1990 No. 816 (S.98)

FOOD

LABELLING, DESCRIPTIONS, ETC

The Milk and Milk Products (Protection of Designations) (Scotland) Regulations 1990

Made - - - -	*27th March 1990*
Laid before Parliament	*11th April 1990*
Coming into force	*2nd May 1990*

The Secretary of State, in exercise of the powers conferred on him by sections 7, 26(3), 56 and 56A of the Food and Drugs (Scotland) Act 1956(**a**) and section 2(2) of the European Communities Act 1972(**b**), and of all other powers enabling him in that behalf, and as a Minister designated(**c**) for the purposes of the said section 2(2) of the last mentioned Act in relation to the common agricultural policy of the European Economic Community and after consultation in accordance with section 56(6) of the said Act of 1956 with such organisations as appear to him to be representative of interests substantially affected by the Regulations, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Milk and Milk Products (Protection of Designations) (Scotland) Regulations 1990 and shall come into force on 2nd May 1990.

Offences, penalties and enforcement

2.—(1) If any person contravenes article 3 of Council Regulation (EEC) No. 1898/87(**d**) of 2nd July 1987 on the protection of designations used in marketing of milk and milk products, he shall be guilty of an offence and shall be liable–

(a) on summary conviction to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding one year, or both.

(2) Each district and islands council shall enforce and execute these Regulations in its area.

Defence

3. 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

---

(**a**) 1956 c.30; section 26(3) was amended by the Local Government (Scotland) Act 1973 (c.65), Schedule 27, Part II, paragraph 123(a) and by the Local Government and Planning (Scotland) Act 1982 (c.43), Schedule 4, Part I; section 7 and section 56 were amended by the Weights and Measures Act 1963 (c.31), Schedule 9, Parts I and II; section 56 was also amended by the Criminal Justice Act 1982 (c.48), Schedule 15, paragraph 8 and by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), section 41 and is to be read with section 289GA(2) of the Criminal Procedure (Scotland) Act 1975 (c.21) (inserted by section 66 of the Criminal Justice (Scotland) Act 1987 (c.41)); section 56A was added by the European Communities Act 1972 (c.68), Schedule 4, paragraph 3(2).

(**b**) 1972 c.68.

(**c**) S.I. 1972/1811.

(**d**) O.J. No. L182, 3.7.87, p.36.

business it is to publish or arrange for the publication of advertisements, he received the advertisement for publication in the ordinary course of business.

Application of various provisions of the Food and Drugs (Scotland) Act 1956

4.—(1) Subject to paragraph (2) of this regulation, the following provisions of the Food and Drugs (Scotland) Act 1956 shall apply for the purposes of these Regulations as if references therein to proceedings, or a prosecution, under or taken or brought under that Act included references to proceedings, or a prosecution, as the case may be taken or brought for an offence under these Regulations:–

(a) section 41(2) and (5) (which relates to proceedings);

(b) section 42(1), (2) and (3) (which relates to evidence of analysis);

(c) section 44 (which relates to the power of a court to require analysis by the Government Chemist);

(d) section 45 (which relates to a contravention due to default by some person other than the person charged);

(e) section 46(2) (which relates to the conditions under which a warranty may be pleaded as a defence);

(f) section 47 (which relates to offences in relation to warranties and certificates of analysis).

(2) Section 44 of the Food and Drugs (Scotland) Act 1956 shall apply for the purposes of these Regulations as if the reference therein to section 41(5) of that Act included a reference to that subsection as applied by paragraph (1) of this regulation.

Amendment of the Food Labelling (Scotland) Regulations 1984

5. Schedule 7 to the Food Labelling (Scotland) Regulations 1984(**a**) shall be amended by substituting for the entry therein relating to the word "milk" or any other word or description which implies that the food being described contains milk and for the immediately following entry relating to the word "milk" together with the corresponding conditions applying thereto the following entries:–

In column 1 *Words and descriptions*	In column 2 *Conditions*
"The word "milk" or any other word or description which implies that the food being described contains milk.	Shall not be used as part of the name of a food which contains the milk of an animal other than a cow, unless– (a) (i) such milk has all its normal constituents in their natural proportions, and (ii) the word or description is accompanied by the name of that animal; or (b) (i) such milk has been subjected to a process or treatment, and (ii) the word or description is accompanied by the name of that animal and an indication of that process or treatment; or (c) the word or description is used in accordance with any regulations made, or having effect as if made, under the Act or any order having effect as if contained in regulations so made.
The word "milk".	Shall not be used as the name of an ingredient where the ingredient is the milk of an animal other than a cow, unless– (a) the word is accompanied by the name of the animal; and (b) the use of the word as the name of the ingredient complies in all other respects with these regulations."

(**a**) S.I. 1984/1519, to which there are amendments not relevant to these Regulations.

Repeals and Revocations

6. The Act and Regulations specified in the first and second columns of the Schedule to these Regulations are hereby repealed or revoked to the extent specified in relation thereto in the third column of that Schedule.

St. Andrew's House, Edinburgh
27th March 1990

Sanderson of Bowden
Minister of State,
Scottish Office

SCHEDULE

Regulation 6

REPEALS AND REVOCATIONS

(1) *Measures repealed or revoked*	(2) *References*	(3) *Extent of repeal or revocation*
The Skimmed Milk with Non-Milk Fat (Scotland) Regulations 1960	S.I. 1960/2437	Regulations 4, 5(2) and 6.
The Ice-Cream (Scotland) Regulations 1970.	S.I. 1970/1285.	Regulation 7(1)(ii).
The Margarine (Scotland) Regulations 1970.	S.I. 1970/1286.	Regulations 8(a) and 9(3)(a).
The Food and Drugs (Scotland) Act 1956	c.30.	Section 17(2). In section 18, subsections (1) and (2), in subsection (3) the words "and imitation cream" onwards, and subsections (4) and (5).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply to Scotland only, and come into force on 2nd May 1990, provide for the enforcement of Council Regulation (EEC) No. 1898/87 on the protection of designations used in the marketing of milk and milk products.

The Council Regulation provides, inter alia, for–

(a) the definition of the terms "milk" and "milk products" and the reservation of certain designations (cream, butter, etc) to the latter (article 2 of the Annex to the Council Regulation);

(b) a prohibition on the use of those designations for any product other than those referred to in Article 2, save in respect of products the exact nature of which is clear from traditional usage and/or when the designations are clearly used to describe a characteristic quality of the product (article 3.1 of the Council Regulation); and

(c) a prohibition, in respect of any product other than those described in Article 2, on the use of any label etc., advertising, or presentation which claims, implies or suggests that the product is a dairy product (article 3.2 of the Council Regulation).

These Regulations–

(a) prescribe offences and penalties in respect of article 3 of the Council Regulation (regulation 2(1));

(b) designate enforcement authorities (regulation 2(2));

(c) provide a defence for advertisers acting in the ordinary course of business (regulation 3); and

(d) introduce consequential amendments (including repeals and revocations) to the Food and Drugs (Scotland) Act 1956 and certain other regulations made under that Act (regulations 5 and 6, and the Schedule) and

(e) make ancillary provisions (regulation 4).

95p net

ISBN 0 11 003816 9

Printed in the United Kingdom by HMSO at Edinburgh Press

800 WO 0786 C11 4/90 452/4 19593 PS 8350958 (279123)