

## EUROPEAN COMMUNITIES (STANDARDS FOR HEAT-TREATED MILK IN INTRA-COMMUNITY TRADE) REGULATIONS 1990

I, MICHAEL O'KENNEDY, Minister for Agriculture and Food, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972), and for the purpose of giving full effect to Council Directive No. 85/397/EEC of 5 August 1985,(1), Council Regulation (EEC) No. 1411/71 of 29 June 1971(2), Council Regulation (EEC) No. 566/76 of 15 March 1976(3) and Commission Directive No 89/362/EEC of 26 May 1989 (4) hereby make the following Regulations:

(1) O.J. No. L226/13, 24.8.1985

(2) O.J. No. L148/4, 3.7.1971

(3) O.J. No. L67/23, 15.3.1976

(4) O.J. No. L156/30, 8.6.1989.

### REG 1

1. (1) These Regulations may be cited as the European Communities (Standards for Heat-treated Milk in Intra-Community Trade) Regulations, 1990.

(2) These Regulations shall come into operation on the 18th day of May 1990.

### REG 2

2. (1) In these Regulations—

"the Directive" means Council Directive No. 85/397/EEC of 5 August, 1985;

"authorised officer" means a person authorised in writing by the Minister to exercise for the purposes of these Regulations and the Directive the powers conferred on an authorised officer by these Regulations;

"approved milk collection centre", "approved milk standardisation centre", "approved milk treatment establishment", "approved production holding" and "approved number" have the meanings assigned to them by Regulation 8 of these Regulations;

"heat-treated milk" includes concentrated, pasteurised milk;

"the Minister" means the Minister for Agriculture and Food;

"the register" means the register established under Regulation 8 of these Regulations and cognate words shall be construed accordingly.

(2) A word or expression that is used in these Regulations and is also used in the Directive has, unless the contrary intention appears, the meaning in these Regulations that it has in the Directive.

### REG 3

3. (1) Heat-treated milk other than heat-treated milk specified in Article 3 of the Directive shall not be exported from the State to another Member State.

(2) Heat-treated milk shall not be exported from the State to another Member State unless—

( a ) it is accompanied by a health certificate, duly completed, relating to the milk in the form specified in Annex B to the

Directive and signed by an authorised officer who is an officer of the Minister and otherwise complies with the Directive,  
( b ) it is produced by an approved production holding,  
( c ) it is processed by an approved milk treatment establishment,  
( d ) any milk collection centre through which it is channelled is an approved milk collection centre,  
( e ) any milk standardisation centre through which it is channelled is an approved milk standardisation centre, and  
( g ) its fat content is in compliance with Council Regulation (EEC) No. 1411/71 of 29 June, 1971, as amended by Council Regulation (EEC) No. 566/76 of 15 March 1976.  
(3) Where there is a contravention of this Regulation, the consignor of the milk concerned and any other person exporting or attempting to export it from the State shall be guilty of an offence.

#### REG 4

4. (1) Heat-treated milk other than heat-treated milk specified in Article 3 of the Directive shall not be imported into the State from another Member State.  
(2) Heat-treated milk shall not be imported into the State from another Member State unless—  
( a ) it is accompanied by a health certificate, duly completed, in the form specified in Annex B to the Directive, and  
( b ) it is imported through Dublin Airport, the port of Dublin, Dun Laoghaire, Rosslare, Ringaskiddy, Tivoli or Waterford or the land frontier crossing point at Blacklion, Monaghan, Carrigans or Killeen, and  
( c ) its fat content is in compliance with Council Regulation (EEC) No. 1411/71 of 29 June, 1971, as amended by Council Regulation (EEC) No. 566/76 of 15 March 1976.  
(3) Where it is proposed to import heat-treated milk into the State, notice of the importation and of the date and place of the importation shall be given to the Minister by the consignor or consignee of the milk or a representative of either of them not less than 3 days before the date of such importation.  
(4) ( a ) Where there is a contravention of paragraph (1) or (2) of this Regulation, the consignee of the milk concerned and any other person importing or attempting to import it into the State shall be guilty of an offence.  
( b ) Where in relation to heat-treated milk imported into the State paragraph (3) of this Regulation has not been complied with, the consignee of the milk shall be guilty of an offence.  
5. (1) ( a ) An approved milk treatment establishment, an approved milk collection centre, an approved milk standardisation centre, an approved production holding and any other premises or place where milk being used or intended to be used in intra-Community trade in heat-treated milk is produced, processed, handled or kept shall comply with the provisions of these Regulations and the Directive.  
( b ) An approved production holding shall comply with the provisions of Commission Directive No. 89/362/EEC of 26 May 1989.  
(2) Where there is a contravention of paragraph (1) of this Regulation, the owner of the establishment, centre, holding or other premises or place concerned shall be guilty of an offence.

