

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

**Ice-cream Regulations, 1987****LN.1987/047**

*Commencement*                      **1.8.1987**

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**ARRANGEMENT OF REGULATIONS**

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**1964-07**

## Food and Drugs

**1987/047**

### Ice-cream Regulations, 1987

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#### **Title and commencement.**

- 1.(1) These regulations may be cited as the Ice-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-

“composite article of food” means any article of food containing ice-cream or Parev ice and includes any sherbet, sorbet, water ice or ice lolly, as the case may be, containing ice-cream or Parev ice;

“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;

“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;

“human consumption” includes use in the preparation of food for human consumption;

“ice-cream” means the frozen product intended for sale for human consumption which is obtained by subjecting an emulsion of fat, milk solids and sugar, with or without the addition of other substances, to heat treatment and either to subsequent freezing or to evaporation, addition of water and subsequent freezing, whether or not fruit, fruit pulp, fruit pure, fruit juice, sugar, flavouring or colouring materials, nuts, chocolate or other similar substances have been added before or after freezing, and include any ice-cream present as an ingredient of any composite article of food, but does not include any sherbet, sorbet, water ice or ice buy described as ‘sherbet’, ‘sorbet’, water ice’ or ‘ice lolly’, as the case may be;

“the Act” means the Food and Drugs Act;

“Parev ice” includes Kasher ice and means the substance intended for sale for human consumption which resembles ice-cream and which-

- (a) is usually known as Parev ice or Kasher ice, and
- (b) contains no milk or milk derivatives,

and includes any Parev Ice present as an ingredient of any composite article of food;

“polyhydric alcohol” means an alcohol with three or more free hydroxyl groups;

“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;

“sugar” means any soluble carbohydrate sweetening matter;

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

- (2) All percentages mentioned in these regulations are percentages calculated by weight.
- (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.
- (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 references to purchasing and purchaser shall be construed accordingly.

**Exemptions.**

3. The following provisions of these regulations shall not apply, except insofar as they relate to advertisements other than labels or wrappers, in relation to any ice-cream or any Parev ice-

- (a) sold, consigned or delivered for exportation to any place outside Gibraltar; or
- (b) sold, consigned or delivered to a manufacturer for the purposes of his manufacturing business;

and the provisions of regulations 4 and 5 of these regulations shall not apply to any ice-cream or any Parev ice sold, consigned or delivered to a caterer for the purpose of his catering business.

**Composition of Ice-cream and of Parev ice.**

4.(1) Any ice-cream and any Parev ice sold, consigned or delivered, shall comply with the compositional requirements specified in the appropriate following paragraph of this regulation in relation to that ice-cream or Parev ice.

(2) Any ice-cream, other than any ice-cream to which paragraph (3), (4), (5) or (6) of this regulation applies shall contain not less than 5% fat and not less than 7<sup>1</sup>/<sub>2</sub> % milk solids other than fat.

(3) Any ice-cream which contains any fruit, fruit pulp, fruit puree or fruit juice, other than any such ice-cream to which paragraph (5) or (6) of this regulation applies, shall either—

- (a) comply with the compositional requirements specified in paragraph (2) of this regulation or
- (b) have a total content of fat and milk solids other than fat of not less than 12<sup>1</sup>/<sub>2</sub> % of the whole product (including the fruit, fruit pulp, fruit puree or fruit juice, as the case may be) so, however, that not less than 7<sup>1</sup>/<sub>2</sub> % shall be fat and not less than 2% shall be milk solids other than fat.

(4) Any ice-cream described as 'dairy ice-cream', 'dairy cream ice' or 'cream ice', other than any such ice-cream to which paragraph (5) of this regulation applies, shall in each case contain—

- (a) not less than 5% milk fat.
- (b) no fat other than milk fat or any fat present by reason of the use as an ingredient of such ice-cream of any egg, any flavouring substance, or any emulsifying or stabilising agent, and
- (c) not less than 7<sup>1</sup>/<sub>2</sub> % milk solids other than fat.

