

1970 No. 1285 (S.104)

FOOD AND DRUGS

COMPOSITION AND LABELLING—SCOTLAND

The Ice-Cream (Scotland) Regulations 1970

<i>Made</i>	- - -	<i>26th August 1970</i>
<i>Laid before Parliament</i>		<i>8th September 1970</i>
<i>Coming into Operation</i>		<i>4th January 1971</i>

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 Ice-Cream (Scotland) Regulations 1970, and shall come into operation on 4th January 1971.

Interpretation

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

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

“artificial sweetener” means any chemical compound which is sweet to the taste but does not include any sugar or any polyhydric alcohol ;

“composite article of food” means any article of food containing ice-cream or Parev ice and includes any sherbet, sorbet, water ice or ice lolly, as the case may be, containing ice-cream or Parev ice ;

“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 ;

“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 ;

“ice-cream” means the frozen product intended for sale for human consumption which is obtained by subjecting an emulsion of fat, milk solids and

sugar, with or without the addition of other substances, to heat treatment and either to subsequent freezing or to evaporation, addition of water and subsequent freezing, whether or not fruit, fruit pulp, fruit puree, fruit juice, sugar, flavouring or colouring materials, nuts, chocolate or other similar substances have been added before or after freezing, and includes any ice-cream present as an ingredient of any composite article of food, but does not include any sherbet, sorbet, water ice or ice lolly described as “sherbet”, “sorbet”, “water ice” or “ice lolly”, as the case may be ;

“Parev ice” includes Kosher ice and means the substance intended for sale for human consumption which resembles ice-cream and which—

(a) is usually known as Parev ice or Kosher ice, and

(b) contains no milk or milk derivatives,

and includes any Parev ice present as an ingredient of any composite article of food ;

“polyhydric alcohol” means an alcohol with three or more free hydroxyl groups ;

“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 ;

“sugar” means any soluble carbohydrate sweetening matter ;

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.

(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 references to purchasing and purchaser shall be construed accordingly.

Exemptions

3. The following provisions of these regulations shall not apply, except in so far as they relate to advertisements other than labels or wrappers, in relation to any ice-cream or any Parev ice—

(a) sold, consigned or delivered for exportation to any place outside the United Kingdom ; or

(b) supplied for consumption by a visiting force within the meaning of any of the provisions of Part I of the Visiting Forces Act 1952(b) ; or

(c) 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.

(a) 1889 c. 63.

(b) 1952 c. 67.

Composition of ice-cream and Parev ice

4.—(1) Any ice-cream and any Parev ice sold, consigned or delivered, shall comply with the compositional requirements specified in the appropriate following paragraph of this regulation in relation to that ice-cream or Parev ice.

(2) Any ice-cream, other than any ice-cream to which paragraphs (3), (4), (5) or (6) of this regulation applies, shall contain not less than 5 per cent. fat and not less than $7\frac{1}{2}$ per cent. milk solids other than fat.

(3) Any ice-cream which contains any fruit, fruit pulp, fruit puree or fruit juice, other than any such ice-cream to which paragraph (5) or (6) of this regulation applies, shall either—

(a) comply with the compositional requirements specified in paragraph (2) of this regulation, or

(b) have a total content of fat and milk solids other than fat of not less than $12\frac{1}{2}$ per cent. of the whole product (including the fruit, fruit pulp, fruit puree or fruit juice, as the case may be) so, however, that not less than $7\frac{1}{2}$ per cent. shall be fat and not less than 2 per cent. shall be milk solids other than fat.

(4) Any ice-cream described as “dairy ice-cream”, “dairy cream ice” or “cream ice”, other than any such ice-cream to which paragraph (5) of this regulation applies, shall in each case contain—

(a) not less than 5 per cent. milk fat,

(b) no fat other than milk fat or any fat present by reason of the use as an ingredient of such ice-cream of any egg, any flavouring substance, or any emulsifying or stabilising agent, and

(c) not less than $7\frac{1}{2}$ per cent. milk solids other than fat.

(5) Any ice-cream described as “dairy ice-cream”, “dairy cream ice” or “cream ice” which contains any fruit, fruit pulp, fruit puree or fruit juice shall either comply with the compositional requirements for such ice-cream specified in paragraph (4) of this regulation or shall in each case—

(a) have a total content of milk fat and milk solids other than fat of not less than $12\frac{1}{2}$ per cent. of the whole product (including the fruit, fruit pulp, fruit puree or fruit juice, as the case may be) so, however, that not less than $7\frac{1}{2}$ per cent. shall be milk fat and not less than 2 per cent. shall be milk solids other than fat, and

(b) contain no fat other than milk fat or any fat present by reason of the use as an ingredient of such ice-cream of any egg, any flavouring substance or any emulsifying or stabilising agent.

