

1990 No. 2507 (S. 209)

FOOD

MILK AND DAIRIES

The Milk and Dairies (Scotland) Regulations 1990

<i>Made</i>	- - - -	<i>7th December 1990</i>
<i>Laid before Parliament</i>		<i>11th December 1990</i>
<i>Coming into force</i>		
<i>For the purposes of regulation 3(1) and (7)</i>		<i>1st April 1991</i>
<i>For all other purposes</i>		<i>1st January 1991</i>

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The Secretary of State, in exercise of the powers conferred on him by sections 4(1), 6(4), 16(1)(d) and (f), 19(1)(b), 26(1) and (2)(d), (e) and (f) and (3) and 48(1) of, and paragraphs 5(1) and (2) and 7(1) of Schedule 1 to, the Food Safety Act 1990(a) and of all other powers enabling him in that behalf, it appearing to him to be necessary or expedient to do so for the purposes of securing that food complies with food safety requirements and having, in accordance with section 48(4) of the said Act, consulted with such organisations as appear to him to be representative of interests likely to be substantially affected by these Regulations, and after consultation with the Council on Tribunals in accordance with section 10 of the Tribunals and Inquiries Act 1971(b), hereby makes the following Regulations:

PART I

Citation, extent and commencement

1. These Regulations, which may be cited as the Milk and Dairies (Scotland) Regulations 1990, shall apply to Scotland only and shall come into force for the purposes of regulation 3(1) and (7) on 1st April 1991 and for all other purposes on 1st January 1991.

Interpretation and enforcement

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

“the Act” means the Food Safety Act 1990;

“bactericidal agent” means a chemical agent capable of killing bacteria but not necessarily bacterial spores;

“byre” means any part of dairy premises used for the housing and milking of cows;

“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, food is prepared for delivery to the ultimate consumer for immediate consumption;

“container” means a tank, vessel or similar receptacle for containing milk in bulk and includes any ancillary equipment, whether removable or not, necessary for its proper functioning;

“contamination” includes contamination by odour and “contaminated” shall be construed accordingly;

“cow housing” means any part of dairy premises in which cows are housed;

“cream” means that part of the milk rich in fat which has been separated by skimming or otherwise, including 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;

“dairy” includes any farm, cow housing, byre, milking parlour, milking bail, milk room or other premises from which milk is produced or supplied for sale, or in which milk is kept or used for purposes of sale or for the purposes of manufacture into milk or milk products for sale, or in which containers or retail containers used for the sale of milk are kept, but does not include a shop from which milk is sold only in the properly closed and unopened retail containers in which it is delivered to the shop, or a shop, catering establishment or other place in which milk is sold for consumption on the premises only;

“dairy farm” means any dairy premises on which milk is produced from cows, but does not include any part of any such premises on which milk is manufactured into other products unless the milk produced on the premises forms a substantial part of the milk so manufactured;

“dairyman” means any person carrying on the business of a dairy;

(a) 1990 c.16.

(b) 1971 c.62; see Schedule 1, paragraph 36A, as added by Schedule 3, paragraph 14(2) to the Food Safety Act 1990.

“dairy premises” means any building or other premises required to be licensed under the provisions of these Regulations;

“food authority” means an islands or district council;

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

“infectious disease” means any disease listed in Schedule 1 to the Public Health (Notification of Infectious Diseases) (Scotland) Regulations 1988(a);

“milk” means cows’ milk intended for sale or sold for human consumption and includes cream, skimmed milk and separated milk;

“milk carrier” means any person engaged in the transport of milk for hire or reward;

“milk processor” means any dairyman who on dairy premises other than those on which it was produced subjects milk to heat treatment or uses it for the manufacture of milk or milk products;

“milk product” means any food intended for human consumption which consists mainly of milk or is derived from milk;

“milk room” means any part of dairy premises specifically used for the cooling, processing, handling and storage of milk or the manufacture of milk products;

“milk tanker” means a vehicle, including any unit of railway rolling stock, for conveying or consigning milk in bulk by road or rail to and from dairy premises and that by means of a single container incorporated in the vehicle or unit;

“milking bail” means a moveable structure specifically used for the milking of cows, but not their housing;

“milking parlour” means any part of dairy premises specifically used for the milking of cows, but not their housing, and includes the gathering area;

“retail container” means a container which has a capacity of not more than 5 litres;

“road” has the meaning assigned to it by section 151(1) of the Roads (Scotland) Act 1984(b);

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

(a) for the purpose of resale;

(b) for the purpose of a catering establishment; or

(c) for the purposes of a manufacturing business.

