

The Parliament of New Zealand enacts as follows:

1 Title

(1) This Act is the Animal Products (Ancillary and Transitional Provisions) Amendment Act 2005.

(2) In this Act, the Animal Products (Ancillary and Transitional Provisions) Act 1999 is called "the principal Act".

2 Commencement

(1) This Act comes into force on 1 June 2005, except for section 11(1)(e).

(2) Section 11(1)(e) comes into force on 1 June 2006.

3 Title amended

The Title of the principal Act is amended by inserting, after paragraph (b), the following paragraph:

"(ba) repeal the Dairy Industry Act 1952 on 1 June 2005; and".

4 Interpretation

(1) Section 4(1) of the principal Act is amended by repealing the definition of existing business, and substituting the following definition:

"existing business, or existing animal product business,---

"(a) means a business that was operating as an animal product business as at---

"(i) the commencement of the Animal Products Amendment Act 2005, in the case of a business engaged in dairy processing (and to the extent only of that dairy processing):

"(ii) the commencement of Part 2 of the Animal Products Act 1999, in any other case; but

"(b) does not include any business or operation referred to in paragraphs (a) to (c) of the definition of new business."

(2) The definition of new business in section 4(1) of the principal Act is amended---

(a) by inserting, after the words "Animal Products Act 1999" where they first occur, the words "(or the date of commencement of the Animal Products Amendment Act 2005, in the case of a business engaged in dairy processing, to the extent that it is engaged in dairy processing)";

(b) by inserting in paragraph (c), after the words "Animal Products Act 1999", the words "(or the date of commencement of the Animal Products Amendment Act 2005, in the case of a business engaged in dairy processing, to the extent that it is engaged in dairy processing)".

5 Existing businesses to register risk management programme by relevant staggered transition date

Section 9(1)(c) of the principal Act is amended by repealing subparagraph (iii), and substituting the following subparagraphs:

"(iia) all renderers to whom paragraph (b)(iii) does not apply; and

"(iii) all petfood processors (whether or not licensed under section 20(1)(b) of the Meat Act 1981); and".

6 New businesses

Section 11 of the principal Act is amended by inserting, after the words "Animal Products Act 1999", the words "(or the date of commencement of the Animal Products Amendment Act 2005, in the case of a business engaged in dairy processing)".

7 Interpretation

Section 61(1) of the principal Act is amended by inserting in the definition of analyst, after the words "a person", the words "recognised or".

8 New Part 6 inserted

The principal Act is amended by inserting, after section 74, the following Part:

"Part 6
"Dairy products

"75 Repeal of Dairy Industry Act 1952
The Dairy Industry Act 1952 is repealed.

"76 Regulations revoked
The following regulations are revoked:

"(a) the Dairy Industry Regulations 1990 (SR 1990/290):

"(b) the Dairy Industry (Fees) Regulations 2000 (SR 2000/89):

"(c) the Dairy Industry (Food Act 1981) Exemption Order 1996 (SR 1996/200):

"(d) the Dairy Industry (Exporter Registration) Regulations 2002 (SR 2002/121).

"77 Regulations continued in force

"(1) The following regulations continue in force as if they were a regulated control scheme made by regulations under the Animal Products Act 1999, and as amended in the manner set out in Schedule 6:

"(a) the Dairy Industry (IMA Certification) Regulations 2000 (SR

2000/116):

"(b) the Dairy Industry (National Residue Monitoring Programme) Regulations 2002 (SR 2002/139).

"(2) Any criteria set out in circulars promulgated under regulation 17 of the Dairy Industry (IMA Certification) Regulations 2000---

"(a) are deemed to be specifications set by the Director-General under section 45 of the Animal Products Act 1999; and

"(b) continue in force accordingly, and may be amended or revoked by the Director-General by notice under section 167 of that Act.

"78 Product safety programmes deemed to be risk management programmes

"(1) All product safety programmes that, immediately before the commencement of the Animal Products Amendment Act 2005, held the status of being approved by the Director-General under the Dairy Industry Regulations 1990 are deemed to be risk management programmes, on the same terms of approval, registered under Part 2 of the Animal Products Act 1999.

