EXPLANATORY NOTE

(This Note is not part of the Regulations, but is intended to indicate their general purport.)

The Regulations extend the special defence of inability to obtain the necessary apparatus to contraventions of the Ice Cream (Heat Treatment, etc.) Regulations, 1947 (S.R. & O. 1947 No. 612), with respect to the cooling process in the preparation of ice cream, committed between the 1st May, 1948 and the 1st May, 1949. A drafting amendment of the 1947 Regulations is also included.

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(2) SCOTLAND

The Ice Cream (Scotland) Regulations, 1948

1948 No. 960 (S. 68)

Made - - - -	*5th May,* 1948
Laid before Parliament	*6th May,* 1948
Coming into Operation	*24th May,* 1948

In exercise of the powers conferred upon me by sections eight and ninety-two of the Food and Drugs Act, 1938(a), and section one of the Public Health (Scotland) Act, 1945(b), and of all other powers enabling me in that behalf I hereby make the following regulations:—

PART I

Interpretation, etc. Short title.

1.—(1) These regulations may be cited as the Ice Cream (Scotland) Regulations, 1948.

(2) Part I of these regulations and Part II with the exception of paragraph (1) of regulation 4 shall come into operation on the twenty-fourth day of May nineteen hundred and forty-eight, and paragraph (1) of regulation 4 and the remainder of the regulations shall come into operation on the first day of November nineteen hundred and forty-eight, with the exception of regulation 7 (3) which shall come into operation on a date to be appointed by the Secretary of State.

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

" applicant " means a person who has made an application for a certificate;

" certificate " means a certificate of registration under regulation 4 of these regulations;

" complete cold mix " means a product which is capable of manufacture into ice cream with the addition of water only and which

(*a*) has been made by dehydrating a liquid mixture which has been submitted to heat treatment, and

(*b*) is delivered to the dealer in an unopened airtight container in which it has been packed by the manufacturer;

" dealer " means in Part II of these regulations a person to whom a certificate has been granted and elsewhere in these regulations means the owner of the business or undertaking in connection with which the manufacture, storage or sale of ice cream as the case may be is carried on and where the owner is not himself in charge of such manufacture, storage or sale then also the person in charge thereof;

(a) 1 & 2 Geo. 6. c. 56. (b) 9 & 10 Geo. 6. c. 15.

" heat treatment " means the raising of a mixture either (*a*) to a temperature of at least 150° F. and the retention thereof at that temperature for not less than 30 minutes, or (*b*) to a temperature of at least 160° F. and the retention thereof at that temperature for not less than 10 minutes;

" ice cream " includes water ices and any article however described which is so similar to ice cream as to constitute a substitute therefor but does not include ice cream not intended for sale;

" ingredients " does not include colouring or flavouring materials or fruits, nuts or chocolate or similar substances;

" local authority " means the council of a county or of a large burgh and, in relation to counties combined for the purposes mentioned in subsection (1) of section 118 of the Local Government (Scotland) Act, 1947(**a**), the joint county council;

" vehicle " includes barrow, bicycle, carriage, cart, hand cart, lorry, tricycle, van, wagon or other conveyance and also includes any portable stall but does not include any vehicle used solely in connection with the sale of ice cream by wholesale.

(4) A small burgh as defined in the Local Government (Scotland) Act, 1947, shall be deemed to be included in the county in the area of which it is situated.

(5) The Interpretation Act, 1889(**b**), applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

Premises used for sale of ice cream.

2. For the purpose of these regulations premises or a vehicle shall be deemed to be used for the sale of ice cream if ice cream is offered, or kept for sale (whether as part of a meal or otherwise) in or on the premises or the vehicle.

Enforcement.

3. These regulations shall be enforced and executed in any area by the local authority of that area.

PART II

Registration of Premises and Vehicles

Use of premises or vehicle for manufacture, etc. of ice cream.

4.—(1) Subject to the provisions of these regulations it shall not be lawful for any person to use any premises or any vehicle for the purpose of the manufacture, storage or sale of ice cream unless that person is registered in respect of the premises or vehicle and such purpose and a certificate of such registration has been issued to him by the local authority of the area in which, in the case of premises, they are situated, or in the case of a vehicle, it is ordinarily kept.