(6) Any ice-cream described as “milk ice”, including any such ice-cream which contains any fruit, fruit pulp, fruit puree or fruit juice, shall contain—

(a) not less than $2\frac{1}{2}$ per cent. milk fat,

(b) no fat other than milk fat or any fat present by reason of the use as an ingredient of such ice-cream of any egg, any flavouring substance or any emulsifying or stabilising agent, and

(c) not less than 7 per cent. milk solids other than fat.

(7) Any Parev ice shall contain—

(a) not less than 10 per cent. fat, and

(b) no milk fat or other derivative of milk.

(8) No ice-cream of any kind nor any Parev ice shall contain any artificial sweetener.

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

General requirements as to composition and description of ice-cream and Parev ice

5.—(1) No person shall sell any food under such a description as to lead an intending purchaser to believe that he is purchasing any ice-cream or any Parev ice for which compositional requirements are specified in these regulations unless the food complies with the appropriate compositional requirements specified in these regulations in relation to that ice-cream or that Parev ice.

(2) Where a person sells any food to a purchaser in response to a request for any kind of ice-cream or Parev ice or for any composite article of food containing any ice-cream or Parev ice for which compositional requirements are specified in these regulations, he shall be deemed to sell ice-cream or Parev ice or, as the case may be, a composite article of food containing ice-cream of that kind or Parev ice and under such a description as is specified in these regulations in relation to that kind of food, unless he clearly notifies the purchaser at the time of sale that the food is not or, as the case may be, the composite article of food does not contain, ice-cream of that kind or Parev ice.

Labelling and description of ice-cream

6.—(1) No person shall sell, consign or deliver in a container any ice-cream under the description “ice-cream” if such ice-cream contains any fat other than milk fat (save as may be present by reason of the use as an ingredient of such ice-cream of any egg, any flavouring substance or any emulsifying or stabilising agent) unless such container bears a label on which there appears in immediate proximity to such description the words “contains non-milk fat”:

Provided that if the ice-cream contains no fat, other than vegetable fat or any fat present by reason of the use as an ingredient of such ice-cream of any egg, any flavouring substance or any emulsifying or stabilising agent, the words “contains vegetable fat” may appear as an alternative to the words “contains non-milk fat”.

(2) No person shall sell by retail any ice-cream, not in a container, under the description “ice-cream” if such ice-cream contains any fat other than milk fat (save as may be present by reason of the use as an ingredient of such ice-cream of any egg, any flavouring substance or any emulsifying or stabilising agent) unless the words “contains non-milk fat” appear on a ticket or notice in immediate proximity to such description:

Provided that—

(a) if the ice-cream contains no fat, other than vegetable fat or any fat present by reason of the use as an ingredient of such ice-cream of any egg, any flavouring substance or any emulsifying or stabilising agent, the words “contains vegetable fat” may appear as an alternative to the words “contains non-milk fat”;

(b) if the ice-cream is sold for immediate consumption at or near the place of sale or if it is sold without having been previously exposed for sale, and, in either case, no ticket or notice bearing the description “ice-cream” is visible to the purchaser at the time of sale, it shall be sufficient

compliance with this paragraph if the purchaser is notified at or before delivery of the ice-cream to him that it contains non-milk fat or contains vegetable fat, as the case may be.

(3) All words which are required by virtue of paragraph (1) of this regulation to appear on a label on a container or which, in compliance with paragraph (2) of this regulation, appear on a ticket or notice shall conform to the requirements set out in Schedule 1 to these regulations.