"(2) The operator of any such programme must, by 1 December 2005, notify the Director-General of the particulars specified in section 19 of the Animal Products Act 1999 in relation to risk management programmes, and the Director-General must record those particulars on the register of risk management programmes.

"(3) Where a completed application for approval of a product safety programme under the Dairy Industry Regulations 1990 has been lodged with the Director-General before the commencement of the Animal Products Amendment Act 2005,---

"(a) the Director-General must process that application as if the Dairy Industry Regulations 1990 were still in force; and

"(b) if the product safety programme is approved by the Director-General, it is, on approval, deemed to be a risk management programme registered under Part 2 of the Animal Products Act 1999; but

"(c) nothing in this section requires the Director-General to approve the product safety programme if the application was not properly submitted in accordance with the Dairy Industry Regulations 1990, or the programme is seriously deficient.

"(4) If an application for approval of a product safety programme to which subsection (3) applies, is seriously deficient, or any delay in the programme's registration is primarily attributable to any act or omission of the person submitting it,---

"(a) the Director-General may treat it as an application for registration of a risk management programme under section 20 of the Animal Products Act 1999; and

"(b) the provisions of Part 2 of that Act apply accordingly.

"(5) Any conditions or directions or instructions imposed or given under the Dairy Industry Act 1952 in relation to registered premises or to a product safety programme or its operator continue to apply as if imposed or given in relation to the premises or the programme or its operator under the Animal Products Act 1999.

"79 Transition period for dairy businesses without product safety programmes

"(1) Nothing in the Animal Products Act 1999 requires a person or business to operate under a registered risk management programme (or, if appropriate, a food safety programme under the Food Act regime) at any time before 1 June 2006 in respect of dairy processing operations of a kind that, immediately before the commencement of the Animal Products Amendment Act 2005, they carried out otherwise than under a product safety programme approved by the Director-General under the Dairy Industry Regulations 1990 (in this section called the relevant operations).

"(2) In the case of relevant operations carried out on premises registered under the Dairy Industry Regulations 1990, the person or business concerned must, until the close of 31 May 2006 (or until any earlier date on which a risk management programme is registered or a food safety programme is approved in respect of those operations), comply with the requirements of---

"(a) the Dairy Industry Act 1952 as if it had not been repealed by section 75, and as if---

"(i) the definition of inspector in section 2 of the Dairy Industry Act 1952 included a reference to animal product officers; and

"(ii) sections 26, 26A, and 27 of that Act were repealed; and

"(b) the following regulations, as if they had not been revoked by section 76:

"(i) regulations 2, 3, 13, 20 to 24, 35, 38 to 41, 46 to 48, 51 to 58, 60, and 61 of the Dairy Industry Regulations 1990; and

"(ii) the Dairy Industry (Fees) Regulations 2000; and

"(c) the Dairy Industry (National Residues Monitoring Programme) Regulations 2002.

"(3) In the case of relevant operations that were not carried out on premises registered under the Dairy Industry Regulations 1990, and that produce dairy product for the domestic market only (or the domestic market and Australia only), the person or business concerned must comply with the requirements of the Food Hygiene Regulations 1974 (as in force before their amendment by section 11 of the Animal Products (Ancillary and Transitional Provisions) Amendment Act 2005) until the earlier of---

"(a) the date a risk management programme is registered or a food safety programme is approved in respect of those operations; and

"(b) the close of 31 May 2006.

"(4) To avoid doubt,---

"(a) all dairy material or dairy product exported to a destination other than Australia must be processed under---

"(i) a risk management programme registered under the Animal Products Act 1999, or a product safety programme approved under the Dairy Industry Regulations 1990 (or both); or

"(ii) an exemption under section 9 of the Animal Products Act 1999:

"(b) dairy material or dairy product exported to Australia must be processed under such a risk management programme or product safety programme only if there are Australian market access requirements that are in excess of those applicable to the relevant material or product for the New Zealand domestic market.