(2) Any reference in these Regulations to a numbered regulation shall, unless the context otherwise requires, be construed as a reference to the regulation bearing that number in these Regulations.

(3) Each food authority shall be the enforcement authority for the purposes of section 6(1) of the Act and shall execute and enforce these Regulations in its area.

PART II

LICENSING OF DAIRIES AND DAIRYMEN

Licensing of dairies and dairymen

3.—(1) No person shall carry on the business of a dairy in any premises unless he and any such premises are licensed under these Regulations.

(2) The food authority may grant or renew such a licence but, subject to paragraph (4) below, shall not do so until an authorised officer of such authority has inspected the premises named in the application and has made a report on the premises and such licence shall be in the form set out in Schedule 1 to these Regulations.

(3) Any person proposing to carry on the business of a dairy in any premises shall, not less than one month before he commences such business, make application in writing to the food authority for a licence to do so.

(4) Before granting or renewing a licence in pursuance of these Regulations, the food authority shall not require an inspection in terms of paragraph (2) above to be made where

(a) S.I. 1988/1550.

(b) 1984 c.54.

the person carrying on the business of a dairy in such premises holds a certificate of registration under section 7 of the Milk and Dairies (Scotland) Act 1914(a).

(5) Before deciding on any application, the food authority shall consider—

- (a) the report on the premises made under paragraph (2) above; and
- (b) any representation made to them, either in writing or at a meeting of the food authority, by any person or by any other food authority to whose area milk from the premises will be sent or is to be sent for sale.

(6) The food authority shall intimate to the applicant their decision on the application within one month from the receipt thereof and, in the case of refusal, their reasons for so refusing.

(7) It shall be an offence for any person to use any premises for the purposes of the business of a dairy unless he holds a licence under this regulation.

(8) The food authority may revoke a licence if they are satisfied that the dairyman or any of his employees are in breach of any of the provisions of Parts III to VII of these Regulations.

(9) Each food authority shall keep and maintain a record of all dairies in their area licensed under this regulation.

Inspection of dairies

4.—(1) An authorised officer of a food authority shall inspect from time to time and at least once every two years every dairy in the area of that food authority to ascertain whether such dairy is complying with these Regulations and may examine any cattle therein.

(2) When an authorised officer of a food authority is of the opinion that any milk consigned from the area of another food authority is contaminated or impure, or when he has reasonable ground for believing that any milk so consigned is likely to cause any infectious disease or other illness, he may inspect the dairy from which such milk has been consigned and examine any cattle therein, and the person having charge of that dairy and his employees shall give all reasonable facilities and assistance to such officer for such inspection and examination.

PART III

GENERAL PROVISIONS RELATING TO BUILDINGS

Construction, layout and equipment of dairies

5.—(1) The dairyman shall ensure that a dairy is—

- (a) so situated and constructed as to avoid the risk of contamination of the milk;
- (b) kept clean and in good repair;
- (c) provided with ventilation arrangements in such a way as to ensure that the air therein is kept in a fresh condition and to prevent as far as practicable undue condensation or accumulation of steam or vapours;
- (d) provided with sufficient lighting to enable any process connected with milk to be properly carried out;
- (e) provided with walls which shall be smooth and constructed of such material as will prevent, so far as reasonably practicable, any matter being absorbed by them;
- (f) provided with flooring which shall be constructed of such material as will prevent, so far as reasonably practicable, any matter being absorbed by it and in such manner as will render it practicable to remove any matter which may fall thereon, and so sloped as to convey any liquid matter to a properly constructed drainage system capable of being readily cleaned.

(2) The dairyman shall ensure that the cow housing is—

- (a) kept clean and in good repair;
- (b) provided with ventilation adequate for the maintenance of the health of the cows;

(a) 1914 c.46.

