STATUTORY INSTRUMENTS

1983 No. 1545 (S. 145)

FOOD

The Importation of Milk (Scotland) Regulations 1983

Made - - - -	21*st October* 1983
Laid before Parliament	26*th October* 1983
Coming into Operation	16*th November* 1983

In exercise of the powers conferred on me by section 1 of the Importation of Milk Act 1983(**a**), and of all other powers enabling me in that behalf, I hereby make the following regulations:—

Citation, commencement and extent

1.—(1) These regulations may be cited as the Importation of Milk (Scotland) Regulations 1983 and shall come into operation on 16th November 1983.

(2) These regulations shall extend to Scotland only.

Interpretation

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

"authorised officer" means any person authorised to act for the purposes of these regulations by a local authority (subject to the approval for the time being of the Secretary of State), or any person authorised directly by the Secretary of State;

"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;

"consignment" means that milk to which a certificate (as described in regulation 4(*a*)(iv)) relates;

"cream" means that part of milk rich in fat which has been separated by skimming or otherwise;

"designated place" means any place designated by an authorised officer;

"exportation" means removal to a place outside the United Kingdom;

"human consumption" includes the preparation of food for human consumption;

"importer", in relation to imported milk, includes any person who, whether as owner, consignor, consignee, agent or broker, is in possession of such milk

(**a**) 1983 c. 37.

or in any way entitled to the custody or control of it, and "import" shall be construed accordingly;

"local authority" means an islands or district council;

"milk" includes cream and milk-based drink;

"milk-based drink" has the meaning given to it in the Milk-based Drinks (Scotland) Regulations 1983(**a**);

"officer of Customs and Excise" includes any person acting under the authority of the Commissioners of Customs and Excise;

"place of entry" means a port, aerodrome or other place of entry;

"semi-skimmed milk", "skimmed milk" and "standardised whole milk" have the meanings respectively assigned to them by Article 3(1)(*b*) of Council Regulation No. 1411/71/EEC(**b**), as amended(**c**);

"ultimate consumer" means any person who buys otherwise than—

(*a*) for the purpose of re-sale;

(*b*) for the purposes of a catering establishment; or

(*c*) for the purposes of a manufacturing business;

"working day" means a day which is not a public holiday, Saturday or Sunday.

(2) Any reference in these regulations to a numbered regulation or Schedule shall, unless the reference is to a regulation of, or Schedule to, specified regulations, be construed as a reference to the regulation or Schedule so numbered in these regulations.

Prohibition on importation

3.—(1) Subject to regulation 4, no person shall import into Scotland milk intended for human consumption.

(2) For the purposes of these regulations milk imported into Scotland shall be presumed, until the contrary is proved, to be intended for human consumption.

Exceptions to prohibition on importation

4. The provisions of regulation 3(1) shall not apply in respect of milk imported into Scotland which—

(*a*) (i) is standardised whole milk (which meets the requirements of regulation 4(*c*) of the Drinking Milk (Scotland) Regulations 1976(**d**)), semi-skimmed milk, skimmed milk, or cream or milk-based drink;

(**a**) S.I. 1983/1514.
(**b**) O.J. No. L148, 3.7.71, p.4 (O.J.S.E. 1971 (II), p.412). Corrigendum at O.J. No. L199, 19.7.73, p.38.
(**c**) The relevant amending instrument is Council Regulation No. 566/76/EEC; O.J. No. L67, 15.3.76, p.23. Corrigendum at O.J. No. L107, 24.4.76, p.22.
(**d**) S.I. 1976/1888.

(ii) has been heat treated by the ultra high temperature method as specified in Schedule 1, paragraph 1, or sterilised as specified in Schedule 1, paragraph 2;

(iii) has been produced in, and is imported from, a Member State of the European Economic Community;

(iv) is accompanied by, and complies with, such certificate as the Secretary of State may from time to time require by notice published in the Edinburgh Gazette in relation to milk in general or milk of such description as may be specified in the notice;

(v) is neither milk which is unfit for human consumption nor milk which has been rendered injurious to human health by addition of any substance as an ingredient, by abstraction of any constituent or by subjection to any other process or treatment (and in determining for the purposes of this paragraph whether particular milk is injurious to human health, regard shall be had not only to the probable effect of that particular milk on the health of a person consuming it, but also to the probable cumulative effect of milk of substantially the same composition on the health of a person consuming such milk in ordinary quantities);

(vi) is imported through an authorised place of entry; and

(vii) is imported in closed and sealed containers in which it is to be supplied to the ultimate consumer or to a catering establishment; or

(*b*) is cream which—

(i) has been heat treated as specified in Schedule 1, paragraph 3, and frozen immediately after heat treatment;

(ii) is imported and intended for sale to the ultimate consumer or to a catering establishment in a frozen state; and

(iii) complies in all respects with the provisions of sub-paragraphs (*a*)(iii) to (vii) of this regulation.