## REG 6

6. (1) Where an approved milk treatment establishment makes products obtained in whole or in part from milk or milk products, the foodstuffs used in the manufacture of the products shall, if they have not previously undergone heat treatment or another similar kind of treatment that does not adversely affect milk or milk products, be stored and treated by the establishment in separate premises specially provided for that purpose.

(2) Where there is a contravention of this Regulation, the owner of the establishment concerned shall be guilty of an offence.

## REG 7

7. (1) A person shall not use or authorise or permit the use for any other purpose of premises, installation or working equipment used for the collection, treatment or storage of milk or milk products intended for intra-Community trade in heat-treated milk.

(2) A person who contravenes paragraph (1) of this Regulations shall be guilty of an offence.

## REG 8

8. (1) The Minister shall establish and maintain a register (in these Regulations referred to as "the register") of approved milk treatment establishments, approved milk collection centres, approved milk standardisation centres and approved production holdings.

(2) ( a ) Where an application for registration is made to the Minister by or on behalf of the person carrying on a milk treatment establishment, a milk collection centre, a milk standardisation centre or milk production holding engaged in the processing, handling or production of milk intended for intra-Community trade in heat-treated milk, the Minister shall cause to be entered and kept in the register the name and address of the establishment, centre or holding if, but only if, it complies with the provisions of the Directive and, in the case of a production holding, Commission Directive No 89/362/EEC of 26 May 1989, and

( b ) shall cause to be allocated to each such establishment, centre and holding, and to be entered in the register, a number (which shall be known as "an approved number"), and such an establishment, centre or holding as respects which the matters aforesaid stand entered in the register shall be deemed to be registered and shall be known as "an approved milk treatment establishment", "an approved milk collection centre" "an approved milk standardisation centre" or "an approved production holding", as may be appropriate.

(3) The Minister shall cause to be removed from the register the name, address and approved number of a milk treatment establishment, an approved milk collection centre, an approved milk standardisation centre or an approved production holding that no longer complies with the provisions of these Regulations or the Directive or, in the case of an approved production holding, Commission Directive No. 89/362/EEC of 26 May 1989.

- (4) ( a ) An application for registration shall be made on such form as the Minister may specify.
- ( b ) A person applying for registration shall furnish the Minister with such information as he may reasonably require for the purposes of his functions under these Regulations.
- ( c ) The Minister may refuse to register an establishment, centre or holding in relation to which information required by him has not been furnished to him or information that is false or misleading in a material particular has been furnished to him.
- ( d ) There shall be paid to the Minister upon an application under this regulation a fee of such amount as may be determined by the Minister.
- ( e ) There shall be paid to the Minister by the person carrying on an approved milk treatment establishment, an approved milk collection centre, an approved milk standardisation centre or an approved production holding, within one month of each anniversary of the day on which the establishment, centre or holding became registered, a fee of such amount as may be determined by the Minister.
- ( f ) Fees of different amounts may be determined in respect of milk treatment establishments, milk collection centres, milk standardisation centres and milk production holdings and in respect of such establishments, centres and holdings of different sizes.
- ( g ) The Minister shall not consider an application for registration if the fee payable in respect of the application under paragraph (d) of this Regulation has not been paid.
- ( h ) The Minister may cause to be removed from the register, the name, address and approved number of an approved milk treatment establishment, an approved milk collection centre, an approved milk standardisation centre or an approved milk production holding in respect of which the fee payable under paragraph (e) of this Regulation has not been paid.
- (5) ( a ) In any proceedings a certificate signed by an authorised officer and stating—
- (i) that he has examined the register, and
- (ii) that the register shows that on the date or during the period specified in the certificate a specified milk treatment establishment, milk collection centre, milk standardisation centre or production holding was not registered shall be admissible as evidence of the fact that the establishment, centre or holding was not registered.
- ( b ) A document purporting to be a certificate under subparagraph (a) of this paragraph shall be deemed to be such a certificate and to have been signed by the person purporting to have signed it unless the contrary is shown.
- (6) During the period of 3 months immediately after the commencement of these Regulations, a milk treatment establishment, a milk collection centre, a milk standardisation centre and a production holding that, immediately before such commencement, was engaged in the processing, handling or production of milk intended for intra-Community trade in heat-treated milk shall be deemed to be registered.
- (7) A person shall not carry on a milk treatment establishment, a milk collection centre or a milk standardisation centre or a milk production holding that is engaged in the processing, handling or production of milk intended for intra-Community trade in heat-treated

milk unless it is registered.