- (c) designed and managed to provide adequately for the comfort, health and cleanliness of the cows;
 - (d) provided with approaches and access which shall be kept clear of any accumulation of excreta, soiled bedding or other waste matter;
 - (e) provided with walls which shall be smooth and constructed of such material as will prevent, so far as reasonably practicable, any matter being absorbed by them;
 - (f) provided with flooring which shall be constructed of such material as will prevent, so far as reasonably practicable, any matter being absorbed by it and in such manner as will render it practicable to remove any matter which may fall thereon, and so sloped as to convey any liquid matter to a properly constructed drainage system capable of being readily cleaned.
- (3) The dairyman shall ensure that a byre is-
- (a) kept clean and in good repair;
 - (b) provided with ventilation arrangements in such a way as to ensure that the air therein is kept in a fresh condition and to prevent as far as practicable undue condensation or accumulation of steam or vapours;
 - (c) designed and managed to provide adequately for the comfort, health and cleanliness of the cows;
 - (d) provided with approaches and access which shall be kept clear of any accumulation of excreta, soiled bedding or other waste matter;
 - (e) provided with walls which shall be smooth and constructed of such material as will prevent, so far as reasonably practicable, any matter being absorbed by them;
 - (f) provided with flooring which shall be constructed of such material as will prevent, so far as reasonably practicable, any matter being absorbed by it and in such manner as will render it practicable to remove any matter which may fall thereon, and so sloped as to convey any liquid matter to a properly constructed drainage system capable of being readily cleaned;
 - (g) provided with stalls which shall be smooth and constructed of such material as will prevent, so far as reasonably practicable, any matter being absorbed by them;
 - (h) provided with sufficient lighting to enable any process connected with milk to be properly carried out.
- (4) The dairyman shall ensure that a milking parlour is-
- (a) so situated and constructed as to avoid the risk of contamination of the milk;
 - (b) kept clean and in good repair;
 - (c) provided with ventilation arrangements in such a way as to ensure that the air therein is kept in a fresh condition and to prevent as far as practicable undue condensation or accumulation of steam or vapours;
 - (d) provided with an interior which shall be kept in such a state of cleanliness and repair as will prevent contamination of milk;
 - (e) provided with sufficient lighting to enable any process connected with milk or any other process connected with the production of milk to be properly carried out;
 - (f) provided with stalls for individual cows or groups of cows which shall be so constructed and adequate in number and size for the comfort and cleanliness of the cows and so placed as to facilitate the entry and exit of the cows;
 - (g) provided with flooring which shall be constructed of such material as will prevent, so far as reasonably practicable, any matter being absorbed by it and so sloped and provided with gutters or channels as to ensure that any liquid matter which falls on the flooring or in the gutters or channels shall be conveyed to a properly constructed drainage system capable of being readily cleaned.
- (5) The dairyman shall ensure that a milking bail is-
- (a) sited on ground which is free from any accumulation of excreta or other waste matter;
 - (b) so constructed and finished as to permit the interior surfaces to be kept clean;
 - (c) moved with sufficient frequency as to avoid the risk of contamination of the milk;
 - (d) provided with sufficient shelter and protection for persons, cows and milk during the whole period in which the milking bail is in use.

Water supply

6. The dairyman shall ensure that—
- (a) all dairy premises are provided with an adequate and sufficient supply of wholesome water;
 - (b) a private water supply is adequately protected against risk of contamination;
 - (c) where water is stored it is protected against risk of contamination, and that every receptacle used for the storage or conveyance of water shall be emptied and cleansed as often as may be necessary to prevent pollution of the water and to maintain it in a suitable condition for the purpose for which it is required;
 - (d) the drinking water supply of cows shall, as far as is reasonably possible, be protected against risk of contamination caused by the drainage of foul water or otherwise.

