Food Act 1984

1984 CHAPTER 30

PART II

MILK, DAIRIES AND CREAM SUBSTITUTES

Compulsory use of special designations in specified areas, and licences for specified areas

40 Special designations: retail sales.

(1) The use of a special designation is obligatory for the purpose of all sales of milk by retail for human consumption (other than catering sales) where the place of sale is in an area in which this subsection is in operation under the following provisions of this Part in that behalf, and subject to this Part.

(2) An area in which subsection (1) is in operation as there mentioned is in this Part, and in Schedule 4, referred to as "a specified area".

(3) Notwithstanding that the place of sale is not in a specified area, the use of a special designation is obligatory also for the purpose of a sale of milk by retail for human consumption (other than a catering sale) if—

(a) the milk is delivered from an establishment, whether in or outside a specified area; and

(b) there is carried on at that establishment a business of selling milk which includes any sales for the purpose of which the use of a special designation is obligatory under subsection (1).

(4) Subsections (1) and (3) do not apply to the selling of milk as mentioned in those subsections by a producer of milk from cows to persons—

(a) employed by him in or in connection with such production, or

(b) employed by him otherwise in agriculture,

if he does not engage in any other selling of milk as mentioned in those subsections.

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(5) A person who sells milk without the use of a special designation under a sale for the purpose of which the use of a special designation is obligatory by virtue of this section is guilty of an offence.

(6) Section 47 applies for the interpretation of this section.

41 Special designations: catering.

(1) This section applies—
- (a) to catering sales; and
- (b) to sales of milk to a person who carries on a business which consists of or comprises making catering sales (in this section called "a caterer").

(2) Subject to this Part, a catering sale made in a specified area—
- (a) is lawful (unless it is for any reason unlawful apart from this subsection) if the caterer bought the milk under a sale for the purpose of which a special designation was used, or if he holds a licence authorising him to use a special designation in connection with the milk, whether the designation is used for the purpose of the catering sale or not, but
- (b) otherwise shall be unlawful.

(3) Subject to this Part, on a sale of milk to a caterer, being a sale for the purpose of which the use of a special designation would be obligatory by section 40 if it were a sale by retail, the use of such a designation is obligatory, except where—
- (a) the caterer 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; or
- (b) the caterer 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.

(4) A person is guilty of an offence—
- (a) who makes a catering sale which is unlawful under subsection (2); or
- (b) who sells milk without the use of a special designation under a sale for the purpose of which the use of a special designation is obligatory under subsection (3).

(5) A person is not guilty of an offence under subsection (3) if at the time of the sale in question he had reasonable cause to believe that the conditions specified in paragraph (a) or paragraph (b) of that subsection were satisfied as to that sale or that the buyer was not a caterer.

(6) Section 47 applies for the interpretation of this section.

42 Special designations: exemption.

(1) Notwithstanding anything in subsection (1) or subsection (3) of section 40, or in section 41(3), selling milk as mentioined in those subsections without the use of a special designation is permissible if done with the Minister's consent.

(2) The Minister may give consents for the purposes of this section—
- (a) either generally as respects selling milk as mentioned in those subsections 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 use of a special designation which would be oblligatory under those subsections apart from the consent appears to him to be for the time being not reasonably practicable.

(3) A catering sale made in a specified area is not unlawful under section 41(2) if the milk was sold to the caterer with consent given by the Minister for the purposes of this section.

(4) Section 47 applies for the interpretation of this section.

43 Specified areas.

(1) The Ministers may at any time order that section 40(1) shall come into operation in any area in which it is not then in operation, or shall cease to be in operation in any area in which it is then in operation.

(2) Before making an order under this section the Ministers shall consult with such representative organisations as appear to them substantially to represent the interests concerned with the purposes of the order.

(3) For the purposes of this Part—

(a) if a contract of sale of milk is made in one place and the milk is delivered under the contract in another place, the place of sale shall, except in a case falling within paragraph (b), be taken to be the place where the milk is so delivered;

(b) if a contract of sale of milk is made in one place and the milk is delivered under the contract to a carrier for transport to another place, the place of the sale shall be taken to be that other place.

(4) Part II of Schedule 4 has effect as respects the application of Part I of that Schedule to a licence held by a retailer for a specified area.

(5) Section 47 applies for the interpretation of this section.