Authorised place of entry

5.—(1) The Secretary of State may by notices published in the Edinburgh Gazette designate a place of entry as an authorised place of entry, either—

(*a*) generally, or

(*b*) specially, in relation to a description of milk specified in the notice.

(2) The Secretary of State may also, by authorisation in writing, designate a place of entry as an authorised place of entry for any consignment of milk specified in the authorisation.

Importation procedure

6.—(1) Schedule 2 shall apply for the procedure for importation of milk into Scotland.

(2) No person shall import any milk into Scotland except in accordance with the procedure set out in Schedule 2.

(3) If anyone imports any milk into Scotland otherwise than in accordance with the procedure set out in Schedule 2, an authorised officer may cause that milk to be destroyed or disposed of by such means and in such manner as to prevent it being used for human consumption.

Application of Schedule 3

7. In relation to imported milk, Schedule 3 shall apply for the application of provisions made by or under certain enactments, the exclusion of the application of any such provision, the making of provision corresponding to any such provision and the modification of any such provision.

Powers of authorised officers

8. An authorised officer may, on production if so required of his authority enter and remain on any premises (other than domestic premises) upon which he reasonably believes imported milk to be situated, at all reasonable hours for any purpose connected with the execution of these regulations.

Offences

9.—(1) Any person who—

(*a*) imports milk in contravention of any requirement imposed by or under these regulations;

(*b*) where milk is required by or under these regulations to be dealt with by him, does not deal with that milk in accordance with that requirement; or

(*c*) in connection with the importation of milk, makes a statement or uses a document which he knows to be false in a material particular or recklessly makes a statement or uses a document which is false in a material particular,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

(2) In any proceedings for an offence under these regulations where that offence comprises the importation of milk which is unfit for human consumption, it shall be a defence for the accused to prove that at the time when he imported the milk he did not know, and could not with reasonable diligence have ascertained, that it was unfit for human consumption.

(3) A prosecution may be brought under this regulation notwithstanding that action may have been, or remains to be taken, in relation to the milk to which the prosecution relates under regulation 6(3) or Schedule 2.

George Younger,
One of Her Majesty's Principal Secretaries of State.

New St. Andrew's House,
Edinburgh.
21st October 1983.

SCHEDULE 1

Regulation 4

HEAT TREATMENT REQUIREMENTS

1. For the purpose of these regulations—

(*a*) standardised whole milk, semi-skimmed or skimmed milk shall be deemed to have been heat treated by the ultra high temperature method if it has been heated to a temperature of not less than 132.2°C, retained at that temperature for not less than 1 second and packaged aseptically.

(*b*) cream or milk-based drink shall be deemed to have been heat treated by the ultra high temperature method if it has been heated—

(i) to a temperature of not less than 140°C and retained at that temperature for not less than 2 seconds, or

(ii) to such other temperature for such period as has equivalent effect to paragraph (i) of this sub-paragraph in relation to the rendering of the cream or milk-based drink free from viable micro-organisms and their spores,

and packaged aseptically.

2. For the purpose of these regulations, milk shall be deemed to have been sterilised if it has been heated in hermetically sealed containers in which it is to be supplied to the ultimate consumer or to a catering establishment—

(*a*) to a temperature of not less than 108°C and retained at that temperature for not less than 45 minutes, or

(*b*) to such other temperature for such period as has equivalent effect to sub-paragraph (*a*) of this paragraph in relation to the rendering of the cream or milk-based drink free from viable micro-organisms and their spores.

3. For the purpose of regulation 4(*b*), cream shall be deemed to have been heat treated if it has been heated to a temperature of not less than 80°C and retained at that temperature for not less than 15 seconds.

SCHEDULE 2

Regulation 6

1. Except as specified in this Schedule—

(*a*) an importer shall ensure that, as soon as possible after importation and such examination as may be carried out by an officer of Customs and Excise, imported milk is taken to a designated place;

(*b*) no person, other than an authorised officer or a person authorised in writing by an authorised officer, shall remove imported milk from a designated place.