PART IV

PROTECTION OF MILK FROM RISK OF CONTAMINATION

Duties of dairyman to prevent contamination during milking

7. The dairyman shall ensure that—
- (a) no dry bedding, hay or other dusty matter is moved in the milking parlour, byre or milking bail during milking or within 30 minutes before milking commences in such manner as to cause risk of contamination of the milk;
 - (b) all cows are kept in a clean condition, particularly on or around the flanks, hindquarters and tails;
 - (c) the udder and teats of each cow are carefully cleaned before milking commences and are kept clean and, as far as practicable, dry, during milking;
 - (d) milking is carried out in good light;
 - (e) every person engaged in milking thoroughly washes and dries his hands before milking and that throughout the milking, as far as practicable, he keeps his hands clean and free from contamination;
 - (f) the foremilk of each teat is drawn separately by hand, examined immediately and subsequently discarded in such manner as to avoid any risk of infection;
 - (g) where it appears from the examination of the foremilk that the milk from the cow is abnormal the milk from that milking of the cow is discarded in such a manner as to avoid any risk of infection;
 - (h) immediately after milking, the milk is transferred by pipeline or in closed containers to a milk room on the premises where it was produced, for the purpose of cooling or subjection to heat treatment;
 - (i) pending such transfer the milk is kept in closed containers and protected from risk of contamination.

Protection of milk from risk of contamination

8. Every person engaged in the sale, conveyance or distribution of milk shall use all practicable precautions for preventing the milk from being exposed to heat and to the risk of contamination by dirt, dust, rain water or otherwise, and in particular such person—

- (a) shall not leave or cause to be left any retail container of milk on a road except upon final delivery to the ultimate consumer; and
- (b) shall so far as is practicable afford milk protection from the direct rays of the sun when it is deposited to await collection or further conveyance.

Prevention of disease from milk

9.—(1) If a person consigns, sells, offers, or exposes or keeps for sale for human consumption, or uses or suffers to be used in the manufacture of products for human consumption, the milk of any cow—

- (a) which is suffering from any sore on the teats accompanied by suppuration or bleeding;
or
- (b) which is suffering from any disease liable to infect or contaminate the milk,

he shall be guilty of an offence unless he proves that he did not know and had no reason to suspect that the milk was the milk of such a cow.

(2) Every dairyman who has in his dairy any cow which appears to be suffering from any sore on the teats accompanied by suppuration or bleeding, or from any disease liable to infect or contaminate the milk, shall immediately give written notice of the fact to the food authority.

Precautions against spread of disease

10.—(1) Any person who milks cows or handles milk containers while suffering from or showing symptoms of any infectious disease, or while suffering from any suppurating sore or from sore throat or diarrhoea, and has not been authorised by a certificate from a duly qualified medical practitioner stating that he may milk cows or handle milk containers without risk of spreading disease, is guilty of an offence; and it is an offence for a dairyman to allow such a person to milk cows or handle milk containers without having such a certificate.

(2) The holder of such a certificate shall, if so required, produce it for inspection by any officer duly authorised by the food authority.

(3) A person who—

(a) has recently been in contact with a person who is suffering from any infectious disease; or

(b) resides in a house where any infectious disease exists, and

milks cows, handles milk containers or in any way takes part or assists in the conduct of the business of a dairy, is guilty of an offence, unless authorised by a certificate from a duly qualified medical practitioner in accordance with paragraph (1) above.

(4) Any person in or about dairy premises having access to milk, containers, plant or equipment used in connection with milk, as soon as he becomes aware that he or any member of his household is suffering from, or showing symptoms of any infectious disease, shall forthwith give notice to the dairyman in whose name such premises are licensed under these Regulations.

(5) Where infectious disease occurs among the persons employed, or in the families of persons employed, or among the persons residing at a dairy from which milk is consigned, an authorised officer may require the dairyman to furnish the food authority with a list of the food authority areas to which the milk is consigned.

Cleanliness of persons

11.—(1) Every person while engaged in the handling, transport or distribution of milk—

(a) shall ensure by washing that his hands and fingernails are and remain clean;

(b) shall wash his hands forthwith after each occasion on which he has used a sanitary convenience;

(c) shall keep any open cut or abrasion or sore on any exposed part of his person covered with a suitable waterproof dressing;

(d) shall refrain from spitting or using tobacco (including snuff).

(2) Every person while engaged in the milking of cows or otherwise having access to milk in open containers, other than a person engaged in the transport or delivery of milk shall wear a clean and washable head covering and clean and washable protective clothing.

(3) Every person having the management and control of dairy premises—

(a) shall provide adequate facilities for all employees to wash and clean themselves, including an adequate supply of soap or other suitable detergent, nailbrushes and clean towels or other hygienic drying facilities and clean water both hot and cold or warm water of a suitably controlled temperature;

(b) shall provide and maintain thereon in a readily accessible position an adequate supply of dressings, bandages and other first aid equipment for the use of persons employed in the dairy.