44 Milk processing facilities.

(1) The Minister may—

(a) install, maintain and operate apparatus for the subjection of milk to any process to which it is required to be subjected as a condition of the use of a special designation in connection with it, and

(b) provide any other facilities for that purpose,

in any case in which it appears to him as respects—

(i) any area which is a specified area, or

(ii) an area as to which the Ministers propose to make an order bringing section 40(1) into operation.

that facilities for the application of such treatment sufficient to provide for supplies of milk of that designation in that area in requisite quantities are not available and are not likely otherwise to become available.

(2) Where the Minister provides facilities under this section—

(a) he may either buy the milk to be treated and re-sell it, otherwise than by retail or to a caterer for the purposes of his business as such, after treatment; or

(b) apply the treatment to milk of others.

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(3) The Minister may arrange with local authorities or other persons for the doing, on his behalf and at his expense, of things which he is authorised by this section to do, and it shall be within the powers of local authorities to carry out arrangements so made.

(4) Section 47 applies for the interpretation of this section; and in this section "local authority" means a local authority within the meaning of the [M1]Local Government Act 1972.

Marginal Citations

M1 1972 c. 70.

45 Breach of retailer's licence.

(1) In the event of a breach of any condition to which this section applies of a licence held by a retailer for a specified area, the holder of the licence shall be guilty of an offence under this section, subject to section 46.

(2) The conditions to which this section applies are conditions as to any such matters as are specified in Schedule 5.

(3) Milk (Special Designation) Regulations shall specify the authorities, whether local authorities or food and drugs authorities, by whom the provisions of this section are to be enforced as respects licences other than licences which authorise the use—

(a) of a special designation in relation to raw milk by its producer; or

(b) of a special designation by a local authority.

(4) Section 47 applies for the interpretation of this section; and in this section "local authoirity" means a local authority within the meaning of the Local Government Act 1972.

46 Restriction on liability under s. 45.

(1) Such a breach of condition as is mentioned in section 45, constituted by an act or omission for which the holder of the licence is liable to any punishment imposed by or under any enactment other than that section, does not render the holder of the licence guilty of an offence under that section.

(2) Such a breach of condition as is mentioned in section 45 does not render the holder of the licence guilty of an offence under that section unless it 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 section 45; or

(b) after he had been convicted of an offence under that section because of an earlier of those two or more breaches.

(3) In the case of any prosecution in respect of such a breach of condition as is mentioned in section 45 which would otherwise render the holder of the licence guilty of an

offence under that section, it is a defence for him to prove the following matters (either as to that breach, or as to the earlier breach relied on for the purpose of subsection (2) of this section, 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 an 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.

(4) Section 47 applies for the interpretation of this section.

47 Interpretation of ss. 39 to 46.

In sections 39, 40, 41, 42, 43, 44, 45 and 46, in this section, and in Schedules 4 and 5, except where the context otherwise requires—

"business" includes the business of a hospital, school or other institution the selling of milk by which is incidental only to the rendering of the health, education or other services rendered by the institution;

"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;

"licence held by a retailer for a specified area" 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 this Part and are of milk in relation to which that licence authorises the use of a special designation;

"licensing authority" means, in relation to a grant of a licence authorising the use of a special designation, the authority having power to grant the licence by virtue of Milk (Special Designation) Regulations, and, in relation to such a licence which has been granted, the authority who would for the time being have power by virtue of such regulations as mentioned above to grant a licence by way of its renewal if it had expired;

"milk" means cows' milk, excluding not only condensed milk and dried milk, but also cream and separated, skimmed and evaporated milk, and butter milk;

"selling" means selling in the course of a business and includes, in relation to milk, supplying it under arrangements for free supply, and, in relation to milk and things made from milk or of which milk is an ingredient, supplying it or

them, in the course of any business otherwise than under such arrangements; and references to sales and contracts of sale and sellers shall be construed accordingly;

"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 of or comprises the selling of milk) or a manufacturer of milk products (that is, a person who carries on a business which consists of 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;

"specified area" has the meaning given by section 40(2);

"supplying under arrangements for free supply" means, in relation to any milk, supplying it, free from any payments made or to be made by the person to whom it is supplied, under arrangements made in exercise of powers in that behalf conferred by section 78(2) of the [M2]Education Act 1944, or section 22 of the [M3]Education Act 1980, or any regulation under the [M4]Emergency Laws (Re-enactments and Repeals) Act 1964; and references to a person's buying milk include references to his having it supplied to him under such arrangements.

Marginal Citations

M2 1944 c. 31.

M3 1980 c. 20.

M4 1964 c. 60.

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