(2) This Regulation shall not apply—

(*a*) to the use of premises being a boarding house, club, hotel, inn or restaurant for the manufacture storage or sale of ice cream for consumption thereon unless in the case of premises being a restaurant the use of the premises for the sale of ice cream for consumption on the premises includes a use for the sale thereof otherwise than as part of a meal supplied on the premises;

(*b*) to the use of premises being a cinematograph theatre, concert hall, dance hall, music hall, theatre or other place of public entertainment or meeting for the sale of ice cream not manufactured on the premises;

(*c*) to the use of any premises for the sale of ice cream by the promoters of any fete, sale of work, garden party or other similar social function on the occasion of any such function;

(**a**) 10 & 11 Geo. 6. c. 43. (**b**) 52 & 53 Vict. c. 63.

(*d*) to the use of any premises for the sale of ice cream in an impervious wrapper or container if the ice cream was packed in that wrapper or container by the manufacturer and the wrapper or container was, after packing, closed by him and has remained unopened.

(3) (*a*) An application for registration under this regulation shall be made to the local authority by a person desiring or proposing to use any premises or vehicle to which this regulation applies, for any purpose mentioned in paragraph (1) of this regulation;

(*b*) where an application relates to premises it shall be in Form 1 of the First Schedule to these regulations and where it relates to a vehicle shall be in Form 2 of that Schedule or, in either case, in a form to the like effect; and the applicant shall supply such further particulars as the local authority may require:

Provided that (1) where the applicant desires to be registered in respect of more than one vehicle all the vehicles in respect of which he desires to be registered may be included in one application but each vehicle shall be specified and shall be allocated a serial number; and (2) where a dealer who has been granted a certificate in respect of a vehicle makes an application in respect of an additional vehicle the number allocated thereto shall be in the same series as that allocated to the first mentioned vehicle.

(4) Subject to the provisions of these regulations the local authority shall, on receipt of an application under the last foregoing paragraph, register the applicant in respect of the premises or, as the case may be, the vehicle or vehicles specified in the application, and shall upon so registering him issue to him a certificate in Form 1 or as the case may be, Form 2 of the Second Schedule to these regulations:

Provided that the authority shall, subject to the provisions of regulation 5 of these regulations, refuse to register the applicant—

(*a*) where the application relates to premises, if they are not satisfied—

(i) in regard to the site, construction, lighting, sanitation, ventilation, water supply, washing facilities and cleanliness of the premises;

(ii) that the premises are otherwise suitable to be used for the purpose specified in the application;

(iii) in regard to the use, other than a use for the purpose specified in the application, made or to be made of the premises, or

(iv) that the applicant is a suitable person to make use of the premises for the purpose specified in the application;

(*b*) where the application relates to a vehicle or vehicles, if they are not satisfied in regard to—

(i) the suitability of the vehicle or vehicles or of the applicant to make use of the vehicle or vehicles for the purpose specified in the application;

(ii) the use, other than a use for the purpose specified in the application, made or to be made of the vehicle or vehicles.

(5) Subject to the provisions of regulation 5 of these regulations, the local authority may at any time cancel the registration of a dealer in respect of any premises or, as the case may be, any vehicle on any ground which would entitle them to refuse to register that person in respect of those premises or that vehicle or on the ground that the dealer has been convicted of an offence against these regulations.

(6) A certificate granted in respect of premises shall be kept fixed in a conspicuous place in the premises.

(7) (*a*) On the near side of every vehicle in respect of which a dealer is registered there shall be indelibly inscribed so as to be easily readable in daylight, the dealer's name and address and the number allocated to the vehicle under paragraph (3) of this regulation;

(*b*) a dealer shall within twenty-four hours of being required so to do by an authorised officer of a local authority, produce for examination any certificate issued to him in respect of a vehicle.

(8) (*a*) In any case in which the dealer uses or permits to be used in connection with his business or undertaking any vehicle for any purpose specified in the certificate granted to him in respect of the vehicle, in circumstances in which he is not himself in charge of the vehicle he shall furnish to the person in charge thereof an authorisation in the form set out in the Third Schedule to these regulations;

(*b*) any person authorised in accordance with the provisions of the immediately preceding sub-paragraph shall on being so required by any authorised officer of a local authority, produce the authorisation furnished to him by the dealer.

Appeal provisions.

5.—(1) Where the local authority propose in accordance with the provisions of this Part of these regulations to refuse to register an applicant or, as the case may be, propose to cancel the registration of a dealer they shall by written notice (*a*) state the grounds upon which the proposal is based, and (*b*) intimate that the applicant or, as the case may be, the dealer may attend before them or be represented by a solicitor or counsel and may call such witnesses as he may desire at a place and a time (being not less than 14 days after the service of the notice) specified in the notice to show cause why the local authority should not refuse to register the applicant or, as the case may be, should not cancel the registration of the dealer.