PART V

REQUIREMENTS IN RELATION TO MILK

Filtering and cooling of milk

12.—(1) Subject to paragraph 2 of this regulation, every dairyman shall ensure that immediately on arrival in the milk room the milk is—

- (a) filtered; and
- (b) cooled to a temperature not exceeding 5C.

(2) Paragraph 1(b) of this regulation shall not apply where the milk is to be immediately—

- (a) heat treated; or
- (b) used for the manufacture of skimmed or separated milk or milk products at the premises where it is produced.

Temperature of milk

13.—(1) Subject to regulation 12(2) and paragraph (2) below, every dairyman shall ensure that after milk has been cooled in accordance with regulation 12(1) it shall be maintained at a temperature not exceeding 5C—

- (a) if it is to be—
 - (i) heat treated; or
 - (ii) used for the manufacture of skimmed or separated milk or milk products, on the premises where it was produced, until it has been so heat treated or used; or
- (b) if it is to be—
 - (i) heat treated; or
 - (ii) used for manufacture of skimmed or separated milk or milk products, elsewhere than on the premises where it has been produced, then until it has been removed from the premises where it was produced; or
- (c) if it is milk other than the above which is to be sold subject to Regulations made under section 18(2)(c) of the Act (relating to special designations), until it is removed from the premises where it was produced for delivery or is collected.

(2) The maximum temperature of milk specified in paragraph (1) of this regulation shall not apply to previously cooled milk to which milk from a subsequent milking has been added, provided that immediately after such addition the combined milk is either cooled in accordance with regulation 12(1) or heat treated or used for the manufacture of milk or other products in accordance with paragraph 13(1) above.

(3) Where milk is to be—

- (a) heat treated; or
- (b) used for the manufacture of skimmed or separated milk or milk products,

elsewhere than on the premises where it has been produced, every person engaged in the conveyance of milk from the premises where it was produced to the premises where it is to be so heat treated or used shall ensure that, from the time when the milk is removed from the premises where it was produced until it is delivered to the premises where it is to be heat treated or used for manufacture of milk or other products, it shall be maintained at a temperature not exceeding 8C.

(4) Every milk processor shall ensure that, from the time when milk has been delivered to premises licensed in his name until it is heat treated or used for the manufacture of any milk product, it shall be maintained at a temperature not exceeding 8C.

Storage of milk

14.—(1) No dairyman shall keep or store, or permit to be kept or stored, milk on the premises where it was produced other than in a milk room.

(2) No dairyman or milk carrier shall keep or store, or permit to be kept or stored, milk in any place so situated as to expose such milk to the risk of contamination.

PART VI

REQUIREMENTS IN RELATION TO CONTAINERS, PLANT, MILK TANKERS AND EQUIPMENT

Prevention of contamination by containers, plant, milk tankers and equipment

15. No person engaged in the production, processing, transport or distribution of milk shall use or permit to be used any container for the purpose of carrying milk, or bring any plant, milk tanker or equipment into contact with milk unless—

- (a) the container, plant, milk tanker or equipment is in such a state of thorough cleanliness and in such good order, repair and condition as will prevent, so far as is reasonably practicable, any contamination or risk of contamination of milk with which such container, plant, milk tanker or equipment may come into contact;
- (b) the container, plant, container of the milk tanker or equipment is impervious and constructed of such material and in such manner as to render it, including any inner surfaces thereof, capable of being readily cleaned;
- (c) the container of the milk tanker and every manhole cover and outlet valve is so constructed and fitted as to prevent, so far as is reasonably practicable, any contamination or risk of contamination by dirt, dust, rain water or otherwise of the milk contained therein, and prevent the entry to the interior of the container, plant, container of the milk tanker, or equipment of any milk which may have been deposited onto the outer surfaces thereof; and
- (d) the container of the milk tanker has been used exclusively for containing food.