2.—(1) Within a reasonable time after the arrival of a consignment of imported milk at a designated place an authorised officer shall carry out a primary examination (that is to say such examination of the consignment of imported milk as may be carried out without opening any closed container in which the milk is to be supplied to the ultimate consumer or to a catering establishment, and an examination of any document accompanying that consignment).

(2) If upon that primary examination the authorised officer considers that—

(*a*) any of the consignment of imported mik has been imported in breach of these regulations; or

(*b*) that human health would be protected if that consignment were not removed from a designated place by the importer (except for export),

he shall issue a notice to the importer in writing that the consignment shall not be removed from the designated place for any purpose other than its exportation.

(3) In respect of imported milk for which a notice has not been issued under sub-paragraph (2) of this paragraph, the authorised officer shall either—

(*a*) authorise the importer in writing to remove the consignment, or

(*b*) arrange for the carrying out of further examination of the consignment in accordance with paragraph 3 of this Schedule.

3.—(1) For the purpose of further examination under paragraph 2(3)(*b*) an authorised officer may, to such extent as is reasonable and within such time as is reasonable—

(*a*) remove any imported milk from a designated place,

(*b*) open any container of imported milk,

(*c*) take samples of imported milk,

(*d*) test samples of imported milk,

(*e*) analyse samples of imported milk, and

(*f*) arrange, by agreement with any other person, for samples of imported milk to be tested and analysed by that other person.

(2) If upon that further examination an authorised officer considers that—

(*a*) any of the consignment of imported milk has been imported in breach of these regulations; or

(*b*) that human health would be protected if that consignment were not removed from a designated place by the importer (except for export),

he shall issue a notice to the importer in writing that the consignment shall not be removed from the designated place for any purpose other than its exportation.

(3) In respect of imported milk for which a notice has not been issued under sub-paragraph (2) of this paragraph, an authorised officer shall authorise the importer in writing to remove the consignment.

(4) Where further examination of a consignment is being carried out, an authorised officer shall authorise the importer to remove from the designated place such milk as the importer may reasonably require for the purpose of sampling in relation to possible proceedings under these regulations.

4. Where a notice is issued to an importer under paragraph 2(2) or 3(2) of this Schedule—

(*a*) that notice shall include a statement of the reasons for service of the notice;

(*b*) that notice shall include a statement that, unless within a time specified in the notice (being not earlier than the end of the next working day after the notice is received) the importer gives to the authorised officer—

(i) a written undertaking to export the consignment at his own expense within 14 days from the date of the undertaking; or

(ii) a written undertaking to prove before the Sheriff that the decision of the authorised officer (under paragraph 2(2) or 3(2) of this Schedule as the case may be) was incorrect,

the consignment may be destroyed or disposed of so that it cannot be used for human consumption;

(*c*) if within the time specified in that notice the authorised officer—

(i) has not received any written undertaking as described in the notice; or

(ii) has received a written undertaking that the importer will export the consignment at his own expense within 14 days from the date of the undertaking and the importer fails to export it within that period of 14 days,

the authorised officer may cause the consignment to be destroyed or disposed of by such means and in such manner as to prevent it from being used for human consumption;

(*d*) if within the time specified in that notice the authorised officer has received a written undertaking in accordance with sub-paragraph (*b*)(ii) of this paragraph, the authorised officer shall—

(i) take steps, no later than the end of the next working day after receipt of the written undertaking, to obtain the decision of the Sheriff with respect thereto,

(ii) authorise the removal from the designated place of such imported milk as the importer may reasonably require for the purpose of evidence, and

(iii) make available to the importer such information (in relation to any further examination which has taken place under paragraph 3 of this Schedule) as the importer may reasonably require for the purpose of evidence.

5. Where, in pursuance of paragraph 4 of this Schedule, the decision of the Sheriff is sought—

(*a*) if he is satisfied that the importer has failed to prove that the decision of the authorised officer (under paragraph 2(2) or 3(2) of this Schedule as the case may be) was incorrect, the Sheriff shall order the consignment to be destroyed or disposed of under the supervision of an authorised officer by such means and in such manner as to prevent it from being used for human consumption;

(*b*) if he is satisfied that the importer has proved that the decision of the authorised officer (under paragraph 2(2) or 3(2) of this Schedule as the case may be) was incorrect, the Sheriff shall order that the notice (under paragraph 2(2) or 3(2) of this Schedule as the case may be) shall no longer have effect and authorise the importer to remove the consignment from the designated place.

