

Subsidiary Legislation made under ss. 6, 8 and 58.

## **Cream Regulations, 1987**

**LN. 1987/028**

*Commencement*

**1.8.1987**

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### **ARRANGEMENT OF REGULATIONS**

#### Regulation

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**Title and Commencement.**

- 1.(1) These regulations may be cited as the Cream Regulations, 1987.
- (2) These regulations shall come into operation on the 1st day of August, 1987.

**Interpretation.**

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

“appropriate designation”, in relation to food, means a name or description or a name and description sufficiently specific, in each case, to indicate to an intending purchaser the true nature of the food to which it is applied;

“clotted cream” means cream which has been produced and separated by the scalding, cooling and skimming of milk or cream;

“container” includes any form of packaging of food for sale as a single item, whether by way of wholly or partly enclosing the food or by way of attaching the food to some other article and in particular includes a wrapper or confining band;

“cream” means that part of milk rich in fat which has been separated by skimming or otherwise and which is intended for sale for human consumption;

“flavouring” includes flavouring essence and flavouring extract and means any product consisting of a flavouring agent and such other substances, if any, the use of which in food is not forbidden and which are reasonably necessary to produce a solid, a solution or an emulsion, but no other ingredient or ingredients;

“flour confectionery” means any solid or semi-solid product complete in itself and suitable for consumption without further preparation or processing other than heating, of which the characteristic ingredient, apart from any filling, is ground cereal, whether or not flavoured, coated with or containing any carbohydrate sweetening matter, chocolate or cocoa; and includes shortbread, sponges, pastry, pastry cases, crumpets, muffins, macaroons, ratafias, meringues and petits fours, but does not include pharmaceutical products, bread, biscuits or any product containing a filling which has as an ingredient any meat or fish;

“food” means food intended for sale for human consumption and includes drink, chewing gum and other products of a like nature and use and articles and substances used as ingredients in the preparation of food or drink or of such products but does not include-

- (a) water, live animals or birds,
- (b) fodder or feeding stuffs for animals, birds or fish, or
- (c) articles or substances used only as drugs;

“the Act” means the Food and Drugs Act;

“pasteunsed cream” means cream which has been subjected to heat treatment so as to pasteurise it or has been produced from pasteurised milk;

“pre-packed” means made up in advance in or on a container ready for sale by retail;

“sell” includes offer or expose for sale or have in possession for sale and “sale” and “sold” shall be construed accordingly;

“sell by retail” means sell to a person buying otherwise than for the purpose of re-sale, but does not include selling to a caterer for the purposes of his catering business or to a manufacturer for the purposes of his manufacturing business; “sale by retail” and “sold by retail” shall be construed accordingly;

“sterilised cream” means cream which has been subjected to a process of sterilisation by heat treatment in the container in which it is to be supplied to the consumer;

“sugar” means any soluble carbohydrate sweetening matter;

“ultra heat treated cream” means cream which has been subjected in continuous flow to an appropriate heat treatment and has been packaged aseptically;

“untreated cream” means cream which has not been treated by heat or in any manner likely to affect its nature and qualities and has been derived from milk which has not been so treated;

AND other expressions have the same meaning as in the Act.

(2) All percentages mentioned in these regulations are percentages calculated by weight of the cream including added ingredients, if any, permitted by regulation 5, save that as respects calculation of the milk fat content specified in regulation 4, of any cream which contains added sugar in accordance with the provisions of these regulations, the percentages specified in regulation 4 are percentages by weight of the cream excluding any such sugar.

(3) Any reference in these regulations to a label borne on a container shall be construed as including a reference to any legible marking on the container however effected.

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(4) For the purposes of these regulations, the supply of food, otherwise than by sale, at, in or from any place where food is supplied in the course of a business shall be deemed to be a sale of that food, and a reference to purchasing and purchaser shall be construed accordingly.

(5) Any reference in these regulations to any order or other regulation shall be construed as a reference to such order or regulations as amended by any subsequent order or regulations.

(6) Any reference in these regulations to a numbered regulation shall, unless the reference is to a regulation of specific regulations, be construed as a reference to the regulation bearing that number in these regulations.

**Exemptions.**

3. The following provisions of these regulations shall not apply in relation to any cream sold, consigned or delivered for exportation to any place outside Gibraltar.