"(5) Without limiting the generality of section 84 of this Act, regulations made under section 166 of the Animal Products Act 1999 may provide that, during the transition period provided for in this section, specified provisions of the Dairy Industry Act 1952 and the Dairy Industry Regulations 1990---

"(a) are not to apply, in all or in any specified cases; or

"(b) are to apply subject to the modifications specified in the regulations.

"80 Application for registration should be made at least 3 months before 1 June 2006

"(1) Where a person or business to which section 79 applies has applied for registration of a risk management programme at least 3 months before 1 June 2006, the Director-General must take all reasonable steps to ensure that registration of the programme can occur before that date, provided the programme was properly submitted in a reasonable form.

"(2) Nothing in subsection (1) requires the Director-General to register a risk management programme before 1 June 2006 in any case where---

"(a) the risk management programme was not properly submitted in accordance with sections 17 to 20 of the Animal Products Act 1999, or is seriously deficient; or

"(b) any delay in registration of the programme is primarily attributable to any act or omission of the person submitting the programme for registration.

"81 Existing exporters

All persons who, immediately before the commencement of the Animal Products Amendment Act 2005, were registered as exporters under the Dairy Industry (Exporter Registration) Regulations 2002 are deemed from the commencement of that Act (unless deregistered) to be registered as exporters under section 55 of the Animal Products Act 1999.

"82 Transition period for producers of animal feeds from dairy material

"(1) Nothing in the Animal Products Act 1999 requires any business that produces animal feeds for sale or export from dairy material to carry out its animal feed operations under a registered risk management programme at any time before 1 June 2006, except as provided in subsection (2).

"(2) If the export of any animal feed from dairy material requires an official assurance, however, the official assurance may be given only if the relevant operations were carried out under a registered risk management programme.

"83 Equivalence of material and product produced under previous dairy regime
For the purposes of the Animal Products Act 1999 and this Act, any dairy material or product produced under and in compliance with the legislation referred to in sections 75 to 77, or under and in compliance with this Part of this Act, is to be treated as equivalent to animal product, at the comparable stage of processing, produced under and in compliance with Parts 2 to 4 of the Animal Products Act 1999.

"84 Regulations

Without limiting the generality of section 166 of the Animal Products Act 1999, regulations under that section may prescribe transitional and savings provisions relating to the coming into force of the Animal Products Amendment Act 2005 and to transitional matters during the period ending with 31 May 2006."

9 New Schedule 6 added

The principal Act is amended by adding the Schedule 6 set out in Schedule 1 of this Act.

10 Food Act 1981 amended

(1) Section 8AA(1) of the Food Act 1981 is amended by inserting, after paragraph (b), the following paragraph:

"(ba) dairy processors (as defined in section 4(1) of the Animal Products Act 1999):".

(2) Section 11A(1) of the Food Act 1981 is amended by omitting the expression "subsection (2)", and substituting the expression "subsections (2) and (3)".

(3) Section 11A of the Food Act 1981 is amended by repealing subsection (3), and substituting the following subsections:

"(3) A milk producer may sell raw milk to a dairy processor (as defined in section 4(1) of the Animal Products Act 1999) who---

"(a) purchases the milk for processing for sale or export; and

"(b) is a person who---

"(i) carries out the processing under a risk management programme registered (or deemed to be registered) under the Animal Products Act 1999 or

"country-specific tariff quota means the tariff quotas relating to the import of dairy product into the European Communities that specify New Zealand as the country of origin, namely,---

"(a) the tariff quota for butter of New Zealand origin:

"(b) the tariff quota for cheddar cheese of New Zealand origin:

"(c) the tariff quota for cheese for processing of New Zealand origin

"Director-General means the chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of the Act

"equipment includes all apparatus, containers, conveyances, machinery, piping, pumps, utensils, vehicles, and other things used in the transport, reception, testing, grading, manufacture, or storage of milk

"IMA certificate means the certificate of official assurance in the form specified by the Director-General, having regard to tariff quota product requirements, that enables dairy product to be imported into the European Communities under a country-specific tariff quota

"inspection means any activity carried out for the purpose of ascertaining whether or not these regulations, or any approved quota compliance programme, are or is being, or can be, complied with

"recognised laboratory means a laboratory recognised under the Act
store means premises used for storing tariff quota product

"tariff quota product means dairy product that is intended for import into the European Communities under a country-specific tariff quota

"tariff quota product requirements means the requirements established by the European Communities that must be met by a consignment of dairy product if it is to be imported into the European Communities under a country-specific tariff quota.

