

**FIRST SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 2,172 of 29th JUNE, 1984.**

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I ASSENT,

DAVID WILLIAMS

GOVERNOR.

29th June, 1984.



**GIBRALTAR**

**No. 7 of 1984.**

**AN ORDINANCE** to amend the Food and Drugs Ordinance (Chapter 61).

**E**NACTED by the Legislature of Gibraltar.

**Short title and Commencement.**

1. (1) This Ordinance may be cited as the Food and Drugs (Amendment) Ordinance, 1984.

(2) This Ordinance shall come into operation on the 1st day of July, 1984.

**Amendment of Section 2.**

Section 2(1) of the Food and Drugs Ordinance (herein after called the principal Ordinance) is amended is amended—

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(1) by inserting in the appropriate alphabetical position the following new definition:

"Community" means the European Economic Community".

(2) by omitting the following definition:

"Milk and Dairies Regulations" has the meaning assigned to it by Section 23".

### **Amendment of Section 6.**

3. Section 6 (1) of the principal Ordinance is amended by inserting after the words "in the interests of public health", the words "or to be called for by any "Community obligation".

### **Amendment of Section 16.**

4. Section 16 (4) of the principal Ordinance is amended by omitting the expression "£10" and substituting the expression "£25".

### **Amendment of Section 18.**

5. Section 18 (1) of the principal Ordinance is amended by omitting the expression "£10" and substituting the expression "£25".

### **Amendment of Section 18A.**

6. Section 18A of the principal Ordinance is amended -

(1) in subsection (1) by omitting the expression "£10" and substituting the expression "£25".

(2) in subsection (3) by omitting the expression "£25" and substituting the expression "£1000".

### **Amendment of Section 21.**

7. Section 21(1) of the principal Ordinance is amended by omitting the expression "£20" and substituting the expression "£1000".

### **Amendment of Section 23.**

8. Section 23 of the principal Ordinance is amended -

(1) in subsection (1) –

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- (a) by omitting the words "to be called Milk and Dairies Regulations"
- (b) by omitting paragraph (k) and substituting the following new paragraph:  
"(k) for prohibiting or restricting, subject to prescribed exceptions, the sale for human consumption as milk of any specified description of milk containing less than a specified quantity of any specified normal constituent;"

(2) in subsection (2) by omitting paragraph (a) and substituting the following new paragraph:

"(a) prescribed exceptions" means such exceptions as may be allowed by or under regulations made under this Ordinance".

**Amendment of Section 24.**

9. Section 24 (1) of the principal Ordinance is amended by omitting the words "Milk and Dairies".

**Amendment of Section 25.**

10. Section 25 (4) of the principal Ordinance is amended by omitting the words "Milk and Dairies".

**Amendment of Section 2b.**

11. Section 26 of the principal Ordinance is amended

- (a) by repealing subsection (2);
- (b) by omitting from subsection (5) the words "any separated milk, or", and
- (c) by adding, after subsection (7) the following new subsection:  
"(8) The treatment of milk by the application of steam shall not be treated for the purposes of this section as the making of an addition of water to that milk in contravention of the foregoing provisions of this section if -

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- (a) regulations made under this Ordinance are in force prescribing a special designation in relation to milk submitted to that treatment; and
- (b) that treatment is carried out in accordance with the conditions prescribed by those regulations; and
- (c) these conditions include a condition that both the percentage of the milk consisting of milk fat and the percentage of the milk consisting of milk solids other than milk fat are the same after treatment as before it."

#### **Repeal of Section 27.**

12. Section 27 of the principal Ordinance is repealed.

#### **Amendment of Section 29.**

13. Section 29 of the principal Ordinance is amended by omitting paragraph (b) and substituting the following new paragraph:

"(b) any provisions of any Regulations made under this Ordinance, other than provisions relating to the registration of dairymen and dairies,".

#### **Amendment Of section 41.**

14. Section 41(5) of the principal Ordinance is amended by omitting the expression "£100" and substituting the expression "£200".

#### **Amendment of Section 43.**

15. Section 43 of the principal Ordinance is amended -

(1) in subsection (1) by omitting the expression "£20" and substituting the expression "£1,000";

(2) in the proviso to subsection (1) by omitting the expression "£50 or to imprisonment for one month" and substituting the expression "£1,000"; and

(3) in subsection (3) by omitting the expression "£20" and substituting the expression "£1,000".

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**Replacement of Section 44.**

16. The principal Ordinance is further amended by repealing section and substituting the following new sections:

"Offences triable either way.

44. (1) A person guilty of an offence to which triable this section applies shall be liable - either way.
- (a) on summary conviction, to a fine not exceeding £1000; and
  - (b) an conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.

(2) This section applies to any offence under this Ordinance except an offence under any provision of this Ordinance specified in section 44A(3) of this Ordinance.

**Offences triable summarily.**

44A. (1) Any offence to which this section triable applies shall be summarily.

(2) The offences to which this section applies are -

- (a) an offence under any provision of this Ordinance specified in subsection (3) of this section;
- (b) an offence under regulations made under this Ordinance other than an offence which by virtue of the regulations is triable either an indictment or summarily;

(3) The provisions of this Ordinance mentioned in subsection (2) (a) of this section are -

- (a) section 16(4);

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- (b) section 18(1);
- (c) section 18A(1);
- (d) section 18A(3);
- (e) section 21(1);
- (f) section 41(5);
- (g) section 43(1);
- (h) section 43 (3)."

