

1983 No. 938 (S. 74)

FOOD

The Milk Labelling (Scotland) Regulations 1983

<i>Made</i> - - - -	29th June 1983
<i>Laid before Parliament</i>	4th July 1983
<i>Coming into Operation</i>	1st August 1983

In exercise of the powers conferred on me by section 2(2) of the European Communities Act 1972(a), and section 56A(2) of the Food and Drugs (Scotland) Act 1956(b), being a Minister designated (c) for the purpose of the said section 2(2) in relation to the common agricultural policy of the European Economic Community, and of all other powers enabling me in that behalf, I hereby make the following regulations:—

PART I

PRELIMINARY

Citation, commencement and extent

1.—(1) These regulations may be cited as the Milk Labelling (Scotland) Regulations 1983 and shall come into operation on 1st August 1983.

(2) These regulation shall extend to Scotland only.

Interpretation

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

“advertisement” includes any notice, circular, label, wrapper, invoice or other document, and any public announcement made orally or by any means of producing or transmitting light or sound, and “advertise” shall be construed accordingly;

“bulk container” means a container of milk which has a capacity of more than 5 litres and is not intended for sale to the ultimate consumer;

“catering establishment” means a restaurant, canteen, club, public house,

(a) 1972 c. 68.

(b) 1956 c. 30; section 56A was inserted by the European Communities Act 1972 (c. 68), section 4 and Schedule 4, paragraph 3(2)(b).

(c) S.I. 1982/1675.

school, hospital or other establishment (including a vehicle or a fixed or mobile stall) where, in the course of a business, food is prepared for delivery to the ultimate consumer for immediate consumption;

“labelling”, includes any words, particulars, trade mark, brand name, pictorial matter or symbol relating to the milk and appearing on the packaging of the milk or on any document, notice, label, ring or collar accompanying the milk;

“milk” includes whole milk and separated milk produced from cows or other animals and intended for human consumption, but does not include cream, dried milk, condensed or evaporated milk, or buttermilk;

“pre-packed for direct sale”, means milk put into containers by a milk producer for sale to the ultimate consumer on the premises where the milk is produced or from a vehicle used by him;

“presentation”, includes the appearance or packaging of the milk, the way in which the milk is arranged when it is exposed for sale and the setting in which the milk is displayed with a view to sale, but does not include any form of labelling or advertising;

“sell” includes offer or expose for sale and have in possession for sale, and “sale” and “sold” shall be construed accordingly;

“standardised whole milk”, “non-standardised whole milk”, “semi-skimmed milk”, and “skimmed milk”, have the meanings respectively assigned to them by the Drinking Milk (Scotland) Regulations 1976(a);

“statutory maximum” in relation to a fine on summary conviction, means the prescribed sum within the meaning of section 74(2) of the Criminal Justice Act 1982(b), (at the making of these regulations £1,000);

“ultimate consumer” means any person who buys otherwise than—

- (a) for the purpose of re-sale;
- (b) for the purpose of a catering establishment, or
- (c) for the purposes of a manufacturing business.

(2) For the purposes of these regulation, the supply of milk, otherwise than by sale, at, in or from any place where milk is supplied in the course of a business shall be deemed to be a sale of that milk, and references to purchasers shall be construed accordingly.

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

Exemptions

- 3.—(1) These regulations shall not apply in respect of any milk which is—
- (a) not intended for human consumption;
 - (b) intended for export to any place outwith the United Kingdom;

(a) S.I. 1976/1888.

(b) 1982 c. 48.

- (c) supplied under Government contract for consumption by Her Majesty's forces or supplied for consumption by a visiting force within the meaning of any of the provisions of Part I of the Visiting Forces Act 1952(a).
- (2) The container of any milk which is prepacked for direct sale need not be marked or labelled with the particulars specified in regulation 4(b) and (e).
- (3) Bottles intended for re-use need not be marked or labelled with the particulars specified in regulation 4(b).

