

1983 No. 338

MILK

Importation of Milk Regulations (Northern Ireland) 1983

Made 26th October 1983

Coming into operation 16th November 1983

The Department of Agriculture, in exercise of the powers conferred on it by section 1 of the Importation of Milk Act 1983(a) and of every other power enabling it in that behalf, hereby makes the following regulations:—

Citation and commencement

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

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(b) shall apply to these regulations as it applies to a Measure of the Northern Ireland Assembly.

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

“authorised officer” means an officer of any district council approved for the time being for the purposes of these regulations by the Department, or any person authorised by the Department 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 70(1) of the Food and Drugs Act (Northern Ireland) 1958(c)), food is prepared for delivery to the ultimate consumer for immediate consumption;

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

“cream” has the same meaning as it has for the purposes of the Marketing of Milk Products Regulations (Northern Ireland) 1966(d);

“the Department” means the Department of Agriculture for Northern Ireland;

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

“district council” has the meaning given to it in the Local Government Act (Northern Ireland) 1972(e);

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

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

“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” includes cream and milk-based drink;

(a) 1983 c. 37

(b) 1954 c. 33 (N.I.)

(c) 1958 c. 27 (N.I.) as amended by S.R. & O. (N.I.) 1973 No. 211

(d) S.R. & O. (N.I.) 1966 No. 204 as amended by S.R. 1981 No. 233 and S.R. 1983 No. 336

(e) 1972 c. 9 (N.I.)

- “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;
- “raw milk”, “semi-skimmed milk”, “skimmed milk” and “milk-based drink” have the same meanings as they have in the Milk Regulations (Northern Ireland) 1981(a);
- “standardised whole milk” means cows’ milk (not being cream or milk-based drink) having a butterfat content of not less than 3.83%;
- “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.

Prohibition on importation

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

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

Exceptions to prohibition on importation

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

- (a) milk imported into Northern Ireland 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 (if any) as the Department may from time to time require by notice published in the Belfast 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 Northern Ireland 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,
 - (iv) complies in all respects with the provisions of sub-paragraphs (a)(iii) to (vii); or

- (c) raw milk imported into Northern Ireland from the Republic of Ireland where the Department is satisfied that such milk or any semi-skimmed or skimmed milk derived from it will not be used for sale for direct consumption as liquid milk or cream.

(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 Department may by notice published in the Belfast Gazette designate a place of entry as an authorised place of entry either—

(a) generally or

(b) specifically, in relation to a description of milk specified in the notice.

(2) The Department 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.

(3) The Department may in any notice in the Belfast Gazette designating a place of entry as an authorised place of entry require that up to 2 working days' notice be given to the Department of intention to import through that authorised place of entry.

Importation procedure

6.—(1) Schedule 2 shall apply for the procedure for importation of milk into Northern Ireland.

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

(3) If any person imports any milk into Northern Ireland otherwise than in accordance with the procedure set out in Schedule 2 the Department may cause that milk to be destroyed or disposed of by such means and in such manner as to prevent it from being sold for human consumption in Northern Ireland.

(4) The provisions of this regulation shall not apply to raw milk imported into Northern Ireland from the Republic of Ireland in accordance with regulation 4(c).

Milk brought to Northern Ireland from Great Britain

7.—(1) Where milk which is whole milk, semi-skimmed milk, skimmed milk, cream or milk-based drink is brought in retail containers to Northern Ireland from Great Britain, and that milk—

(a) has been produced in Great Britain;

(b) has been subjected to a sterilisation process or to treatment by the ultra high temperature method;

(c) has been packaged and labelled;

(d) if stored, has been stored; and

(e) has been transported while in Great Britain

in accordance with legislation having effect for the time being in Great Britain, such milk may, subject to Schedule 3, be sold in Northern Ireland.

(2) In this regulation “whole milk” has the same meaning as it has in the Milk Regulations (Northern Ireland) 1981.