(2) If the local authority after affording the applicant or the dealer an opportunity of appearing before them as aforesaid, determine to refuse to register the applicant or, as the case may be, determine to cancel the registration of the dealer they shall give to the applicant or dealer, written notice of their determination together with a statement of the grounds on which it is based but where the determination is a determination to cancel the registration of a dealer it shall not have effect until a date 21 days after the day on which notice is given under this paragraph.

(3) An applicant or a dealer aggrieved by a determination of the local authority under this regulation may within 21 days after receipt of written notice of the determination appeal to the Sheriff who may either refuse the appeal or order the local authority to register the applicant or, as the case may be, to restore the registration of the dealer and the decision of the Sheriff shall be final, and where the

determination appealed against is a determination to cancel the registration of a dealer, it shall not have effect pending the decision on the appeal.

(4) Where the decision of a local authority to cancel the registration of a dealer has taken effect, the dealer shall forthwith return to the local authority the certificate of that registration issued to him by the authority.

Certain areas may be excluded from operation of Part II.

6. Where at the date of the coming into operation of this Part of these regulations, the Secretary of State is satisfied that there are in force within the area of a local authority, provisions of, or bye-laws made under, a local or special Act with respect to the registration of persons in respect of premises and for the purposes mentioned in paragraph (1) of regulation 4 hereof, he may on the application of the local authority direct that the provisions of this Part of these regulations shall not apply within the area.

PART III

Apparatus Equipment and Utensils

Provisions as to material, etc. and cleanliness, etc. of apparatus, equipment and utensils.

7.—(1) All apparatus, equipment and utensils used in connection with the manufacture, storage or sale of ice cream shall be of such material, construction and type as may be satisfactory to the local authority, shall at all times be maintained in a proper state of cleanliness and repair to their satisfaction, and shall be reserved for use solely in that connection.

(2) Where it appears to the local authority that the state of cleanliness or the state of repair or the material, construction or type of any such apparatus, equipment or utensil as is mentioned in the last foregoing paragraph is not satisfactory they shall by written notice make intimation to that effect to the dealer specifying the respects in which the same is not satisfactory and such apparatus, equipment or utensil shall not after receipt of the notice be used in the aforesaid connection before the local authority shall have cancelled the said notice.

(3) Such indicating and recording thermometers as the local authority, by written notice served on the dealer, require to be used, shall be used in the manufacture, cooling and storage of ice cream for the purposes of indicating and recording the temperatures to which ice cream or any liquid mixture formed in the manufacture thereof is raised or reduced or at which it is kept; and the records of such temperatures shall be preserved for a period of not less than one month and shall be available on demand for inspection by the local authority or their authorised officer.

(4) Any dealer aggrieved by a notice served under either of the two last foregoing paragraphs may within seven days of receipt thereof appeal to the Secretary of State whose decision shall be final and shall have effect as if it were a determination of the local authority and where an appeal has been made the aforesaid notice shall not have effect pending the decision on the appeal.

(5) Any dealer who uses or permits to be used any apparatus, equipment or utensils or any indicating or recording thermometers contrary to the provisions of this regulation or who fails to keep records as required by paragraph (3) thereof shall be guilty of an offence under these regulations.

PART IV

Heat Treatment Etc.

Provisions to be complied with in manufacture of ice cream.

8.—(1) Where in the process of the manufacture of ice cream a liquid mixture of ingredients is formed, the mixture shall not be kept for more than one hour at temperatures between 45° F. and 150° F. before being subjected to heat treatment, and the mixture shall be subjected to heat treatment.

(2) After the mixture has been subjected to heat treatment it shall be reduced to a temperature not exceeding 45° F. within one-and-a-half hours and shall not thereafter be allowed to exceed that temperature at any time before it is frozen:

Provided that this regulation shall not apply where the manufacture of ice cream is carried out by the use of a complete cold mix, wholesome water, colouring or flavouring materials or chocolate and no other ingredients and the freezing process is begun within one hour after the addition of the water to the complete cold mix.

Provisions to be complied with after manufacture of ice cream.

9. After ice cream has been frozen whether or not a complete cold mix has been used in its manufacture, it shall not be offered, exposed or kept for sale unless either—

(*a*) it has been kept at a temperature not exceeding 28° F. since manufacture; or

(*b*) if its temperature has risen above 28° F. at any time since manufacture it has again been subjected to heat treatment and after having been subjected to heat treatment has been reduced to a temperature not exceeding 45° F. within one-and-a-half hours and after having again been frozen it has been kept at a temperature not exceeding 28° F.