(8) A person who contravenes paragraph (7) of this Regulation or furnishes information to the Minister, pursuant to a requirement under paragraph (4) of this Regulation that is to his knowledge false or misleading in a material particular shall be guilty of an offence.

#### REG 9

9. (1) Milk tankers used for the purposes of intra-Community trade in heat-treated milk shall not be used for the transport of any article or substance other than milk, milk products and potable water.

(2) Where there is a contravention of paragraph (1) of this Regulation, the owner of the tanker concerned shall be guilty of an offence.

#### REG 10

10. (1) An authorised officer, on production of the officer's authorisation, if so required by any person affected, may, for the purposes of these Regulations, the Directive, Council Regulation (EEC) No 1411/71 of 29 June 1971, Council Regulation (EEC) No. 566/76 of 15 March 1976 and Commission Directive No. 89/362/EEC of 26 May 1989—

( a ) at all times enter—

(i) any premises that he reasonably suspects to be a milk treatment establishment, a milk collection centre, a milk standardisation centre or a milk production holding that is engaged in the production, processing or handling of milk intended for intra-Community trade in heat-treated milk,

(ii) any premises where it is proposed to establish such an establishment, centre or holding,

(iii) any other premises or place on or at which he reasonably suspects that there is milk that is intended for intra-Community trade in heat-treated milk, or

(iv) any vehicle, wagon, vessel or aircraft that he reasonably suspects to contain milk intended for intra-Community trade in heat-treated milk, and there carry out or have carried out such inspections, examinations, tests and checks of the premises or place and any equipment, machinery or plant in, on or at the premises, place, vehicle, wagon, vessel or aircraft as he reasonably considers to be necessary or expedient and check, inspect and examine any milk found therein or thereat and, where appropriate, require it to be kept for such period, and at such place, as he may specify,

( b ) require any person on the premises or at the place or the owner or person in charge of the vehicle, wagon, vessel or aircraft to give to him such information and to produce to him such records and other documents within the power or procurement of the person as he may reasonably require for the purposes of his functions under these Regulations,

( c ) examine and take copies of, or copies of extracts from, any such records or documents as aforesaid,

( d ) take, without payment, such samples of any milk or other substance found on the premises, at the place or on or in the

vehicle, wagon, vessel or aircraft as he may reasonably require and carry out or have carried out on the samples such examinations, tests, checks, and analyses, according with any relevant provisions of the Directive, as he considers necessary or expedient,

( e ) if he is a veterinary surgeon, check the general state of health of any cows or other cattle on or at the premises or place and, if necessary, have a clinical examination carried out of the udder of any cows on or at the premises or place and perform any other functions that the official veterinarian is authorised or required to perform by the Directive,

( f ) if accompanied by a member of the Garda Síochána in uniform, stop any vehicle that he reasonably suspects to contain milk or a milk product or to be used or intended to be used for the transport of milk or a milk product, and

( g ) in the case of any heat-treated milk found in the exercise of powers conferred by this Regulation imported into the State from a Member State, require the production of the relevant health certificate.

(2) An expert referred to in Articles 5.4 and 8 of the Directive shall have and may exercise for the purposes of those Articles the powers conferred on an authorised officer by this Regulation.

(3) A veterinary expert from the Commission referred to in Article 6 of the Directive shall have and may exercise for the purposes of that Article the powers conferred on an authorised officer by this Regulation.

(4) An expert referred to in paragraph (2) and (3) of this Regulation shall be furnished by the Minister with a document containing a statement to the effect that he is authorised to exercise the powers conferred by this Regulation for the purposes of Articles 5.4 and 8 of the Directive or, as the case may be, for the purposes of Article 6 thereof and shall, when exercising any such power as aforesaid, if so required by any person affected, produce the authorisation.

(5) A person who obstructs or impedes an authorised officer, or an expert referred to in paragraph (2) or (3) of this Regulation, in the exercise of a power or, without reasonable excuse, does not comply with a requirement, under this Regulation or who, in purported compliance with such a requirement, gives information to an authorised officer or such an expert as aforesaid that he knows to be false or misleading in a material respect shall be guilty of an offence.

11. (1) ( a ) Checks, inspections and examinations under Regulation 10 of these Regulations of consignments of milk imported into the State shall be carried out at the place of importation or destination of the milk concerned or at another suitable place that interferes as little as possible with the routing of the milk.