Application of Schedule 3

8. Schedule 3 shall apply in respect of 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 and milk brought to Northern Ireland from Great Britain.

Powers of authorised officers

9.—(1) The powers under these regulations of an authorised officer who is an officer of a district council shall be exercisable only in relation to milk which is imported into Northern Ireland by entry into the district of which that council is the district council, or milk which is or has been in that district.

(2) 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

10.—(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 remains to be taken in relation to the milk to which the prosecution relates, under regulation 6(3) or Schedule 2.

Sealed with the Official Seal of the Department of Agriculture for Northern Ireland on 26th October 1983.

(L.S.)

S. R. Armstrong

Assistant Secretary

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 sub-paragraph (a) 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 sub-paragraph (a) 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

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 the Department) 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 as a result of that primary examination the Department 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 by the importer, it shall give notice to the importer in writing that the consignment shall not be removed from the designated place for any purpose other than its exportation.

(3) If as a result of that primary examination the Department does not come to a decision described in sub-paragraph (2) it 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 by an authorised officer in accordance with paragraph 3.

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 as a result of that further examination the Department decides that any of the consignment of imported milk has been imported in breach of these regulations, or that of human health would be protected if that consignment were not unconditionally authorised to be removed by the importer, it shall give notice to the importer in writing that the consignment shall not be removed from the designated place for any purpose other than its exportation.

(3) If as a result of that further examination the Department does not come to a decision described in sub-paragraph (2) it shall unconditionally authorise the importer in writing to remove the consignment.

(4) The Department 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, the Department shall authorise the importer to remove from the designated place such milk as the importer may reasonably require for the purposes of sampling with a view to possible proceedings under these regulations in a court of summary jurisdiction.

4. Where notice is served on an importer under paragraph 2(2) or 3(2) that a consignment of imported milk shall 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 service 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 Department 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 court of summary jurisdiction that the decision of the Department (under paragraph 2(2) or 3(2) as the case may be) was incorrect, the consignment may be destroyed or disposed of so that it cannot be used for human consumption;

- (c) if within the time specified in that notice the Department has not received any such written undertaking as is described in the notice, or if within that time it 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 Department 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;
- (d) if within the time specified in that notice the Department has received a written undertaking that the importer will try to prove to a court of summary jurisdiction that the decision specified in sub-paragraph (b) was incorrect, the Department shall—
 - (i) not later than the end of the next working day after the receipt of the undertaking take steps to obtain an order of a court of summary jurisdiction under paragraph 5,
 - (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 court of summary jurisdiction, and
 - (iii) make available to the importer such information (in relation to any further examination which has taken place under paragraph 3) as the importer may reasonably require for the purpose of evidence in the court of summary jurisdiction.

5. Where, in pursuance of paragraph 4, an application is made to a court of summary jurisdiction:

- (a) if the court of summary jurisdiction is satisfied that the importer has failed to prove that the decision of the Department referred to in paragraph 4(b) was incorrect, the court shall order the consignment to be destroyed or disposed of under the supervision of the Department by such means and in such manner as to prevent it from being used for human consumption;
- (b) if the court of summary jurisdiction 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) (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 Department gives the importer unconditional authorisation in writing to remove the consignment, compliance on the part of the importer with paragraph 1(a) shall not be required.

7. An authorised officer may, to such extent as is reasonable for the protection of human health, at any stage from the time when a consignment of imported milk reaches him for primary examination under paragraph 2, do anything specified in paragraph 3(1)(a) to (f) notwithstanding that he is not carrying out a further examination under paragraph 3 and may take such action as is reasonable in respect of the destruction or disposal of any milk the Department 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 paragraphs 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) the Department arranges the carrying out of a further examination of a consignment from which milk has been previously removed under paragraph 2, 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) (or under any equivalent provision of legislation having effect in Scotland or England and Wales) is in effect in relation to a consignment, an authorised officer may cause any consignment subsequently landed in Northern Ireland, 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.