"4 Application for IMA certificate

A person may apply in writing to the Director-General for an IMA certificate in accordance with section 63 of the Act.

"5 Decision to issue IMA certificate

"(1) The Director-General may issue an IMA certificate under section 61 of the Act if satisfied that---

"(a) the consignment of tariff quota product in respect of which the application is made would not cause New Zealand to exceed its country-specific tariff quota for the relevant period; and

"(b) the application is made by a person who is lawfully entitled to export tariff quota product; and

"(c) the consignment of tariff quota product in respect of which the

application is made has been manufactured, stored, and tested in accordance with approved quota compliance programmes; and

"(d) the exporter making the application is operating in accordance with an approved quota compliance programme.

"(2) The Director-General must not issue an IMA certificate if the Director-General is aware of any information that suggests that the consignment does not meet the tariff quota product requirements.

"6 IMA certificate may be withdrawn or reissued
The Director-General may withdraw or reissue any IMA certificate as provided in section 64 of the Act."

Regulation 15

Omit from the heading of regulation 15 the word "inspectors" and substitute the words "animal product officers".

Omit subclauses (1) and (2) and substitute the following subclauses:

"(1) An occupier of a dairy factory, store, or recognised laboratory, and any holder of a risk management programme, must permit an animal product officer, or other person recognised by the Director-General, at all reasonable times to do all or any of the following for the purposes of these regulations:

"(a) to enter the dairy factory, store, recognised laboratory, or other premises and inspect any part of the premises, and any equipment, process, procedure, or dairy product on the premises:

"(b) to carry out any examination or test, or to require any demonstration of any processing, testing, or inspection procedure:

"(c) to peruse all charts and other records kept for the purposes of these regulations, and to make copies of any entries in the charts and records.

"(2) An exporter of tariff quota product must permit an animal product officer, or other person recognised by the Director-General, at all reasonable times to do all or any of the following for the purposes of these regulations:

"(a) to enter premises where the exporter---

"(i) stores the records that the exporter keeps for the purposes of these regulations; or

"(ii) carries out the processing of data relating to tariff quota product:

"(b) to peruse and audit---

"(i) all records kept for the purposes of these regulations, and to make copies of any entries in the records; and

"(ii) the systems and procedures for the processing of data relating to tariff quota product."

Regulation 17
Revoke.

Regulation 18
Omit from the heading the word "registered" and substitute the word "recognised".

Omit the word "registered" and substitute the word "recognised".

Regulation 20
Revoke.

Dairy Industry (National Residue Monitoring Programme) Regulations 2002
(SR 2002/139)

Regulations 3 to 10
Revoke these regulations and substitute the following regulations:

"3 Interpretation

In these regulations, unless the context otherwise requires,---

"Act means the Animal Products Act 1999

"chemical substance includes an agricultural compound, a veterinary medicine, an environmental contaminant, an extraneous substance, a toxic substance, and the metabolites of those substances

"Director-General means the chief executive of the Department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of the Act

"farm dairy has the same meaning as in the Act

"operator means---

"(a) for a dairy processor, including the operator of a farm dairy, every person who controls or manages the dairy processing; and

"(b) for a registered risk management programme, the person specified in the programme as the operator

"programme means the dairy residue monitoring programme referred to in regulation 5

"recognised laboratory means a laboratory recognised under the Act

"recognised person means a person recognised by the Director-General under regulation 6

"residue---

"(a) means a chemical substance that remains in or on raw milk, dairy material, or dairy product and that---

"(i) is likely to be harmful to a human or an animal; or

"(ii) fails to comply with the New Zealand (Maximum Residue Limits of Agricultural Compounds) Food Standard and Food Standards Code applicable to New Zealand; or

"(iii) exceeds any maximum allowable level specified in standards or specifications made under the Act:

"(b) includes a contaminant that is of a chemical nature.

