) section 36 (offences by bodies corporate); and
- (i) section 44 (protection of officers acting in good faith).

Revocations

8. The Drinking Milk Regulations 1998(d) and the Drinking Milk (Amendment) Regulations 2007(e) are revoked.

(a) Section 2 is amended by section 40(1) of, and Schedule 5, paragraphs 7 and 8, to, the Food Standards Act 1999 (c. 28).
(b) Section 21 is amended by S.I. 2004/3279.
(c) Section 35(3) is amended by S.I. 2004/3279.
(d) S.I. 1998/2424.
(e) S.I. 2007/3428.

Amendments

9.—(1) Regulation 2(1) of the Food Labelling Regulations 1996^(a) is amended in accordance with paragraphs (2) to (4).

(2) After the definition of “confectionery product”, insert—

““Council Regulation 1234/2007” means Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation);”.

(3) In the definition of “raw milk”, for the words “Article 3(1) of Council Regulation (EC) No 2597/97 laying down additional rules on the common organisation of the market in milk and milk products for drinking milk”, substitute “point III(1) of Annex XIII to Council Regulation 1234/2007”.

(4) In the definitions of “semi-skimmed milk”, “skimmed milk” and “whole milk”, for the words “Article 3(1) of Council Regulation (EC) No 2597/97”, substitute ““point III(1) of Annex XIII to Council Regulation 1234/2007”.

13th May 2008

Jeff Rooker
Minister of State
Department for Environment, Food and Rural Affairs

(a) S.I. 1996/1499; amended by S.I. 1998/2424; there are other amending instruments, but none is relevant.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply only in England and come into force on 1st July 2008, make provision for the enforcement of Article 114(2) of, and Annex XIII (“the Annex”) to, Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ No L 299, 16.11.2007, p 1). The Drinking Milk Regulations 1998, S.I. 1998/2424, and the Drinking Milk (Amendment) Regulations 2007, S.I. 2007/3428, are revoked by regulation 8.

The sale or delivery of milk and the use or non-use of a sales description for any product in contravention of the Annex is prohibited. (Regulation 3)

The importation of any product from outside the Community in contravention of point IV of the Annex is prohibited. (Regulation 4)

Regulation 5 makes provision for enforcement and regulation 6 contains provision about offences and penalties.

Certain provisions of the Food Safety Act 1990 are incorporated in the Regulations. (Regulation 7)

Regulation 9 contains amendments to the Food Labelling Regulations 1996, S.I. 1996/1499.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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