Special defence where cooling apparatus unobtainable.

10. It shall be a defence for any person charged with failing to comply with a requirement of paragraph (2) of regulation 8 hereof before the first day of May, 1949, to prove that before the date of the alleged failure, suitable apparatus to enable him to comply with that requirement had been ordered by him or on his behalf but had not been delivered to him and that he had taken all practicable steps to comply with the said requirement.

PART V

General

Cleanliness, etc. to be observed.

11.—(1) Every dealer shall prevent contamination of any ice cream manufactured, stored or kept or offered for sale by him and of the ingredients and other components and of any mixture formed in the manufacture thereof, and, in regard to any premises or any vehicle used for the purpose of manufacture, storage or sale of ice cream, shall maintain a standard of cleanliness sufficient to prevent the risk of contaminating any such ice cream, ingredients or other components or any mixture formed as aforesaid:

Provided that a dealer shall not be guilty of an offence under these regulations if he satisfies the court that he has taken all reasonable precautions to prevent contamination as aforesaid or, as the case may be, to secure the said standard of cleanliness.

(2) Every person engaged in the manufacture, storage or sale of ice cream or in any other work directly connected therewith shall observe a standard of cleanliness in regard to himself and his clothing sufficient to prevent the risk of contaminating any such ice cream, ingredients or other components or any such mixture as is mentioned in the last preceding paragraph.

Notification of specified diseases.

12.—(1) If a dealer has reason to believe that any person—

(*a*) living or working in or about any premises used for the manufacture, storage or sale of ice cream; or

(*b*) engaged in work in connection with any vehicle used as aforesaid

suffers from any disease to which this regulation applies, he shall forthwith give notice thereof to the Medical Officer of Health of the local authority, and if that person is engaged in the manufacture, storage or sale of ice cream or in any work directly connected therewith, the dealer shall not permit him to be so engaged until the Medical Officer of Health has certified that in his opinion such person may so engage without risk of spreading disease.

(2) The diseases to which this regulation applies are enteric fever (including typhoid and paratyphoid fevers), dysentery, diphtheria, scarlet fever, acute inflammation of the throat, gastro-enteritis and undulant fever.

(3) If the dealer fails to give notice as required by paragraph (1) of this regulation or permits any person to engage in the manufacture, storage or sale of ice cream or in any work directly connected therewith contrary to the provisions of that paragraph he shall be guilty of an offence under these regulations.

Powers of entry etc.

13.—(1) Any officer appointed for the enforcement and execution of these regulations on producing, if so required, a duly authenticated document showing his authority, shall have power to enter and inspect at all reasonable times any premises used or to be used or which he has reasonable grounds for supposing are being used for the purpose of the manufacture, storage or sale of ice cream.

(2) If the Medical Officer of Health of the local authority has reason to believe that ice cream from any such premises as are mentioned in the last preceding paragraph is associated with the occurrence of infectious disease he shall have power—

(*a*) to examine any person for the time being engaged on the premises, and

(*b*) if he is satisfied after examination that that person may be associated with the said occurrence, to direct that that person shall not personally engage in the manufacture, storage or sale of ice cream until such time as the Medical Officer of Health is satisfied that there is no likelihood of the spreading of infection by that person.

(3) The foregoing provisions of this regulation shall, with the necessary modifications, apply to the inspection of any vehicle used for any purpose therein mentioned and to the examination and direction of any person engaged in connection with such a vehicle.

(4) An officer authorised by the Secretary of State on producing, if so required, a duly authenticated document showing his authority, shall have the like powers of entry, inspection, examination and direction as are conferred by this regulation on an officer of a local authority.

PART VI

Penalties

14.—(1) Any person contravening or failing to comply with any requirement of these regulations shall be guilty of an offence and shall be liable on conviction (*a*) in the case of a first offence to a fine not exceeding £20 and (*b*) in the case of a second offence to a fine not exceeding £50 and (*c*) in the case of a subsequent offence to a fine not exceeding £100 or, if in the opinion of the court the failure to comply as aforesaid resulted from the personal act, default or culpable negligence of the person accused and the court is of opinion that a fine will not meet the circumstances of the case, to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment.

(2) Offences under these regulations may be prosecuted either—

(*a*) in the sheriff court or in any court in which a stipendiary magistrate sits as judge, at the instance of the procurator fiscal; or

(*b*) in a burgh or police court at the instance of the burgh prosecutor.

Arthur Woodburn,
One of His Majesty's Principal Secretaries of State.

St. Andrew's House,
Edinburgh, 1.
5th May, 1948.

