
 STATUTORY INSTRUMENTS

1970 No. 1191 (S. 98)

FOOD AND DRUGS

COMPOSITION AND LABELLING

The Cream (Scotland) Regulations 1970

<i>Made</i> - - -	5th August 1970
<i>Laid before Parliament</i>	14th August 1970
<i>Coming into Operation</i>	17th August 1970

In exercise of the powers conferred upon me by sections 4, 7 and 56 of the Food and Drugs (Scotland) Act 1956^(a), and of all other powers enabling me in that behalf, and after consultation with such organisations as appear to me to be representative of interests substantially affected by these regulations and after reference to the Scottish Food Hygiene Council under section 25 of the said Act (in so far as the regulations are made in exercise of the powers conferred by the said section 7), I hereby make the following regulations:—

Citation and commencement

1. These regulations may be cited as the Cream (Scotland) Regulations 1970, and shall come into operation on 17th August 1970.

Interpretation

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

“the Act” means the Food and Drugs (Scotland) Act 1956;

“appropriate designation”, in relation to food, means a name or description or a name and description sufficiently specific, in each case, to indicate to an intending purchaser the true nature of the food to which it is applied;

“clotted cream” means cream which has been produced and separated by the scalding, cooling and skimming of milk or cream;

“container” includes any form of packaging of food for sale as a single item, whether by way of wholly or partly enclosing the food or by way of attaching the food to some other article and in particular includes a wrapper or confining band;

“cream” means that part of milk rich in fat which has been separated by skimming or otherwise and which is intended for sale for human consumption;

“flavouring” includes flavouring essence and flavouring extract and means any product consisting of a flavouring agent and such other substances, if any, the use of which in food is not forbidden and which are reasonably necessary to produce a solid, a solution or an emulsion, but no other ingredient or ingredients;

“flour confectionery” means any solid or semi-solid product complete in itself and suitable for consumption without further preparation or processing

other than heating, of which the characteristic ingredient, apart from any filling, is ground cereal, whether or not flavoured, coated with or containing any carbohydrate sweetening matter, chocolate or cocoa; and includes short-bread, sponges, pastry, pastry cases, crumpets, muffins, macaroons, ratafias, meringues and petits fours, but does not include pharmaceutical products, bread, biscuits or any products containing a filling which has as an ingredient any meat or fish;

“food” means food intended for sale for human consumption and includes drink, chewing gum and other products of a like nature and use, and articles and substances used as ingredients in the preparation of food or drink or of such products, but does not include—

- (a) water, live animals or birds,
- (b) fodder or feeding stuffs for animals, birds or fish, or
- (c) articles or substances used only as drugs;

“pasteurised cream” means cream which has been subjected to heat treatment so as to pasteurise it or has been produced from pasteurised milk;

“pre-packed” means made up in advance in or on a container ready for sale by retail;

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

“sell by retail” means sell to a person buying otherwise than for the purpose of re-sale, but does not include selling to a caterer for the purposes of his catering business or to a manufacturer for the purposes of his manufacturing business; and ‘sale by retail’ and ‘sold by retail’ shall be construed accordingly;

“sterilised cream” means cream which has been subjected to a process of sterilisation by heat treatment in the container in which it is to be supplied to the consumer;

“sugar” means any soluble carbohydrate sweetening matter;

“ultra heat treated cream” means cream which has been subjected in continuous flow to an appropriate heat treatment and has been packaged aseptically;

“untreated cream” means cream which has not been treated by heat or in any manner likely to affect its nature and qualities and has been derived from milk which has not been so treated;

and other expressions have the same meaning as in the Act.

(2) The Interpretation Act 1889(a) shall apply for the interpretation of these regulations as it applies for the interpretation of an Act of Parliament.

(3) All percentages mentioned in these regulations are percentages calculated by weight of the cream including added ingredients, if any, permitted by regulation 5, save that as respects the calculation of the milk fat content, specified in regulation 4, of any cream which contains added sugar in accordance with the provisions of these regulations, the percentages specified in regulation 4 are percentages by weight of the cream excluding any such sugar.

(4) Any reference in these regulations to a label borne on a container shall be construed as including a reference to any legible marking on the container however effected.