General requirements as to labelling and advertisement of ice-cream and Parev ice

7.—(1) No person shall—

- (a) give with any ice-cream, any Parev ice or any composite article of food sold by him, any label, whether attached to or borne on the container or not, or display with any ice-cream, any Parev ice or any composite article of food offered or exposed by him for sale, any ticket or notice, or
- (b) publish, or be a party to the publication of, any advertisement for any ice-cream, any Parev ice or any composite article of food,

being a label, ticket, notice or advertisement, as the case may be, which bears or includes—

- (i) the expression “ice-cream”, “dairy ice-cream”, “dairy cream ice”, “cream ice”, “milk ice”, “Parev ice” or “Kosher ice” unless—
 - (aa) such food complies with the appropriate compositional requirements specified in relation to food of that kind in regulation 4 of these regulations, or
 - (ab) the expression is used in such a context as to indicate clearly that the ice-cream or Parev ice, as the case may be, to which the expression relates is an ingredient with one or more other ingredients, of such food and such ice-cream or Parev ice complies with the compositional requirements specified in relation thereto in regulation 4 of these regulations ;
- (ii) any word, not being part of a true statement of all the ingredients of such ice-cream, or any pictorial device which refers to, or is suggestive of, butter, cream or milk or of anything connected with the dairy interest unless the ice-cream to which such label, ticket, notice or advertisement, as the case may be, relates, contains no fat other than any milk fat or any fat present by reason of the use as an ingredient of such ice-cream of any egg, any flavouring substance or any emulsifying or stabilising agent :

Provided that such label, ticket or notice may bear or such advertisement may include, as the case may be, a true statement to the effect that the ice-cream contains skimmed milk solids.

(2) Nothing in these regulations shall prevent the use in or on any label, ticket, notice or advertisement of—

- (a) the expression “ice-cream”, in respect of any ice-cream which complies with the appropriate compositional requirements specified in regulation 4 of these regulations ; or
- (b) the name of the manufacturer, packer or advertiser of ice-cream or Parev ice or of any person selling ice-cream or Parev ice.

Enforcement

8.—(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

9.—(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

10.—(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 ice-cream, any Parev ice or any composite article of food 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.

(a) 1897 c. 38.

(b) 1947 c. 43.

Application of various sections of the Act

11.—(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 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

12.—(1) The order and regulations mentioned in column 1 of Schedule 2 to these regulations are hereby revoked to the extent shown in column 3 of that Schedule.

(2) Section 38 of the Interpretation Act 1889 shall apply as if these regulations were an Act of Parliament and as if the order and regulations 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.
26th August 1970.

Regulation 6(3)

SCHEDULE 1

Requirements as to marking of labels on containers and of tickets and notices

1. Every word appearing on a label on a container, or on a ticket or notice, which is required so to appear by virtue of regulation 6 of these regulations shall—

- (a) be clearly legible ;
- (b) appear in a prominent position on the label, ticket or notice ;
- (c) appear in dark-coloured letters upon a light-coloured ground or in light-coloured letters upon a dark-coloured ground ;
- (d) be of uniform colour and in letters of uniform size, save that the initial letter in any such word may be taller than any other letter in that word ;
- (e) appear in letters of such size that the height of the shortest letter in any such word shall be not less than 2 mms. and not less than one quarter the height of the tallest letter, other than an initial letter, in the word "ice-cream" to which such word is in immediate proximity.

2. For the purposes of this Schedule the height of any lower case letter shall be taken to be the x-height thereof, disregarding any ascender and descender thereof.

SCHEDULE 2

Regulation 12

Column 1 Order and Regulations revoked	Column 2 References	Column 3 Extent of revocation
The Labelling of Food Order 1953, as amended.	S.I. 1953/536 (1953 I, p. 665). The relevant amending instrument is S.I. 1959/571 (1959 I, p. 1328).	Article 6A
The Food Standards (Ice-Cream) (Scotland) Regulations 1959.	S.I. 1959/572 (1959 I, p. 1319).	The whole regulations
The Food and Drugs (Legal Proceedings) (Scotland) Regulations 1962.	S.I. 1962/1668 (1962 II, p. 2029).	The entry "The Food Standards (Ice-Cream) (Scotland) Regulations 1959" in the first column of Part I of the Schedule and the figure "9" relating to that entry in the second column of that Part.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations, which apply to Scotland only, supersede, with amendments, the Food Standards (Ice-Cream) (Scotland) Regulations 1959 and the provisions of the Labelling of Food Order 1953, as amended, which relate to ice-cream.

The Regulations—

- (a) specify compositional requirements for ice-cream and Parev ice, including any ice-cream and any Parev ice present as an ingredient of any composite article of food (Regulation 4);
- (b) specify requirements as to the labelling and advertisement of ice-cream (Regulations 6, 7 and Schedule 1).

The Regulations, except in so far as they relate to advertisements other than labels or wrappers, do not apply to ice-cream or Parev ice sold for export or supplied for consumption by a visiting force, or which is sold to a manufacturer for the purposes of his manufacturing business, or to a caterer for the purposes of his catering business (Regulation 3).

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