**Description and composition of cream.**

4.(1) Subject to the provisions of this regulation, any cream sold, consigned or delivered shall bear one of the following descriptions and shall comply with such of the following compositional requirements as are specified in relation to that description:

- (a) 'clotted cream' if the cream is clotted cream and contains not less than 55 per cent milk fat;
- (b) 'double cream' if the cream contains not less than 48 per cent milk fat;
- (c) 'whipping cream' if the cream contains not less than 35 per cent milk fat;
- (d) 'whipped cream' if the cream contains not less than 35 per cent milk fat and has been whipped;
- (e) 'sterilised cream' if the cream is sterilised cream and contains not less than 23 per cent milk fat;
- (f) 'cream' or 'single cream' if the cream, not being sterilised cream, contains not less than 18 per cent milk fat;
- (g) 'sterilised half cream' if the cream is sterilised cream and contains not less than 12 per cent milk fat;

- (h) 'half cream' if the cream, not being sterilised cream, contains not less than 12 per cent, milk fat;
- (2) If any cream, other than cream bearing the description 'clotted cream', which is sold, consigned or delivered is pasteurised cream, ultra heat treated cream or untreated cream, the description specified in relation to that cream in paragraph (1) of this regulation shall include the expression or letters 'pasteurised', 'ultra heat treated' or 'U.H.T.', or 'untreated' as appropriate.
- (3) In the case of cream derived from milk other than cow's milk, each of the descriptions specified in paragraph (1) of this regulation shall include the name of the kind of animal from which the milk has been obtained.
- (4) No person shall sell, consign or deliver any cream in contravention of this regulation.

**Permitted ingredients in cream.**

5.(1) Subject to the provisions of this regulation, any cream sold, consigned or delivered shall contain, no flavouring or other added ingredient whether or not that ingredient is a constituent of milk;

Provided that-

- (a) clotted cream may contain nisin;
- (b) cream which may bear the description 'whipped cream' in pursuance of regulation 4(1) and cream in an aerosol container may contain-
- (i) sodium alginate, or a mixture of sodium bicarbonate, tetrasodium pyrophosphate and alginic acid,
  - (ii) sodium carboxymethyl cellulose,
  - (iii) carrageenan,
  - (iv) gelatine,

so however, that the percentage of any or, as the case may be, all of the ingredients specified in this sub-paragraph (b) present in the cream shall not exceed 0.3 per cent;

- (c) cream which may bear the description 'whipped cream' in pursuance of regulation 4(1) and cream in an aerosol container may contain-

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- (i) not more than 13 per cent of sugar,
- (ii) nitrous oxide;
- (d) cream in an aerosol container may contain not more than 0.5 per cent of glyceryl monosterate;
- (e) sterilised cream or ultra heat treated cream may contain-
  - (i) calcium chloride,
  - (ii) sodium or potassium salts of-
    - (aa) carbonic acid,
    - (ab) citric acid,
    - (ac) orthophosphoric acid,

so however that the percentage of any or, as the case may be, all of the ingredients specified in this sub-paragraph (e) present in the cream shall not exceed 0.2 per cent.

(2) Notwithstanding the provisions of the last preceding paragraph, any cream sold, consigned or delivered to a manufacturer for the purposes of his manufacturing business or to a caterer for the purposes of his catering business may contain any or all of the following ingredients where appropriate to the circumstances or the description of cream specified in relation thereto, namely-

- (a) cream intended for use in flour confectionery may contain not more than 13 per cent of sugar;
- (b) cream which may bear the description 'whipping cream' in pursuance of regulation 4(1) may contain not more than 3 per cent of sugar;
- (c) cream which may bear the description 'whipping cream' in pursuance of regulation 4(1) may contain-
  - (i) sodium alginate, or a mixture of sodium bicarbonate, tetrasodium pyrophosphate and alginic acid,
  - (ii) sodium carboxymethyl cellulose,
  - (iii) carrageenan,

(iv) gelatine,

so however that the percentage of any or, as the case may be, all of the ingredients specified in this sub-paragraph (c) present in the cream shall not exceed 0.3 per cent.

(3) Notwithstanding the preceding provisions of this regulation, no product derived from milk and substantially similar to and resembling cream shall be deemed not to be cream solely by reason of the presence of any flavouring or other added ingredient or any ingredient in an amount in excess of the amount permitted by this regulation.

(4) No person shall sell, consign or deliver any cream in contravention of this regulation.

**Sale by description.**

6.(1) No person shall sell any food under such a description as to lead to an intending purchaser to believe that he is purchasing any kind of cream for which compositional requirements are specified in regulation 4 unless the food complies with the appropriate compositional requirements having effect in relation to that kind of cream.