(5) For the purposes of these regulations, the supply of food, otherwise than by sale, at, in or from any place where food is supplied in the course of a business shall be deemed to be a sale of that food, and a reference to purchasing and purchaser shall be construed accordingly.

(6) Any reference in these regulations to any order or other regulations shall be construed as a reference to such order or regulations as amended by any subsequent order or regulations.

(7) 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 bearing that number in these regulations.

Exemptions

3. The following provisions of these regulations shall not apply in relation to any cream—

- (a) sold, consigned or delivered for exportation to any place outside the United Kingdom;
- (b) supplied under Government contracts 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).

Description and composition of cream

4.—(1) Subject to the provisions of this regulation, any cream sold, consigned or delivered shall bear one of the following descriptions and shall comply with such of the following compositional requirements as are specified in relation to that description:—

- (a) "clotted cream" if the cream is clotted cream and contains not less than 55 per cent. milk fat;
- (b) "double cream" if the cream contains not less than 48 per cent. milk fat:
Provided that, for the purposes of any sale, consignment or delivery on or before 29th February 1972, the word "thick" may be substituted for the word "double";
- (c) "whipping cream" if the cream contains not less than 35 per cent. milk fat;
- (d) "whipped cream" if the cream contains not less than 35 per cent. milk fat and has been whipped;
- (e) "sterilised cream" if the cream is sterilised cream and contains not less than 23 per cent. milk fat:
Provided that, for the purposes of any sale, consignment or delivery on or before 29th February 1972, the word "sterilised" may be omitted;
- (f) "cream" or "single cream" if the cream, not being sterilised cream contains not less than 18 per cent. milk fat;
- (g) "sterilised half cream" if the cream is sterilised cream and contains not less than 12 per cent. milk fat;
- (h) "half cream" if the cream, not being sterilised cream, contains not less than 12 per cent. milk fat:

Provided that the provisions of this paragraph shall not have effect as respects any sale, consignment or delivery before 1st March 1972 of—

- (i) any clotted cream which bears the description "clotted cream" and which contains not less than 48 per cent. milk fat;
- (ii) any sterilised cream which contains less than 23 per cent. milk fat but not less than 18 per cent. milk fat.

(2) If any cream, other than cream bearing the description "clotted cream", which is sold, consigned or delivered is pasteurised cream, ultra heat treated cream or untreated cream, the description specified in relation to that cream in paragraph (1) of this regulation shall include the expression or letters "pasteurised", "ultra heat treated" or "U.H.T.", or "untreated" as appropriate:

Provided that the provisions of this paragraph shall not have effect as respects any sale, consignment or delivery before 1st March 1972 of any cream (other than cream in an aerosol container) which contains not less than 18 per cent. milk fat and which bears the description "cream", "single cream", "double cream" or "thick cream".

(3) In the case of cream derived from milk other than cows' milk, each of the descriptions specified in paragraph (1) of this regulation shall include the name of the kind of animal from which the milk has been obtained.

(4) If any cream which complies with any of the compositional requirements specified in paragraph (1) of this regulation is used as an ingredient of another food, it shall be sufficient compliance with paragraphs (1) and (2) of this regulation if the description "cream" is applied to any such cream containing not less than 18 per cent. milk fat or if the description "half cream" is applied to any such cream containing not less than 12, and not more than 18 per cent. milk fat.

(5) No person shall sell, consign or deliver any cream which does not comply with this regulation.

Permitted ingredients in cream

5.—(1) Subject to the provisions of this regulation, no cream sold, consigned or delivered shall contain any flavouring or other added ingredient whether or not that ingredient is a constituent of milk:

Provided that—

- (a) clotted cream may contain nisin;
- (b) cream which may bear the description "whipped cream" in pursuance of regulation 4(1) and cream in an aerosol container may contain—
 - (i) sodium alginate, or a mixture of sodium bicarbonate, tetrasodium pyrophosphate and alginic acid,
 - (ii) sodium carboxymethyl cellulose,
 - (iii) carrageenan,
 - (iv) gelatine,so however that the percentage of any or, as the case may be, all of the ingredients specified in this sub-paragraph (b) present in the cream shall not exceed 0.3 per cent.;
- (c) cream which may bear the description "whipped cream" in pursuance of regulation 4(1) and cream in an aerosol container may contain—
 - (i) not more than 13 per cent. of sugar,
 - (ii) nitrous oxide;
- (d) cream in an aerosol container may contain not more than 0.5 per cent. of glyceryl monostearate;
- (e) sterilised cream or ultra heat treated cream may contain—
 - (i) calcium chloride,
 - (ii) sodium or potassium salts of—
 - (aa) carbonic acid,
 - (ab) citric acid,
 - (ac) orthophosphoric acid,

so however that the percentage of any or, as the case may be, all of the ingredients specified in this sub-paragraph (e) present in the cream shall not exceed 0.2 per cent.

