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STATUTORY INSTRUMENTS

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**1990 No. 2625**

**The Food Safety Act 1990 (Consequential Modifications) (Scotland) Order 1990**

**PART VI**

**MODIFICATIONS RELATING TO MILK**

**Consequential modifications to the Milk and Dairies (Channel Islands and South Devon Milk) (Scotland) Regulations 1967**

**13.**—(1) In regulation 2(1) of the Milk and Dairies (Channel Islands and South Devon Milk) (Scotland) Regulations 1967(1)—

(a) for the definition of “the Act” there shall be substituted the following definition:—

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

(b) for the definition of “special designation” there shall be substituted the following definition:—

““special designation” has the meaning assigned to it by article 3(1) of the Milk (Special Designations) (Scotland) Order 1988;”.

(2) In regulation 3 of the said Regulations for the words “local authority” there shall be substituted the words “food authority”.

**Consequential modification to the Milk Bottles (Labelling and Cap Colour) (Scotland) Order 1976**

**14.** In article 2(1) of the Milk Bottles (Labelling and Cap Colour) (Scotland) Order 1976(2) for the definition of “special designation” there shall be substituted the following definition:—

““special designation” has the meaning assigned to it by article 3(1) of the Milk (Special Designations) (Scotland) Order 1988;”.

**Consequential modification to the Milk Labelling (Scotland) Regulations 1983**

**15.** In regulation 5(1)(a) of the Milk Labelling (Scotland) Regulations 1983(3) after the words “Secretary of State” there shall be substituted the words:—

“by virtue of Regulations made under section 18(2)(c) of the Food Safety Act 1990;”.

**Consequential modifications to the Milk-based Drinks (Scotland) Regulations 1983**

**16.** The Milk-based Drinks (Scotland) Regulations 1983(4) shall be amended as follows:—

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- (1) S.I. 1967/81, to which there are amendments not relevant to this Order.  
(2) S.I. 1976/875.  
(3) S.I. 1983/938, amended by S.I. 1985/1068.  
(4) S.I. 1983/1514, amended by S.I. 1985/1068, 1986/790 and 1988/1814.

- (a) In regulation 2(1) the definition of “the 1914 Act” shall be deleted;
- (b) In paragraph 3 of Schedule 1 the words after “be left” to the end shall be deleted and there shall be substituted the words:—  
“on a road except upon final delivery to the ultimate consumer.”; and
- (c) for paragraph 2 of Schedule 2 there shall be substituted:—  
“2. Heat treatment shall be carried out only at premises licensed under regulation 3 of the Milk and Dairies (Scotland) Regulations 1990(8).”.

### **Consequential modifications to the Cream (Heat Treatment) (Scotland) Regulations 1983**

17.—(1) The Cream (Heat Treatment) (Scotland) Regulations 1983(5) shall have effect subject to the amendments specified in paragraph (2) of this article.

(2) In regulation 2(1), in the definition of “cream”, after the words “ingredient may have been added” there shall be inserted the words:—

“and includes 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 or butter.”.

### **Consequential modification to the Importation of Milk (Scotland) Regulations 1988**

18. For paragraph 2(a) of Schedule 3 to the Importation of Milk (Scotland) Regulations 1988(6) there shall be substituted:—

“(a) as regards standardised whole milk, the Milk (Special Designations) (Scotland) Order 1988;”.

### **The Milk (Special Designations) (Scotland) Order 1988**

19.—(1) In article 2(1) of the Milk (Special Designations) (Scotland) Order 1988(7) the definition “specified area” shall cease to have effect and for the definition of “the Act of 1949” there shall be substituted ““the Act” means the Food Safety Act 1990”; and for the words “local authority” there shall be substituted the words “food authority”.

(2) In articles 2(1), 11, 12 and 15(2)(a) the words “for a specified area” shall be deleted.

20.—(1) In article 2(1) of the said Order for the definition of “licence held by a retailer for a specified area” there shall be substituted the following definition:—

““licence held by a retailer” means a licence authorising the use of a special designation held by a person carrying on a business which includes any sales which are sales for the purpose of which the use of a special designation is obligatory by virtue of article 2B and are of milk in relation to which that licence authorises the use of a special designation;”.

(2) For the definition of “selling milk by retail” there shall be substituted the following definition:—

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(8) S.I. 1990/2507.  
(5) S.I. 1983/1515, to which there are amendments not relevant to this Order.  
(6) 1988/1814.  
(7) S.I. 1988/2191.

““selling milk by retail” means selling it–

- (a) to any person other than a milk dealer (that is a person who carries on a business which consists in or comprises the selling of milk) or a manufacturer of milk products (that is a person who carries on a business which consists in or comprises the making of things made from milk or of which milk is an ingredient); or
- (b) to such a dealer or manufacturer otherwise than for the purposes of his business as such;”.

**21.** In article 2(1) of the said Order after the definition of “bulk milk” there shall be inserted 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;”.

**22.** After Part I of the said Order 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 likely 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 cows from which the milk is derived are free from the infection of tuberculosis or of any other disease; or
- (c) that the milk is tested, approved or graded by any competent person.

(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 opinion of the court, 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 this Order.

### **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 this Order.

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

- (a) 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;
- (b) a sale to a caterer if the caterer holds a licence authorising him to use the special designation appropriate to that milk;
- (c) 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;
- (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) a non-retail sale where the seller has reasonable cause to believe that the buyer was either not a caterer, or that, if he knows the buyer is a caterer, the conditions in sub-paragraphs (d) or (e) above are fulfilled;
- (g) a sale made with the consent of the Secretary of State;
- (h) a sale by a caterer of milk sold to the caterer under a consent given by the Secretary of State.

(3) The Secretary of State 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 him to be requisite to meet any circumstances in which the use of a special designation appears to him 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 article 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 article if the act or omission concerned renders him liable to punishment imposed by or under any enactment other than this article.

(3) A person shall not be guilty of an offence under this article 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 food 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 article; or
- (b) after he had been convicted of an offence under this article because of an earlier of those two or more breaches.

(4) In any prosecution under this article, it shall be 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 could 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 article 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 measures 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—

- (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,

is guilty of an offence.

(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 article as the making of an addition of water to that milk if it is done in accordance with Schedules 2 to 4 and 9.

### **Imported Milk**

**2E.** Nothing in this Part shall apply to imported milk.”.

**23.** In article 12(1) and (3) of the said Order for the words “section 8 of the Act of 1949” there shall be substituted the words “article 2C”, in article 12(1)(a) for the words “that section” there shall be substituted the words “that article”, and in article 12(1)(b) for the words “the Milk and Dairies (Scotland) Acts 1914 to 1949 (other than an offence under the said section 8) or of an offence under any order or byelaw made under any of the said Acts” there shall be substituted the words “articles 2A or 2B (or an offence under any order or regulations having effect as if made under the provisions of the Act by virtue of Schedule 4 to the Act (other than offences under article 2C))”.

**24.** After article 19 of the said Order there shall be inserted the following articles:—

#### **“Penalties**

**19A.** A person guilty of an offence under this Order 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**

**19B.** No prosecution for an offence under this Order 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**

**19C.** The following provisions of the Act shall apply for the purposes of this Order 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 this Order:—

- section 2 (extended meaning 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).”.

**25.** In paragraph 8 of Schedule 7 to the said Order for the words “section 8 of the Milk (Special Designations) Act 1949” there shall be inserted “article 2C of this Order”.