Cleaning and disinfecting of containers, plant, milk tankers and equipment

16.—(1) Every dairyman or milk carrier shall ensure that such parts of any container, plant, milk tanker or equipment as have been in contact with milk are—

- (a) immediately after use, thoroughly rinsed with clean water and thereafter cleaned with a detergent solution; and
- (b) before such container, plant, milk tanker or equipment is used, disinfected—
 - (i) by steam; or
 - (ii) by water at a temperature of not less than 82C; or
 - (iii) by a solution containing a bactericidal agent, followed by thorough rinsing with water to which a sodium hypochlorite solution has been added at the rate of 25ml to 40 litres,

at least once in every day on which the containers, plant, milk tankers and equipment are used and as soon after each occasion on which the containers, plant, milk tankers and equipment have come into contact with milk (being milk which the aforesaid person has reason to believe is tainted or otherwise contaminated) as is practicable.

(2) Any person who consigns milk in bulk by rail in a milk tanker shall, before he transfers any supply of milk to the container of the milk tanker, clean the inner surfaces of such container with a warm solution of a suitable detergent and thereafter disinfect such surfaces by steam or by water at a temperature of not less than 82C or by a solution containing a bactericidal agent.

- (3) Any person to whom milk has been consigned in bulk by rail in a milk tanker shall—
 - (a) thoroughly rinse with clean water the inner surfaces of the container of such milk tanker as soon as is practicable after the container is emptied of milk; and
 - (b) as soon as is practicable thereafter clean the inner surfaces of the container with a solution of a suitable detergent and thereafter disinfect such surfaces by steam or by water at a temperature of not less than 82C or by a solution containing a bactericidal agent.

(4) Any person engaged in the conveyance of milk in bulk by road in a milk tanker and any person who consigns milk in bulk by rail in a milk tanker shall ensure that the container of such milk tanker is free from all detectable traces of detergent or bactericidal agent.

- (5) Every dairyman or milk carrier shall ensure that—

- (a) the place used for the purposes of cleaning and disinfecting shall be one which prevents so far as is reasonably practicable the risk of contamination of all such containers, plant, milk tankers and equipment;
- (b) after having been cleaned and disinfected, all such containers, plant, milk tankers and equipment are stored before use in a clean place and protected from risk of contamination; and
- (c) immediately before use all such containers, plant, milk tankers and equipment which come into contact or are likely to come into contact with milk shall be in a state of thorough cleanliness.

(6) Every dairyman or milk carrier having the management and control of dairy premises shall provide adequate facilities for the rinsing, cleaning and disinfecting of containers, plant, containers of milk tankers and equipment at such premises.

Conveyance of milk

17.—(1) No person shall consign for transit milk intended for sale for human consumption which is contained in a milk tanker, container or other receptacle unless—

- (a) the name and address of the consignor of the milk is distinctly and legibly marked on every container or on a label properly and securely affixed thereto; and
- (b) every such container is provided with a lid without openings so constructed and fitted as to prevent the access to the milk of dirt, dust or rainwater or the return to the interior of the receptacle of any milk which may have been splashed above the lid.

(2) Every dairyman or milk carrier shall satisfy himself, before any supply of milk is transferred to the container of such milk tanker, that the appearance and smell of that supply disclose no abnormality and that the temperature thereof does not exceed 8C.

(3) Every dairyman or milk carrier shall ensure that—

- (a) all vehicles used for the conveyance of milk or containers are kept thoroughly clean; and
- (b) no vehicle used for the conveyance of milk or containers is used for the conveyance of anything likely to contaminate the milk or containers.

PART VII

RESPONSIBILITY FOR INFORMING EMPLOYEES

Employees

18. Every dairyman and every milk carrier shall take all practicable steps to make the provisions of these Regulations known to each of his employees in so far as such provisions impose any duties or restrictions on, and so far as they relate to the processes carried out by, that person.

PART VIII

PENALTIES

Penalties

19. A person guilty of an offence under regulations 3(7), 9(1) and 10(1) or (3) shall be liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months or both; and
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

PART IX

APPLICATION OF PROVISIONS OF THE FOOD SAFETY ACT 1990

Application of provisions of the Food Safety Act 1990

20.—(1) Section 2(1) (extended meaning of “sale” etc) of the Act shall apply for the purposes of these Regulations as it applies for the purposes of the Act.

(2) These Regulations shall apply in relation to food in relation to which section 2(2) of the Act applies as that subsection applies to it.

(3) Section 3(2), (3) and (4) (presumptions that food is intended for human consumption) of the Act shall apply for the purposes of these Regulations as they apply for the purposes of the Act.