"4 Purpose

The purpose of these regulations is to enable it to be determined whether residues in dairy material or product are controlled effectively.

"5 Programme established

The dairy residue monitoring programme established and commenced on 1 July 2002 authorises recognised persons to sample and test dairy material or product from farm dairies and dairy factories (whether the dairy material or product is for domestic sale or export sale or for human or animal consumption).

"6 Recognised persons

The Director-General may recognise an agency or a person for the purpose of undertaking sampling, testing, or other activities under the programme if the Director-General is satisfied that the person or class of person has the necessary experience and skill.

"7 Testing only in recognised laboratories

All testing of dairy material or product under the programme must be carried out in a recognised laboratory.

"8 Results of tests

"(1) The Director-General must, within a reasonable time if practicable, advise a risk management programme operator (or the operator of a business to which section 79(2)(a) of the Animal Products (Ancillary and Transitional Provisions) Act 1999 applies) of the results of tests under the programme of that operator's dairy material or product.

"(2) The Director-General may release information on the programme, but must not identify an operator or farm dairy or dairy factory in doing so.

"(3) The Director-General must keep information obtained through the programme confidential unless disclosure is required---

"(a) under the Official Information Act 1982; or

"(b) to enable a recognised agency or person to sample or test under the programme; or

"(c) to enable a person to do whatever is necessary or desirable to respond to a finding that a residue in dairy material or product is unsafe or suspected to be so.

"(4) A recognised agency, person, or laboratory that holds information about sampling or other activities under the programme must keep that information

confidential unless the programme requires the agency, person, or laboratory to disclose the information.

"9 Director-General may conduct surveys

"(1) The Director-General may conduct or arrange a survey or do research, development, or investigatory work if the Director-General considers that is desirable or necessary to determine---

"(a) whether or not, or how, to exercise a power or function contemplated by these regulations in relation to the programme; or

"(b) how best to achieve the purpose of these regulations, including developing or testing legislative, administrative, technical, or other measures.

"(2) The Director-General is authorised under subclause (1) to investigate or confirm the presence, absence, extent, or distribution of a residue in dairy material or product in New Zealand or the risk posed by that residue.

"(3) The Director-General must do everything reasonably practicable to consult the persons likely to be substantially affected by a survey referred to in subclause (1). However, consultation is not required if the Director-General considers that an urgent survey is desirable in the public interest."

Schedule 2 s 11
Orders and regulations amended

Animal Products (Ancillary and Transitional Provisions) Regulations 2000 (SR 2000/208)

Insert after regulation 3 the following regulation:

"3A Dairy material, products, and processors excluded
Nothing in these regulations applies to any dairy material, dairy products, or dairy processors."

Animal Products (Exemptions and Inclusions) Order 2000 (SR 2000/209)

Clause 3

Insert in their appropriate alphabetical order the following definitions:

"alcoholic beverage means an alcoholic beverage that contains dairy product or alcohol derived from dairy material or product

"formulated caffeinated beverage means a non-alcoholic water-based flavoured beverage that contains caffeine and dairy material or product, and that may contain carbohydrates, amino acids, vitamins and other substances, including other foods, for the purpose of enhancing mental performance

"ice cream means a sweet frozen food, generally aerated, made from dairy material and other foods".

Clause 5

Insert in clause 5(1), after the words "animal products", the words "or the

processing of dairy material, being products or material".

Insert in clause 5(2)(a) and (b), after the words "processing of animal products", the words "or the processing of dairy material".

Insert in clause 5(2)(a), after the words "those animal products", the words "or that dairy material".

Clause 6

Insert in clause 6(1), after the words "animal products", the words "or the processing of dairy material, being products or material".

Insert in clause 6(2)(a), (b), and (c), after the words "processing of an animal product", the words "or processing of dairy material".

Insert in clause 6(2)(c)(i), after the words "animal product", the words "or dairy material".

Clause 7

Insert in clause 7(1) and (2), after the words "animal products", the words "or processing of dairy material, being products or material".