(2) Notwithstanding the provisions of the last preceding paragraph, any cream sold, consigned or delivered to a manufacturer for the purposes of his manufacturing business or to a caterer for the purposes of his catering business may contain any or all of the following ingredients where appropriate to the circumstances or the description of cream specified in relation thereto, namely:—

- (a) cream intended for use in flour confectionery may contain not more than 13 per cent. of sugar;
- (b) cream which may bear the description “whipping cream” in pursuance of regulation 4(1) may contain not more than 13 per cent. of sugar;
- (c) cream which may bear the description “whipping cream” in pursuance of regulation 4(1) may contain—
 - (i) sodium alginate, or a mixture of sodium bicarbonate, tetrasodium pyrophosphate and alginic acid,
 - (ii) sodium carboxymethyl cellulose,
 - (iii) carrageenan,
 - (iv) gelatine,
 so however that the percentage of any or, as the case may be, all of the ingredients specified in this sub-paragraph (c) present in the cream shall not exceed 0.3 per cent.

(3) Notwithstanding the preceding provisions of this regulation, no product derived from milk and substantially similar to and resembling cream shall be deemed not to be cream solely by reason of the presence of any flavouring or other added ingredient or of any ingredient in an amount in excess of the amount permitted by this regulation.

(4) No person shall sell, consign or deliver any cream which does not comply with this regulation.

Amendment of the Emulsifiers and Stabilisers in Food (Scotland) Regulations 1962

6. The Emulsifiers and Stabilisers in Food (Scotland) Regulations 1962^(a) shall be amended as follows:—

- (a) by adding at the end of regulation 5(1) thereof the words “save that cream may contain any such substance of a kind and to the extent permitted by regulation 5 of the Cream (Scotland) Regulations 1970.”;
- (b) by deleting regulation 8 thereof.

Sales by description

7.—(1) No person shall sell any food under such a description as to lead an intending purchaser to believe that he is purchasing any kind of cream for which compositional requirements are specified in regulation 4 unless the food complies with the appropriate compositional requirements having effect in relation to that kind of cream.

(2) Where a person sells any food to a purchaser in response to a request for any kind of cream for which compositional requirements are specified in regulation 4, he shall be deemed to sell cream of that kind and under such a description as is specified in these regulations in relation to that kind of cream unless he clearly notifies the purchaser at the time of sale that the food is not that kind of cream.

(a) S.I. 1962/779 (1962 I, p. 766).

Labelling and advertisement of cream

8. On and after 1st January 1973 no person shall:—

- (a) give with any food sold by him any label, whether attached to or borne on the container or not, or display with any food offered or exposed for sale by him any ticket, or
- (b) publish, or be a party to the publication of, any advertisement for food, which bears or includes the word “cream” or any derivative thereof or any word substantially similar thereto otherwise than in accordance with provisions of the Act or any regulations made thereunder which, in either case, expressly provide for the use of that word unless—
 - (i) the food is cream which complies with the appropriate compositional requirements having effect in relation thereto by virtue of these regulations, or
 - (ii) that word is used in such a context as to indicate explicitly or by clear implication that the substance to which it relates is an ingredient of that food and unless the substance is cream which complies with such appropriate compositional requirements, or
 - (iii) that word is used in such a context as to indicate explicitly or by clear implication that such food is not, or does not contain, cream:

Provided that nothing in this regulation shall prohibit the use of the word “creamed” in relation to food which is not butter, milk, cream, condensed milk, evaporated milk, dried milk, cheese, skimmed milk or skimmed milk with non-milk fat.