(2) Where a person sells any food to a purchaser in response to a request for any kind of cream for which compositional requirements are specified in regulation 4, he shall be deemed to sell cream of that kind and under such a description as is specified in these regulations in relation to that kind of cream unless he clearly notifies the purchaser at the time of sale that the food is not that kind of cream.

**Labelling and advertising of cream.**

7. No person shall-

- (a) give with any food sold by him any label, whether attached to or borne on the container or not, or display with any food offered or exposed for sale by him any ticket or
- (b) publish, or be a party to the publication of, any advertisement for food, which bears or includes the word 'cream' or any derivative thereof or any word substantially similar thereto otherwise than in accordance with provisions of the Act or any regulations made thereunder which, in either case, expressly provide for the use of that word unless-
  - (i) the food is cream which complies with the appropriate compositional requirements having effect in relation thereto by virtue of these regulations,

- (ii) that word is used in such a context as to indicate explicitly or by clear implication that the substance to which it relates is an ingredient of that food and unless the substance is cream which complies with such appropriate compositional requirements, or
- (iii) that word is used in such a context as to indicate explicitly or by clear implication that such food is not, or does not contain, cream:

Provided that nothing in this regulation shall prohibit the use of the word 'creamed' in relation to food which is not butter, milk, cream, condensed milk, evaporated milk, dried milk, skimmed milk or skimmed milk with non-milk fat.

8.(1) No person shall sell, consign or deliver to a manufacturer for the purposes of his manufacturing business or to a caterer for the purposes of his catering business any cream which contains sugar, unless-

- (a) there appears clearly and legible on the label borne on, or securely attached to, the container of such cream and in immediate proximity to, and so prominent in height and visual emphasis as to be conspicuous by comparison with, the description of the cream required by regulation 4 of the following' statement 'contains X per cent Y', and the statement is completed by inserting at 'X' the amount of sugar in the cream expressed as a percentage of the mixture of cream and sugar and at 'Y' the common or usual name or appropriate designation of the sugar, or
- (b) the vendor furnishes to the purchaser not later than the time of delivery of such cream to the purchaser an invoice or other document bearing a statement as aforesaid.

(2) No person shall sell by retail any cream in an aerosol container or any cream which may bear the description 'whipped cream' in pursuance of regulation 4(1), being cream which in each case contains sugar, unless there appears clearly and legibly on the label borne on, or securely attached to, the container of such cream and in immediate proximity to, and so prominent in height and visual emphasis as to be conspicuous by comparison with, the description of the cream required by regulation 4 the statement referred to in paragraph (1)(a) of this regulation.

**Requirements as to marking on labels on containers and on tickets.**

9.(1) Any description required by regulation 4 to be borne by any cream shall appear-



- (a) when the cream is sold, consigned or delivered in a container, on the container or on a label borne on the container of the cream; and
  - (b) when the cream is sold by retail otherwise than in a container, on a ticket or notice displayed on or in immediate proximity to the cream.
- (2) Any such description shall be easy to understand, clearly legible and indelible and, on a sale by retail, shall be marked in a conspicuous place in such a way as to be easily visible.
- (3) Such description shall not in any way be hidden, obscured or interrupted by any other written or pictorial matter.

**Penalties.**

10. If any person contravenes or fails to comply with any of the foregoing provisions of these regulations he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000.

**Defences.**

11.(1) In any proceedings for an offence against all these regulations in relation to the publication of an advertisement, it shall be a defence for the defendant to prove that, being a person whose business it is to publish or arrange for the publication of advertisements, he received the advertisement for publication in the ordinary course of business.

(2) In any proceedings against the manufacturer or importer of any cream for an offence against these regulations in relation to the publication of an advertisement, it shall rest on the defendant to prove that he did not publish, and was not a party to the publication of the advertisement.

**Application of various sections of the Act.**

12. Sections 46(2) and (3) (which relate to prosecutions), 47(1) and (2) (which relate to evidence of analysis), 49 (which relates to the power of a court to require analysis by the Government Chemist in the United Kingdom), 50 (which relates to a contravention due to some person other than the person charged), 51(2) (which relates to the conditions under which a warranty may be pleaded as a defence) and 52 (which relates to offences in relation to warranties and certificates of analysis) or the Act shall apply for the purposes of these regulations as if references therein to proceedings, or a prosecution, under or taken or brought under the Act included references to proceedings, or a prosecution, as the case may be, taken or brought for an offence under these regulations and as if, the reference in the said Section 49 to subsection (3) of Section 46 included a reference to that subsection as applied by these regulations.