PART II

LABELLING REQUIREMENTS

Labelling of milk containers

4. Subject to regulations 3 and 9, every container of milk in which milk is sold to the ultimate consumer, or to a catering establishment, shall be marked or labelled with—

- (a) the name of the milk in accordance with regulation 5;
- (b) an indication of minimum durability in accordance with regulation 6;
- (c) the net quantity, in accordance with the requirements of the Weights and Measures Acts 1963 to 1979(b) or any statutory instrument made thereunder;
- (d) the name or business name of the packer and address of the premises where the milk was put into the container, or, in the case of milk imported into the United Kingdom the name or business name and address or a seller established within the European Economic Community; and
- (e) particulars of the place of origin or provenance of the milk if failure to give such particulars might mislead a purchaser to a material degree as to the true origin or provenance of the milk.

Name of the milk

5.—(1) In the case of cows' milk, the name of the milk shall be—

- (a) in relation to non-standardised whole milk, the special designation 'Pasteurised Milk', 'Ultra Heat Treated Milk' (or 'UHT Milk'), or 'Sterilised Milk' as appropriate in accordance with Schedule 3 to the Milk (Special Designations) (Scotland) Order 1980(c), or in relation to undesignated milk sold by specific consent of the Secretary of State under section 3 of the Milk (Special Designations) Act 1949(d), the name required by the conditions of consent;
- (b) in relation to imported standardised whole milk, without prejudice to the requirements of regulation 6 of the Drinking Milk (Scotland)

(a) 1952 c. 67.

(b) 1963 c. 31, 1976 c. 77, 1979 c.45.

(c) S.I. 1980/1866.

(d) 1949 c. 34.

Regulations 1976, the name 'Pasteurised standardised whole milk', 'Ultra Heat Treated standardised whole milk' (or 'UHT standardised whole milk'), or 'Sterilised standardised whole milk' as appropriate;

- (c) in relation to skimmed or semi-skimmed milk, the name 'Pasteurised Semi-skimmed Milk', 'Ultra Heat Treated Semi-skimmed Milk' (or 'UHT Semi-skimmed Milk'), 'Sterilised Semi-skimmed Milk', 'Pasteurised Skimmed Milk', 'Ultra Heat Treated Skimmed Milk' (or 'UHT Skimmed Milk'), or 'Sterilised Skimmed Milk' as appropriate in accordance with Schedule 5 of the Milk and Dairies (Semi-skimmed and Skimmed Milk) (Heat Treatment and Labelling) (Scotland) Regulations 1974(a);

(2) In the case of milk other than cows' milk—

- (a) the name of the milk shall be the name of the species of animal which produced the milk immediately followed by the word "Milk"; and
- (b) the name of the milk shall be immediately preceded by an indication of any separation, heat treatment or other process to which the milk may have been subjected.

(3) A trade mark, brand name or fancy name shall not be substituted for the name specified in regulation 5(1) and (2) above.

Indication of minimum durability

6.—(1) Subject to the following paragraphs of this regulation, the minimum durability of milk shall be indicated by—

- (a) the words "best before" followed by the date up to and including which the milk can reasonably be expected to retain its specific properties if properly stored, and
- (b) any storage conditions which need to be observed if the milk is to retain its specific properties until that date.

(2) The date in the indication of minimum durability shall be expressed in terms of a day, month and year, in that order, except that—

- (a) in the case of milk which can reasonably be expected to retain its specific properties for three months or less, it may be expressed in terms of a day and month only, and
- (b) in the case of milk which can reasonably be expected to retain its specific properties for more than three months, it may be expressed in terms of a month and year only, if the words "best before" are replaced by the words "best before end".

(3) The date up to and including which milk can reasonably be expected to retain its specific properties if properly stored may appear on the labelling of the milk separately from the words "best before" or "best before end", as the case may be, provided that those words are followed by a reference to the place where the date appears.

(a) S.I. 1974/1356.