( b ) Checks, inspections, examinations and analyses under that Regulation shall be such as not to delay unduly, having regard to the nature of those checks, inspections, examinations and analyses, the passage of the milk concerned and its placing on the market or cause delays that might adversely affect its quality.

(2) Where, pursuant to a check, inspection, examination or analysis under Regulation 10 of these Regulations, it is found that the milk concerned, being heat-treated milk imported from another Member State, does not comply with these Regulations or any of the Directives or

the other Regulations referred to in the said Regulation 10, the Minister or the authorised officer concerned may—

( a ) (i) if health considerations so permit, direct the consignor or the consignee of the milk (or a representative of either of them) at his expense and at his option—

(I) to return the milk to the milk treatment establishment from which it came,

(II) to dispose of the milk for use for purposes other than human consumption, or

(III) to destroy the milk,

or

(ii) if health considerations do not permit the option aforesaid, direct the consignor or the consignee of the milk (or a representative of either of them), at his expense, to destroy the milk, and

( b ) where appropriate, direct that the milk be kept, for such period, and such place, as he may specify.

(3) ( a ) A direction under this Regulation shall state that the consignor concerned may, within a period of 3 days from the date of the giving of the direction, request the furnishing, at the expense of the consignor, of the opinion of an expert under Article 8 of the Directive in relation to the direction and that, if he wishes to make such a request, he should so notify the Minister within the period aforesaid.

( b ) Where a consignor of milk to whom a direction has been given or communicated under this Regulation wishes to obtain the opinion of an expert thereon under the said Article 8—

(i) he shall notify the Minister accordingly within the period of 3 days from the date of the giving or communication of the direction to him, and

(ii) the Minister shall thereupon furnish to him the names and addresses of not less than two experts either of whom may be requested by the consignor within 10 days from the date of the giving or communication of the direction to the consignor to furnish to the consignor, upon payment to the expert by the consignor of such fee as may be agreed upon by the parties, an opinion on the direction under the aforesaid Article 8.

( c ) where a consignor of milk obtains the opinion of an expert under the aforesaid Article 8, he shall furnish a copy of the opinion to the Minister forthwith.

( d ) (i) Where the opinion of an expert, obtained pursuant to a request duly made under this Regulation and in accordance with the aforesaid Article 8 and the rules adopted under Article 14 of the Directive for applying the aforesaid Article 8, recommends that the direction concerned be withdrawn, it shall be withdrawn.

(ii) Where such an opinion recommends that the direction concerned be confirmed subject to specified amendments, the direction shall be read and construed with and subject to the amendments.

(4) ( a ) Where a direction is given under this Regulation to the consignee of a consignment of milk, or his representative, it shall also be communicated by the Minister or, as the case may be, the authorised officer concerned to the consignor concerned or his representative and, if so requested by either of them, shall forthwith be so communicated in writing.

( b ) The reasons for giving a direction under this Regulation

shall also be communicated to the consignor concerned or his representative and, if so requested by either of them, shall forthwith be so communicated in writing.

(5) ( a ) A person who fails or refuses to comply with a direction under this Regulation shall be guilty of an offence.

( b ) A direction under this Regulation (except in so far as it is a direction under paragraph (2) (b) of this Regulation) shall be deemed, for the purposes of subparagraph (a) of this paragraph, not to be in operation—

(i) during the period of 3 days from the date of the giving of the direction, and

(ii) if the consignor to whom the direction is given or communicated gives a notification to the Minister under and in accordance with clause (i) of paragraph (3) (b) of this Regulation—

(I) in case a request is duly made under clause (ii) of the said paragraph (3) (b) for an opinion on the direction under Article 8 of the Directive, until the expiration of 3 days after the furnishing of the opinion, or

(II) in case such a request as aforesaid is not duly made, during the period of 10 days specified in the said clause (ii).

( c ) Subparagraph (a) of this paragraph does not apply in relation to a direction (except in so far as the direction is a direction under subparagraph (b) of paragraph (2) of this Regulation) in relation to which an opinion referred to in sub paragraph (d)

(i) of the said paragraph (3) recommends that the direction be withdrawn.

## REG 12

12. (1) A person guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 6 months or to both.

(2) Where an offence under this Act has been committed by a body corporate an is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person shall also be guilty of an offence and be liable to be proceeded against and punished as if he was guilty of the first-mentioned offence.

GIVEN under my Official Seal, this 18th day of May 1990.

MICHAEL O'KENNEDY,  
Minister for Agriculture and Food.

## EXPLANATORY NOTE.

This Order implements EEC Council Directive on health and animal health problems affecting intra-Community trade in heat-treated milk and EEC Commission Directive 89/362 on general conditions of hygiene on milk production holdings.