New clauses 7A and 7B

Insert after clause 7 the following clauses:

"7A Processing of certain dairy products consumed on premises
Parts 2 to 4 of the Act do not apply to the processing of dairy products for human consumption if---

"(a) the processing is carried out at the premises where all the resulting product is consumed; and

"(b) No dairy product is exported from those premises; and

"(c) the dairy product is sold only by way of retail sale.

"7B Processing of certain dairy products that are food

"(1) Parts 2 to 4 of the Act do not apply to the processing of the following dairy material or products (being material or products that consist of or contain dairy material or products):

"(a) multi-ingredient foods and other prepared foods that, despite containing 1 or more ingredients that are dairy material or products, do not consist principally of dairy material or products (for example, biscuits, cakes, bread, soups, sauces, snack goods, pastries, confectionery, and also prepared meals that do not consist principally of dairy product):

"(b) formulated caffeinated beverages and alcoholic beverages.

"(2) The exemption in this clause does not apply to the processing of ice cream."

New clauses 8A and 8B

Insert after clause 8 the following clauses:

"8A Domestic dairy processors

"(1) A risk management programme is not required for dairy processors who---

"(a) are not farm dairy operators; and

"(b) process dairy material for the domestic market or Australia only;
and

"(c) process the dairy material in accordance with a food safety programme approved under the Food Act 1981.

"(2) The exemption under this clause does not obviate the need for a risk management programme if the processed product is intended to be exported other than to Australia (whether or not the export would require an official assurance).

"8B Processing of dairy material for animal consumption

"(1) A risk management programme is not required for the processing of dairy material for animal consumption if the processing occurs at a place or premises where no other operations requiring a risk management programme take place.

"(2) The exemption in this clause does not obviate the need for a risk management programme if the processed product is intended for export (whether or not the export would require an official assurance)."

Clause 17

Insert in clause 17(1), after paragraph (a), the following paragraph:

"(aa) formulated caffeinated beverages and alcoholic beverages:".

New clause 20A

Insert after clause 20 the following clause:

"20A Technical grade dairy product processed at same place as dairy product for human or animal consumption

"(1) The processing of technical grade dairy product must be carried out under a risk management programme if---

"(a) that processing is carried out at the same place as the processing of dairy material for sale or export for human or animal consumption and that latter processing is required by or under the Act to be carried out in accordance with a risk management programme; or

"(b) the product is for export, and an official assurance is required by the authorities of the importing country.

"(2) In this clause, technical grade dairy product means dairy product for sale or export that is not intended for human or animal consumption."

Insert after regulation 2 the following regulation:

"2A Dairy processing excluded

Nothing in these regulations applies to require the payment of any fee, charge, or levy by any dairy processor in respect of dairy processing operations or premises."

Animal Products Regulations 2000

(SR 2000/207)

Insert after regulation 2 the following regulation:

"2A Dairy material, product, and processing excluded

Nothing in these regulations applies to any dairy material, dairy product, or dairy processor."

Food Hygiene Regulations 1974

(SR 1974/169)

Regulation 2(1)

Insert after the definition of food premises the following definition:

"frozen confection means a frozen product prepared from sugars or honey and other foods, but does not include ice-cream".

Omit the definition of milk and substitute the following definition:

"milk includes any liquid form of milk from a milking animal, but does not include---

"(a) sealed packages of ultra-heat-treated milk; or

"(b) milk sold in tins that are hermetically sealed".

Omit from the definition of readily perishable food the words "perishable food that consists" and substitute the words "food for sale that consists".

Regulations 54 to 56

Revoke regulations 54, 55, and 56.

Regulation 57

Omit the words "pending sale" and substitute the words "pending retail sale".

Part XI heading

Omit the words "ice-cream and".

Regulation 58

Omit from the heading the words "ice-cream and".

Omit the words "ice-cream or" where they occur before paragraph (a) and in paragraphs (a), (b), and (g).

Regulation 59

Omit from the heading the words "ice-cream or".

Omit the words "ice-cream or" where they occur before paragraph (a) and in

paragraphs (a), (b), (c) (twice), and (d).

Legislative history

10 March 2005 Divided from Animal Products (Dairy Products and Other
Matters) Bill as Bill 123-3B
15 March 2005 Third reading