9.—(1) No person shall sell, consign or deliver to a manufacturer for the purposes of his manufacturing business or to a caterer for the purposes of his catering business any cream which contains sugar, unless—

- (a) there appears clearly and legibly on the label borne on, or securely attached to, the container of such cream and in immediate proximity to, and so prominent in height and visual emphasis as to be conspicuous by comparison with, the description of the cream required by regulation 4 the following statement “contains X per cent. Y”, and the statement is completed by inserting at “X” the amount of sugar in the cream expressed as a percentage of the mixture of cream and sugar and at “Y” the common or usual name or appropriate designation of the sugar, or
- (b) the vendor furnishes to the purchaser not later than the time of delivery of such cream to the purchaser an invoice or other document bearing a statement as aforesaid.

(2) No person shall sell by retail any cream in an aerosol container or any cream which may bear the description “whipped cream” in pursuance of regulation 4(1), being cream which in each case contains sugar, unless there appears clearly and legibly on the label borne on, or securely attached to, the container of such cream and in immediate proximity to, and so prominent in height and visual emphasis as to be conspicuous by comparison with, the description of the cream required by regulation 4 the statement referred to in paragraph (1)(a) of this regulation.

10.—(1) Notwithstanding the provisions of article 5(1)(a) of, and Table C of Schedule 1 to, the Labelling of Food Order 1953(a), as amended (b), (whereby

(a) S.I. 1953/536 (1953 I, p. 665).

(b) The relevant amending instruments are S.I. 1953/1889, 1959/571, 1966/98 (1953 I, p. 685; 1959 I, p. 1328; 1966 I, p. 210).

the ingredients of certain foods pre-packed for sale as such need not be specified in certain circumstances) and of regulation 6(1) of, and items 1 and 3 in Part I of Schedule 2 to, the Labelling of Food (Scotland) Regulations 1970(a) (whereby the use of certain generic, rather than specific, expressions is permitted in relation to certain food when forming an ingredient of some other food) no person shall sell by retail, pre-packed, any cream containing all or any of the substances specified in regulation 5, unless the appropriate designations of such substances appear on a label borne on the container of that cream in order of the proportion by weight in which they were used in the manufacturing process (the appropriate designation of the substance used in the greatest proportion by weight being listed first):

Provided that the provisions of this paragraph shall not have effect as respects any such sale by retail before 1st March 1972 of—

- (a) any clotted cream which bears the description “clotted cream” and which contains not less than 48 per cent. milk fat;
- (b) any sterilised cream which contains not less than 18 per cent. milk fat;
- (c) any cream (other than cream in an aerosol container) which contains not less than 18 per cent. milk fat and which bears the description “cream”, “single cream”, “double cream” or “thick cream”.

(2) Notwithstanding the provisions of regulation 9(2) of the Labelling of Food (Scotland) Regulations 1970 (whereby the use of certain generic, rather than specific, expressions is permitted in certain circumstances in relation to certain substances contained in food for sale by retail otherwise than pre-packed), no person shall sell by retail, otherwise than pre-packed, any cream which has been dispensed from an aerosol container or any cream which may bear the description “whipped cream” in pursuance of regulation 4(1), being cream which in either case contains all or any of the substances specified in regulation 5, unless the appropriate designations of such substances in order of the proportion by weight in which they were used in the manufacturing process (the appropriate designation of the substance used in the greatest proportion by weight being listed first) appear on a ticket displayed on or in immediate proximity to such cream so as to be clearly visible to an intending purchaser:

Provided that where any such cream is so sold for immediate consumption at or near the place of sale without having been previously exposed for sale, there shall be deemed to be sufficient compliance with the provisions of this paragraph if the purchaser is clearly notified, at or before the time of delivery of the cream to him, that the cream contains all or any of the substances specified in regulation 5.

Requirements as to marking on labels on containers and on tickets

11. Any description required or permitted by regulation 4 to be borne on any cream shall appear, when the said cream is—

- (a) sold, consigned or delivered in a container, on a label borne on the container of the said cream;
- (b) sold by retail otherwise than in a container, on a ticket displayed on or in immediate proximity to the said cream so as to be clearly visible to an intending purchaser;

and every letter or word of such description shall be in characters of uniform colour and size, save that the initial letter of any word may be taller than any other letter in that word.

(a) S.I. 1970/1127 (1970 II, p. 3559).