(4) In the case of milk which is intended for consumption within six weeks of being packed, the minimum durability of the milk may be indicated by—

(a) the words “sell by”—

(i) followed (subject to paragraph (5) of this regulation) by the latest recommended date of sale of the milk, expressed in terms of a day and month, and

(ii) immediately preceded or immediately followed by an indication of the period from the date of purchase for which the milk can reasonably be expected to retain its specific properties if properly stored, and

(b) any storage conditions which need to be observed if the milk is to retain its specific properties for the period referred to in paragraph (a)(ii) of this paragraph.

(5) Where the minimum durability of milk is indicated in the manner permitted by paragraph (4) of this regulation, the latest recommended date of sale may appear on the labelling of the milk separately from the words “sell by”, provided that those words are followed by a reference to the place where the date appears.

Field of vision

7.—(1) Where a container of milk is required to be marked or labelled with an indication of minimum durability, that indication shall appear in the same field of vision as the name of the milk specified in regulation 5.

(2) Where a container of milk is required to be marked or labelled with an indication of net quantity, that indication shall appear in the same field of vision as the name of the milk specified in regulation 5 and, if the container is also required to be marked or labelled with an indication of minimum durability, in the same field of vision as the indication of minimum durability.

Manner of marking or labelling

8.—(1) The particulars with which containers of milk are required to be marked or labelled in accordance with these regulations shall be easy to understand, clearly legible and indelible, and shall be marked in a conspicuous place in such a way as to be easily visible.

(2) The said particulars shall not in any way be hidden, obscured or interrupted by any other written or pictorial matter.

Catering and vending machine sales

9.—(1) When milk is sold in bulk containers to a catering establishment, the particulars with which it is required to be marked or labelled in accordance with these regulations shall appear—

(a) on each bulk container; or

(b) on labels attached to each bulk container; or

(c) in relevant trade documents furnished on or before delivery of the milk.

(2) Where milk is sold at a catering establishment for immediate consumption there as drinking milk, the containers in which it is sold to the ultimate consumer need not be marked or labelled with the particulars required by these regulations, provided that the following particulars shall appear on a notice displayed in a prominent position near the point of sale—

- (a) the name of the milk specified in regulation 5;
- (b) any declaration required by regulation 10(1); and
- (c) any energy statement required by regulation 11(2).

(3) Without prejudice to any other labelling requirements in these regulations or in other legislation, where milk is sold from a vending machine (or other dispensing machine) the front of the machine shall bear the name of the milk contained therein, unless the milk is pre-packaged and marked or labelled in such manner that the name appears easily visible and clearly legible to an intending purchaser through the front of the machine.

Special emphasis

10.—(1) Where milk is characterised by the high or low content of a particular compositional element, the labelling of the container or any notice required by regulation 9(2) shall not place special emphasis on that particular quality unless it includes a declaration of the minimum or maximum percentage, as the case may be, (by weight) of that particular element in the milk.

(2) Any declaration required by this regulation shall appear next to the name of the milk specified in regulation 5.

PART III

CLAIMS

Misleading or special claims

11.—(1) The marking, labelling, presentation, and advertising of milk must not be such as could mislead the purchaser to a material degree, particularly (but without prejudice to the foregoing generality)—

- (a) as to the characteristics of the milk, including its nature, identity, properties, composition, quantity, durability, origin, method of manufacture or production;
- (b) by attributing to the milk effects or properties which it does not possess; or
- (c) by suggesting that the milk possesses any special characteristic when in fact all milk bearing the relevant name possesses such characteristic.

(2) A claim that milk is suitable for fulfilling the particular nutritional requirements of any class or classes of persons shall not be made, either expressly or by implication, in the marking, labelling, presentation or advertising of milk, unless—

- (a) the milk is capable of fulfilling that claim; and

- (b) subject to regulation 9(2), the container is marked or labelled with an energy statement in accordance with the Schedule to these regulations.

PART IV

ADMINISTRATION AND LEGAL PROCEEDINGS

Offences and Penalties

12.—(1) If any person—

- (a) sells any milk which is not marked or labelled in accordance with Part II of these regulations; or
- (b) sells any milk whose marking, labelling or presentation for sale contravenes Part III of these regulations; or
- (c) advertises for sale any milk in contravention of Part III of these regulations;

he shall be guilty of an offence against these regulations.