(4) Section 8(3) (which makes presumptions in the case of batches etc of food) of the Act shall apply to food which it is an offence to sell under these Regulations as it applies to food which fails to comply with food safety requirements.

(5) Section 9 (inspection and seizure of suspected food) of the Act shall apply for the purposes of these Regulations as if food which it were an offence to sell under these Regulations were food which failed to comply with food safety requirements.

(6) Section 20 (offences due to fault of another person) of the Act shall apply to offences under these Regulations as it applies to offences under provisions of Part II of the Act which precede that section.

(7) Section 21 (defence of due diligence) of the Act shall apply to offences under these Regulations as it applies to offences under any provision which is both a relevant provision for the purpose of subsection (1) of that section and specifically mentioned in subsection (2) of that section.

(8) Section 30(8) (which relates to the sufficiency of certain documents) of the Act shall apply to proceedings under these Regulations as it applies to proceedings under the Act.

(9) Section 33 (which relates to the obstruction of officers) of the Act shall apply in relation to any person acting in the execution of these Regulations as it applies in relation to any person acting in the execution of the Act and shall so apply as if assistance or information which that person might reasonably require for the purpose of enforcement or execution of these Regulations were assistance or information which he might reasonably require for the performance of his functions under the Act.

(10) Section 34 (which relates to time limits for the beginning of prosecutions) of the Act shall apply in relation to offences under these Regulations as it applies to offences punishable under section 35(2) of the Act.

(11) Section 36 (which relates to offences by bodies corporate) of the Act shall apply to offences under these Regulations as it applies to offences under the Act.

(12) Section 41 (which relates to the power to require returns) shall apply for the purposes of these Regulations as it applies for the purposes of the Act.

(13) Section 44 (which relates to the protection of officers acting in good faith) of the Act shall apply to acts done by an officer of a food authority in the execution or purported execution of these Regulations as it applies to acts done by such an officer in the execution or purported execution of the Act.

PART X

APPEALS

Appeals

21.—(1) The holder of a licence under regulation 3 which has been revoked, or an applicant to whom the food authority have refused to grant such a licence (whether by renewal of the existing licence or otherwise) may, within one month of receiving notification of the decision of the food authority, appeal against such decision to a tribunal appointed by the Secretary of State in accordance with Schedule 2.

- (2) On any such appeal—
- (a) the tribunal shall give their decision in writing and shall give reasons for their decision;
 - (b) the determination of the tribunal shall be final and the food authority shall comply therewith.

PART XI

REVOCATIONS

Revocations

22. The Milk and Dairies (Scotland) Order 1934(a), the Milk and Dairies (Scotland) Amendment Order 1956(b) and the Bulk Transport of Milk (Scotland) Order 1976(c) are hereby revoked.

St Andrew's House, Edinburgh
7th December 1990

Strathclyde
Parliamentary Under Secretary of State,
Scottish Office

(a) S.R. & O. 1934/675, as amended by S.I. 1970/1191 and 1974/1356.
(b) S.I. 1956/2110.
(c) S.I. 1976/1857.

SCHEDULE 1

Regulation 3(2)

FORM OF LICENCE

FOOD SAFETY ACT 1990

MILK AND DAIRIES (SCOTLAND) REGULATIONS 1990

The Council
being the food authority hereby grants a licence under regulation 3 of the above Regulations to (name
of dairyman)
.....
of (address)
to carry on the business of a dairy at (address of premises)
.....
being (short description, eg dairy, dairy farm, creamery)
.....

Signed on behalf of food authority

Date

TRIBUNAL

Constitution of tribunal

- 1.—(1) A tribunal shall consist of a Chairman and two other members.
 - (2) The Chairman shall be appointed by the Secretary of State and shall not be an officer of the Crown or a person associated with the milk trade or a member or officer of any food authority.
 - (3) One member shall be a person appointed by the Secretary of State, as being representative of the milk distributive trade.
 - (4) One member shall be a person appointed by the Secretary of State, as being representative of the consumers' interest.
- 2.—(1) The Chairman shall hold office for three years unless his appointment is terminated by the Secretary of State before expiry of that period, and shall be eligible for re-appointment.
 - (2) The Chairman may resign office by notice in writing to the Secretary of State.
 - (3) If the Chairman is prevented by sickness or any other reason from acting on any appeal to the tribunal, the Secretary of State may appoint an independent person to act as chairman on that appeal.
3. The Secretary of the tribunal shall be an official of the Department of Agriculture and Fisheries for Scotland to whom appeals should be addressed.