FIRST SCHEDULE

FORM 1

Food and Drugs

Ice Cream (Scotland) Regulations 1948

Application for registration of premises

To:—

The Local Authority of the (County) (Burgh) of .....

I, (*a*) .....
.....
.....

hereby make application for registration in respect of the following premises namely (*b*) .....
.....
.....
.....

which I desire to use for the manufacture/storage/sale(*c*) of ice cream and I desire that the local authority shall issue to me a certificate accordingly.

(Signature).....

(Date).....

(*a*) Insert name and address.

(*b*) Insert full description and location of premises.

(*c*) Delete as necessary.

FORM 2

Food and Drugs

Ice Cream (Scotland) Regulations 1948

Application for registration of vehicles

To:—

The Local Authority of the (County) (Burgh) of .....

I(*a*) .....

.....

hereby make application for registration in respect of the vehicle(s) described in the second column of the appendix hereto which I desire to use for the purpose(s) set out in the third column thereof, and I desire that the Local Authority shall issue to me a certificate accordingly.

The address at which each vehicle is ordinarily kept is set out in the fourth column of the appendix.

I have allocated to each vehicle in terms of regulation 4 (3) of the Ice Cream (Scotland) Regulations 1948 the serial number set out in the first column of the appendix.

(Signature).....

(Date).....

APPENDIX

Serial number of vehicle	Description of vehicle (*b*)	Purpose(s) (*c*) for which vehicle is to be used	Address at which vehicle ordinarily kept

(*a*) Insert name and address.

(*b*) Insert description sufficient to identify vehicle.

(*c*) Insert " manufacture ", " storage ", " sale " as the case may be.

SECOND SCHEDULE

FORM 1

Food and Drugs

Ice Cream (Scotland) Regulations 1948

Certificate in respect of premises

No.

I hereby certify that .....
.....
.....
has in terms of regulation 4 of the Ice Cream (Scotland) Regulations 1948 been registered by the Local Authority of the (County) (Burgh) of .....
..... in respect of the following premises namely
.....
.....
.....
.....
which premises may be used for the .....
..... of ice cream.

Dated this ..... day of ..... 19.... ....

Clerk to the Local Authority.

FORM 2

Food and Drugs

Ice Cream (Scotland) Regulations 1948

Certificate in respect of vehicle(s)

No.

I hereby certify that .....
.....
.....
has in terms of regulation 4 of the Ice Cream (Scotland) Regulations 1948 been registered by the Local Authority of the (County) (Burgh) of .....
..... in respect of the vehicle(s) described in the second column of the appendix hereto which vehicle(s) may be used for the purpose(s) set out in the third column of the appendix.

The serial number allocated to each vehicle in terms of regulation 4 (3) of the Ice Cream (Scotland) Regulations 1948 is set out in the first column of the appendix.

Dated this ..... day of ..... 19.....

APPENDIX

Serial number of vehicle	Description of vehicle	Purpose(s) (*a*) for which vehicles may be used

(*a*) Insert " manufacture ", " storage ", " sale " as the case may be.

THIRD SCHEDULE

Food and Drugs

Ice Cream (Scotland) Regulations 1948

Authorisation by an Ice Cream Dealer(a)

I(*b*) .....

.....

hereby authorise(*c*) .....

..... (whose signature appears below) to use the vehicle described in the appendix hereto for the purpose of the sale of ice cream.

I am registered in respect of the said vehicle by the Local Authority of the (County) (*d*) of .....,

the number of the certificate of registration issued to me by the authority being No. .....

The appendix hereto contains a true copy of the entries relating to the said vehicle contained in the appendix to the said certificate(*e*).

(Signature).....

(Date).....

APPENDIX

(i) Serial number of vehicle .....

(ii) Description of vehicle .....

(iii) Purpose(s) for which vehicle may be used .....

[*Signature* of person holding this authorisation .....]

(*a*) Copies of this form may be obtained from the local authority by whom the dealer is registered.

(*b*) Insert name and address of dealer.

(*c*) Insert name and address of person to whom authority is given.

(*d*) Delete whichever inappropriate.

(*e*) Full copy of entries in certificate to be made.

EXPLANATORY NOTE

(*This Note is not part of the Regulations, but is intended to indicate their general purport.*)

These regulations require that certain hygienic measures be observed in the manufacture and sale of ice cream. The main provisions are concerned with the registration of ice cream dealers; the cleanliness of persons, premises and vehicles concerned with the manufacture and sale of ice cream and the heat treatment of ice cream mixtures.