Enforcement

12.—(1) The local authority of any area shall, subject to the provisions of the next following paragraph, enforce and execute the provisions of these regulations within their area.

(2) Where any part of the area of a local authority lies within the area of a port local authority such of the functions of the local authority under these regulations in relation to any food imported into that part shall, in so far as these functions fall to be exercised by the port local authority by virtue of any order made under section 172 of the Public Health (Scotland) Act 1897(a), be exercised by that port local authority.

(3) In this regulation “local authority” means the council of a county or of a large burgh within the meaning of the Local Government (Scotland) Act 1947(b); and any small burgh within the meaning of that Act shall, for the purposes of these regulations, be included in the county in which it is situated; and “port local authority” includes a joint port local authority.

Penalties

13.—(1) If any person contravenes or fails to comply with any of the foregoing provisions of these regulations he shall be guilty of an offence under these regulations.

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

(a) on summary conviction to—

- (i) a fine not exceeding £100 or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment; and
- (ii) in the case of a continuing offence, to a further fine not exceeding £10 for every day during which the offence is continued; or

(b) on conviction on indictment to—

- (i) a fine not exceeding £500 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment; and
- (ii) in the case of a continuing offence, to a further fine not exceeding £50 for every day during which the offence is continued.

Defences

14.—(1) In any proceedings for an offence against these regulations in relation to the publication of an advertisement, it shall be a defence for the accused to prove that, being a person whose business it is to publish or arrange for the publication of advertisements, he received the advertisement for publication in the ordinary course of business and did not himself make, or cause to be made, any material alteration in the substance of that advertisement.

(2) In any proceedings against the manufacturer or importer of any cream for an offence against these regulations in relation to the publication of an advertisement, it shall rest on the accused to prove that he did not publish, and was not a party to the publication of, the advertisement.

Application of various sections of the Act

15.—(1) Sections 41(2) and (5) (which relates to proceedings), 42(1), (2) and (3) (which relates to evidence of certificates of analysis), 44 (which relates to the power of a court to require analysis by the Government Chemist), 46(2) (which

(a) 1897 c. 38.

(b) 1947 c. 43.

relates to the conditions under which a warranty may be pleaded as a defence) and 47 (which relates to offences in relation to warranties and certificates of analysis) of the Act shall apply for the purposes of these regulations as if references therein to proceedings, or a prosecution, under or taken under the 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 a reference to said 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.
- (2) Section 41(4) of the Act shall apply for the purposes of these regulations as if the reference therein to section 47 of the Act included a reference to said section 47 as applied by these regulations.

Revocation

16.—(1) Article 10 of the Milk and Dairies (Scotland) Order 1934(a), as amended (b), and the Food Standards (Cream) Order 1951(c) are hereby revoked.

(2) Section 38 of the Interpretation Act 1889 shall apply as if these regulations were an Act of Parliament and as if the orders revoked or partially revoked by these regulations were Acts of Parliament repealed by an Act of Parliament.

Gordon Campbell,
One of Her Majesty's Principal
Secretaries of State.

St. Andrew's House,
Edinburgh.
5th August 1970.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations, which apply to Scotland only, supersede the Food Standards (Cream) Order 1951 and come into operation on 17th August 1970.

The principal provisions of these Regulations—

- (a) specify requirements for the description and composition of cream (Regulation 4);
- (b) specify permitted added ingredients for cream, subject to specified limits (Regulation 5), and make consequential amendments to the Emulsifiers and Stabilisers in Food (Scotland) Regulations 1962 (Regulation 6);
- (c) specify requirements for the labelling and advertisement of cream (Regulations 8 to 11);
- (d) provide that certain requirements relating to the description and composition of cream (Regulation 4(1) and (2)) and relating to labelling (Regulation 10(1)) shall have modified effect before 1st March 1972.

The regulations do not apply to any cream intended for export or supplied for consumption by Her Majesty's forces or a visiting force (Regulation 3).

(a) S.R. & O. 1934/675 (Rev. VIII, p. 23: 1934 I, p. 1256).

(b) S.I. 1956/2110 (1956 I, p. 1016).

(c) S.I. 1951/668 (1951 III, p. 13).

SI 1970/1191
ISBN 0-11-001191-0



780110 011912