**Replacement of Section 46.**

17. The principal Ordinance is further amended by repealing section 46 and substituting the following new section:

"Prosecutions.

46. (1) No prosecution for an offence under this Ordinance or regulations made under this Ordinance which is triable either an indictment or summarily shall be begun after the expiration of three years from the commission of the offence or one year from its discovery by the prosecutor, whichever is the earlier.
- (2) Where a sample has been procured under this Ordinance, no prosecution in respect of the article or substance sampled shall be begun after the expiration of the following periods, beginning with the date on which the sample was procured, that is to say -
- (i) in the case of a sample of milk, twentyeight days;
  - (ii) in any other case, two months

unless the justice of the peace before whom the information is laid, on being satisfied on oath that having regard to the circumstances of the particular case it was not practicable to lay the information at an earlier date, gives a certificate to that effect; and, if the prosecution is in respect of a sample of milk, it shall not in any case be begun after the expiration of forty two days beginning with the said date;

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- (3) the time within which proceeding may be commenced under Section 52 in respect of the giving of a false warranty shall be twelve months;
- (4) In any proceedings under this Ordinance in respect of an article or substance sampled, the summons shall not be made returnable less than fourteen days from the day on which it is served, and a copy of any certificate of analysis obtained on behalf of the prosecutor, and of any certificate given by justice under subsection (2) shall be served with the summons;
- (5) In any proceedings under this Ordinance, where a sample has been procured in such circumstances that its division into parts is required by this Ordinance, the part of the sample retained by the person who procured it shall be produced at the hearing."

**Replacement of Section 58.**

18. The principal Ordinance is further amended by repealing section 58 and substituting the following new section:

"58. Regulations made under this Ordinance, without prejudice to the generality of the provisions under which they are made, may -

- (a) modify for the purposes of the regulations any provisions of this Ordinance relating to the taking, analysis and examination of samples;
- (b) apply, as respects matters to be dealt with by the regulations, any provision in any Ordinance (including this Ordinance) dealing with the like matters, with the necessary modifications and adaptations;
- (c) provide for an appeal to the magistrates' court against any refusal or other decision of an authority by whom the regulations are to be enforced and executed;

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- (d) authorize, the making of charges for the purposes of the regulations, or for any services performed thereunder, and provide for the recovery of charges so made;
- (e) provide that an offence under the regulations shall be triable either on indictment or summarily;
- (f) include provisions under which a person guilty of an offence under the regulations which is so triable on summary conviction to a fine not exceeding £1,000 or such smaller amount as may be specified in the regulations and on conviction on indictment to either or both of the following: -
  - (i) to a fine not exceeding an amount specified in the regulation or of an indefinite amount;
  - (ii) imprisonment for a term not exceeding two years or such shorter term as may be specified in the regulations;
- (g) include provision under which a person guilty of an offence under the regulations which is triable only summarily is liable on conviction to a fine not exceeding £1,000 or such smaller amount as may be specified in the regulations;
- (h) make such ancillary and incidental provisions as appear to the Governor to be necessary or desirable;

and regulations made under Part I may, without prejudice as aforesaid, require persons carrying on any activity to which the regulations apply to keep and produce records and furnish returns."

**Insertion of now section 58A**

19. The principal Ordinance is further amended by inserting, after section 58, the following new section:

Regulations to conform to Community Requirements.

58A. (1) The Governor may, in respect of to any directly applicable Community provision relating to food for which, in his opinion, it is appropriate to make provision under this



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Ordinance, by regulations make such provisions as he considers necessary or expedient for the purpose of securing that the Community provision is administered, executed and enforced under this Ordinance, and may apply such of the provisions of this Ordinance as may be specified in the regulations in relation to the Community provision with such modifications, if any, as may be so specified.

(2) For the purpose of complying with any Community obligation, or for conformity with any provision made far that purpose, the Governor may by regulations make provisions as to -

- (a) the manner of sampling any food specified in the regulations, and the manner in which samples are to be dealt with; and
- (b) the method to be used in analysing, testing or examining samples of any food so specified; and regulations made by the Governor for that purpose, or for conformity for any provision so made, may modify or exclude any provision of this Ordinance relating to the procuring or analysis of, or dealing with, samples or to evidence of the results of any analysis or test."

#### **Amendment of Second Schedule.**

20. The Second Schedule to the principal Ordinance is amended -

(1) in Part I by omitting paragraph 5 and substituting the following new paragraph:

"5. The court before whom a person registered as a dairyman is convicted of an offence under any of the provisions relating to milk in this Ordinance, or under any regulations made under this Ordinance, may, in addition to any other punishment, cancel his registration as such."

(2) in Part II by omitting paragraph 7(a) and substituting the following new paragraph:

- "(a) that any requirement of any regulations made under this Ordinance cannot be or are not being complied with, as the

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case may be, in connection with the premises or the business proposed to be carried on or carried on at the premises; or".

Passed by the Gibraltar House of Assembly on the 27th day of June, 1984.

F. A. GARBARINO,

Clerk to the Assembly.