SCHEDULE 3

1.—(1) The following provisions shall not apply in respect of permitted imported milk and milk brought to Northern Ireland from Great Britain in accordance with regulation 7:—

- (a) articles 3, 4, 5, 6(2), 6(3), 6(4), 6(5), 6(6), 8, 10 and 11 of the Milk (Northern Ireland) Order 1983(a);
 - (b) the Imported Food Regulations (Northern Ireland) 1968(b);
 - (c) section 7 of the Marketing of Milk Products Act (Northern Ireland) 1958(c);
 - (d) the Milk Regulations (Northern Ireland) 1981(d) with the exception of:
 - (i) regulations 28(1), 28(4), 29(3), 36, 40, 41 and Schedule 3, Part I except that in their application in respect of imported milk for the words “holder of a distributor’s licence” or “licence holder” where they appear the word “importer” shall be substituted and in respect of milk brought to Northern Ireland from Great Britain for the words “holder of a distributor’s licence” or “licence holder” where they appear the word “distributor” shall be substituted;
 - (ii) regulation 27(4) except that in its application for sub-paragraph (a) the words “a description of the milk and the heat-treatment to which it has been subjected” shall be substituted and in sub-paragraph (c)(i) for the words “licence holder” the word “person” shall be substituted;
 - (iii) regulations 27(7), 27(8), 27(9), 28(5), 30, 38 and 39.
- (2) In this Schedule “permitted imported milk” means—
- (a) milk imported into Northern Ireland
 - (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 Northern Ireland 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.

(a) S.I. 1983/148 (N.I. 2)

(b) S.I. 1968/98 as amended by S.I. 1973/1350, S.I. 1979/1427, S.I. 1981/1084, S.I. 1982/1727

(c) 1958 c. 31 (N.I.) as amended by 1967 c. 15 (N.I.) s. 13, 14 and 15

(d) S.R. 1981 No. 234 as amended by S.R. 1983 No. 337

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations—

- (a) prohibit the importation into Northern Ireland of milk, cream and milk-based drink unless it—
 1. (i) comes from a Member State of the European Economic Community,
 - (ii) has been heat treated by the ultra high temperature method or sterilised,
 - (iii) is fit for human consumption,
 - (iv) is accompanied by an authorised certificate, and
 - (v) is imported through an authorised place of entry; or
 - 2. is raw milk imported, with the approval of the Department of Agriculture, from the Republic of Ireland for use other than for sale as liquid milk, cream or milk-based drink;
 - 3. is frozen cream which has been previously subjected to specified heat treatment provided that it complies with the conditions in 1 above.
- (b) enable milk, cream or milk-based drink brought from Great Britain to be sold in Northern Ireland provided it has been produced, heat-treated by the ultra high temperature method or sterilised, stored and transported in Great Britain in accordance with legislation in force in Great Britain;
 - (c) provide that up to 2 working days' notice of intention to import may be required and require details of authorised places of entry and authorised certificates to be published in the "Belfast Gazette";
 - (d) limit milk which may be imported to skimmed milk (with a maximum butterfat content of 0.3%), semi-skimmed milk (with a butterfat content of between 1.5% and 1.8% inclusive) and whole milk (with a butterfat content of at least 3.83%);
 - (e) provide for the examination of milk on importation by officers authorised by the Department of Agriculture and for appeal to a court of summary jurisdiction by an importer against any decision of the Department resulting from such examination;
 - (f) provide for powers of entry for authorised officers;
 - (g) adapt existing legislation to imported milk and milk brought to Northern Ireland from Great Britain by—
 - (i) exempting such milk from the licensing and designation provisions of the Milk (Northern Ireland) Order 1983 (S.I. 1983/148 (N.I. 2));
 - (ii) subjecting such milk to the same labelling provisions and the same storage, handling and transport requirements as domestically produced milk; and
 - (iii) requiring records to be kept of transactions in such milk; and
 - (h) provide for offences against these regulations to be punishable on summary conviction by a fine not exceeding £1,000.