Procedure

4. Where in accordance with these Regulations, an appeal against the revocation of a licence or refusal of grant of a licence is made to the tribunal the appellant shall send to the Secretary of the tribunal copies of the notice of decision to refuse or revoke the licence, as the case may be, and of any representations made by him.
 5. The Secretary, on being informed of the appeal to the tribunal, shall without delay fix a convenient date and place for the hearing of the appeal.
- 6.—(1) The dairyman shall have the right to be heard by the tribunal by himself or by counsel, or solicitor, or other representative as he may elect.
 - (2) The food authority may be represented by any person instructed in that behalf.
- 7.—(1) At the hearing of the appeal the tribunal shall give an opportunity to the dairyman, or to his representative to address the tribunal and call witnesses. The representative of the food authority may cross-examine the dairyman, if he elects to give evidence, and any witnesses called by him.
 - (2) The tribunal shall give the representative of the food authority an opportunity to address the tribunal and to call witnesses. The dairyman, or his representative, may cross-examine any witnesses called by the food authority.
8. The tribunal may visit and inspect any dairy to which the appeal relates.
9. The tribunal may take notice of the circumstances existing at the date of the hearing where there has been any change of circumstances since the date of the decision issued by the food authority.
10. The tribunal may adjourn the hearing if for any reason it appears to them necessary or desirable so to do.
11. In the event of a difference of opinion amongst the members of the tribunal, the decision of the majority of them shall become the finding of the tribunal.
12. The decision of the tribunal shall be notified to the appellant in writing by the Secretary without delay and shall include the reasons for the finding.
13. The hearing shall be open to the public.
14. Subject to the provisions of this Schedule, the tribunal shall have power to regulate their own procedure.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations (which apply to Scotland only) replace with amendments, provisions previously contained in the Milk and Dairies (Scotland) Act 1914 and the Milk and Dairies (Amendment) Act 1922. They revoke and replace with amendments the Milk and Dairies (Scotland) Order 1934 and the Bulk Transport of Milk (Scotland) Order 1976. They introduce a new system of licensing (regulation 3), instead of the previous system of registration. A dairyman will now be required to have his business licensed by the food authority, a food authority being an islands or district council. These Regulations do not apply to shops selling pre-packed milk and consequently regulation 2(1) contains a new definition of "dairy" which excludes shops.

2. In particular these Regulations prescribe:-

- (a) licences for persons proposing to carry on the business of a dairy (regulation 3);
- (b) inspections of dairies at least once every two years by food authorities (regulation 4);
- (c) structural conditions which dairies must comply with and provisions for the adequate and sufficient supply of wholesome water (regulations 5 and 6);
- (d) provisions to prevent milk being exposed to the risk of contamination during milking and afterwards (regulations 7 and 8);
- (e) a duty on dairymen not to sell contaminated milk and to notify infectious disease in any of their cows (regulation 9);
- (f) a duty on persons to notify the dairyman of infectious disease and provisions for medical certificates (regulation 10);
- (g) hygiene requirements for persons handling and distributing milk (regulation 11);
- (h) filtering and cooling of milk and the temperature at which milk is cooled and maintained after filtering, and storage of milk (regulations 12, 13 and 14);
- (i) provisions to prevent milk being exposed to the risk of contamination including requirements as to containers, plant, tankers and equipment (regulations 15 and 16);
- (j) conditions under which milk is conveyed (regulation 17);
- (k) a duty on dairymen and milk carriers to take steps to make the provisions of the Regulations known to their employees (regulation 18);
- (l) penalties for offences committed under regulations 3(7), 9(1) or (2) and 10(1) or (3) (regulation 19);
- (m) provide for the application of provisions of the Food Safety Act 1990 and for appeals against the revocation of or refusal to grant a licence (regulations 20 and 21 and Schedule 2).

These Regulations come into force on 1st January 1991, except for regulation 3(1) and (7) to allow opportunity to change to the new licensing system.

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