6. An authorised officer may, with the agreement of an officer of Customs and Excise, carry out any examination (or any part of an examination) of a consignment of imported milk before its examination by the officer of Customs and Excise has been completed and if, as a result of such an examination, the authorised officer authorises the importer in writing to remove the consignment, compliance on the part of the importer with paragraph 1(*a*) of this Schedule shall not be required.

7. An authorised officer may, to such extent as is reasonable for the purpose of protection of human health, at any stage from the time when the consignment reaches him for primary examination under paragraph 2 of this Schedule do anything specified in paragraph 3(1)(*a*) to (*f*) of this Schedule notwithstanding that he is not carrying out a further examination under paragraph 3(1) of this Schedule, and may take such action as is reasonable in respect of the destruction or disposal of any milk which he has removed under this paragraph.

8. Where, under this Schedule, any authorisation or examination relates to a consignment of imported milk, such authorisation or examination may relate only to such part of the consignment as remains after removal of any milk under paragraphs 3(1), 3(5), 4(*d*)(ii) or 7 of this Schedule.

9.—(1) Milk in respect of which a notice has been issued under paragraph 2(2) or 3(2) of this Schedule (or under any equivalent provision of legislation having effect for the time being in Northern Ireland or England and Wales) shall not subsequently be landed in Scotland.

(2) An authorised officer may cause any consignment which includes any milk to which sub-paragraph (1) of this paragraph relates to be destroyed or disposed of by such means and in such manner as to prevent it from being used for human consumption.

Regulation 7

SCHEDULE 3

1. In this Schedule "permitted imported milk" means—

(*a*) milk imported into Scotland—

(i) pursuant to the disapplication, by regulation 4, of the importation prohibition contained in regulation 3, and

(ii) in accordance with these regulations, or

(*b*) milk brought into Scotland from another part of the United Kingdom where that milk has been imported into that other part of the United Kingdom in accordance with legislation having effect for the time being in that other part of the United Kingdom.

2. The following provisions shall not apply in respect of permitted imported milk:—

(*a*) section 3 of the Milk and Dairies (Amendment) Act 1922(**a**), and the Milk (Special Designations) Act 1949(**b**), (which relate to special designations) and any order or regulations made thereunder;

(*b*) regulation 4 of the Cream (Heat Treatment) (Scotland) Regulations 1983(**c**) (which relates to heat treatment);

(*c*) regulation 7 of the Milk-based Drinks (Scotland) Regulations 1983(**d**) (which relates to heat treatment); and

(*d*) the Imported Food (Scotland) Regulations 1968(**e**).

3. Regulation 3 of the Milk and Dairies (Semi-skimmed and Skimmed Milk) (Heat Treatment and Labelling) (Scotland) Regulations 1974(**f**) shall not apply to permitted imported milk except in so far as it prohibits the sale of semi-skimmed milk and skimmed milk in the absence of compliance by a milk purveyor with his obligations under paragraphs 2 and 3 of Schedule 1 therein (which relate to records and inspections).

(**a**) 1922 c. 54; section 3 was substituted by the Milk Act 1934 (c. 51.), section 10.
(**b**) 1949 c. 34. (**c**) S.I. 1983/1515. (**d**) S.I. 1983/1514.
(**e**) S.I. 1968/1181, amended by S.I. 1973/1471, 1979/1537, 1981/1035.
(**f**) S.I. 1974/1356, amended by S.I. 1983/940, 1526.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These regulations prohibit (regulation 3) the importation of milk, cream and milk-based drinks into Scotland unless (regulation 4)—

(*a*) it comes from an EEC Member State,

(*b*) it has been heat treated as prescribed in these regulations,

(*c*) it is fit for human consumption,

(*d*) it is accompanied by an authorised certificate, and

(*e*) it is imported through an authorised place of entry.

Details of authorised certificates and authorised places of entry must be published in the Edinburgh Gazette (regulations 4 and 5), and there is provision (regulation 5) for importation of particular consignments, subject to written authorisation by the Secretary of State, through a place of entry not listed in such a notice.

Regulation 6 and Schedule 2 deal with the procedure for examination on importation under the supervision of authorised officers. There is scope for an authorised officer's decision to be reviewed by the Sheriff. An authorised officer's powers of entry are set out in regulation 8.

Regulation 7 and Schedule 3 adapt existing legislation in respect of imported milk, as follows—

(1) the distribution and sale of permitted imported whole milk is exempt from the requirements of special designation legislation; and

(2) permitted imported skimmed and semi-skimmed milk, cream and milk-based drinks are exempt from domestic heat treatment requirements.

Offences against these regulations are punishable on summary conviction by a fine not exceeding £1,000 (regulation 9).

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