(2) Any person who is guilty of an offence against these regulations shall be liable—

- (a) on a summary conviction to—
 - a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months, or both; or
- (b) on conviction on indictment to—
 - a fine or to imprisonment for a term not exceeding one year, or both.

Enforcement

13. Each district and islands council shall enforce and execute the provisions of these regulations within their area.

Defences

14. In any proceedings for an offence against these regulations of selling any milk which is not marked or labelled in accordance with Part II of these regulations, or of marking, labelling, presenting for sale or advertising milk in contravention of Part III of these regulations, it shall be a defence for the accused to prove that before offering or advertising the milk for sale he had taken all reasonable steps to ensure compliance with these regulations.

Application of various sections of the Food and Drugs (Scotland) Act 1956

15. Sections 41(2) and (5) (proceedings), 42(1), (2) and (3) (evidence of certificates of analysis), 44 (power of a court to require analysis by the Government Chemist), and 47 (offences in relation to certificates of analysis) of the Food and Drugs (Scotland) Act 1956 shall apply for the purposes of these regulations as if references therein to proceedings, or a prosecution, under or

taken under that Act included references to proceedings, or a prosecution, as the case may be, taken for an offence against these regulations and in addition as if—

- (a) in the case of section 44(1) of the Act, the reference therein to section 41(5) of the Act included reference to section 41(5) as applied by these regulations; and
- (b) in the case of section 47(1) and (2) of the Act, the references therein to an offence against the Act included references to an offence against these regulations.

George Younger,
One of Her Majesty's Principal
Secretaries of State.

New St Andrew's House,
Edinburgh.
29th June 1983.

Regulation 11

SCHEDULE

CLAIMS RELATING TO PARTICULAR NUTRITIONAL USES:
PRESCRIBED ENERGY STATEMENT*Definition*

1. In regulation 11, “energy statement” means a statement which shall include—

- (a) the energy value, expressed in kilojoules and kilocalories, of each hundred millilitres of the milk, and
- (b) the amount of carbohydrate, protein and fat contained in each hundred millilitres of the milk.

Energy Conversion Factors

2. In the calculation of the energy value of milk for the purpose of an energy statement the following conversion factors shall be employed:—

- (a) 1 gramme of available carbohydrate (expressed as monosaccharides) shall be deemed to contribute 16 kilojoules (3.75 kilocalories);
- (b) 1 gramme of protein shall be deemed to contribute 17 kilojoules (4 kilocalories); and
- (c) 1 gramme of fat shall be deemed to contribute 37 kilojoules (9 kilocalories).

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations, which come into operation on 1st August 1983, implement, in relation to milk, Council Directive No. 79/112/EEC (O.J. No. L33, 8.2.79, p. 1) on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer. They also implement, in relation to milk, Council Directive No. 77/94/EEC (O.J. No. L26, 31.1.77, p. 55) on the approximation of the laws of the Member States relating to foodstuffs for particular nutritional uses.

These regulations consolidate certain existing labelling requirements in the Milk (Special Designations) (Scotland) Order 1980, the Milk and Dairies (Semi-skimmed and Skimmed Milk) (Heat Treatment and Labelling) (Scotland) Regulations 1974, and the Drinking Milk (Scotland) Regulations 1976. The regulations prescribe new labelling requirements, including date-marking, (with special provisions for bulk milk supplies to catering establishments, and sales from catering establishments and dispensers), and provide for the manner of marking or labelling these requirements (Part II). They also provide that it is an offence to sell improperly labelled milk, or to sell, present for sale, or advertise milk in a misleading manner (Parts III and IV).

The regulations apply only to milk sold for human consumption in Scotland. Bottles intended for re-use are exempted from some of the labelling requirements, and milk sold direct from the place of production is also exempted in part (regulation 3).

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