(5) Any ice-cream described as 'dairy ice-cream', 'dairy cream ice', or 'cream ice' which contains any fruit, fruit pulp, fruit puree or fruit juice shall either comply with the compositional requirements for such ice-cream specified in paragraph (4) of this regulation or shall in each case—

- (a) have a total content of milk fat and milk solids other than fat of not less than 12<sup>1</sup>/<sub>2</sub> % of the whole product (including the fruit, fruit pulp, fruit puree or fruit juice, as the case may be), so, however, not less than 7<sup>1</sup>/<sub>2</sub>% shall be milk fat and not less than 2% 'shall be milk solids other than fat, and

- (b) contain no fat other than milk fat or any fat present by reason of the use as an ingredient of such ice-cream of any egg, any flavouring substance or any emulsifying or stabilising agent.
- (6) Any ice-cream described as 'milk ice', including any such ice-cream which contains any fruit, fruit pulp, fruit puree or fruit juice, shall contain-
  - (a) not less than 2<sup>1</sup>/<sub>2</sub> % milk fat,
  - (b) no fat other than milk fat or any fat present by reason of the use as an ingredient of such ice-cream of any egg, any flavouring substance or any emulsifying or stabilising agent, and
  - (c) not less than 7% milk solids other than fat.
- (7) Any Parev ice shall contain-
  - (a) not less than 10% fat, and
  - (b) no milk fat or other derivative of milk.
- (8) No ice-cream of any kind nor any Parev ice shall have in it or on it any added acesulfame potassium, aspartame, saccharin, sodium saccharin, calcium saccharin or thaumatin.
- (9) No person shall sell, consign or deliver, as the case may be, any ice-cream or any Parev ice in contravention of this regulation.

**General requirements as to composition and description of ice-cream and Parev ice.**

5.(1) No person shall sell any food under such a description as to lead an intending purchaser to believe that he is purchasing any ice-cream or any Parev ice for which compositional requirements are specified in these regulations unless the food complies with the appropriate compositional requirements specified in these regulations in relation to that ice-cream or that Parev ice.

(2) Where a person sells any food to a purchaser in response to a request for any kind of ice-cream or Parev ice or for any composite article of food containing any ice-cream or Parev ice for which compositional requirements are specified in these regulations, he shall be deemed to sell ice-cream or Parev ice or, as the case may be, a composite article of food containing ice-cream of that kind or Parev ice and under such a description as is specified in these regulations in relation to that kind of food, unless he clearly notifies the purchaser at the time

sale that the food is not or, as the case may be, the composite article of food does not contain, ice-cream of that kind or Parev ice.

**Labelling and description of ice-cream.**

6.(1) No person shall sell, consign or deliver in a container any ice-cream under the description ice cream if such ice-cream contains any fat other than milk fat (save as may be present by reason of the use as an ingredient of such ice-cream of any egg, any flavouring substance or any emulsifying or stabilising agent) unless such container bears a label on which there appears in immediate proximity to such description the words 'contains non-milk fat'.

Provided that if the ice-cream contains no fat, other than vegetable fat or any fat present by reason of the use as an ingredient of such ice-cream of any egg, any flavouring substance or any emulsifying or stabilising agent, the words 'contains vegetable fat' may appear as an alternative to the words 'contains non-milk fat.'

(2) No person shall sell by retail any ice-cream not in a container under the description 'ice-cream' if such ice-cream contains any fat other than milk fat (save as may be present by reason of the use as an ingredient of such ice-cream of any egg, any flavouring substance or any emulsifying or stabilising agent) unless the words 'contains non-milk fat' appear on a ticket or notice in immediate proximity to such description:

Provided that—

- (a) if the ice-cream contains no fat, other than vegetable fat or any fat present by reason of the use as an ingredient of such ice-cream of any egg, any flavouring substance or any emulsifying or stabilising agent, the words contains vegetable fat' may appear as an alternative to the words contains 'non-milk fat';
- (b) if the ice-cream is sold for immediate consumption at or near the place of sale or if it is sold without having been previously exposed for sale, and, in either case, no ticket or notice bearing the description ice-cream' is visible to the purchaser at the time of sale, it shall be sufficient compliance with this paragraph if the purchaser is notified at or before delivery of the ice-cream to him that it contains non-milk fat or contains vegetable fat, as the case may be.

(3) All words required by paragraph (1) of this regulation to appear on a label on a container or which, in compliance with paragraph (2) of this regulation, appear on a ticket or notice shall be clearly legible and indelible and, on a sale to the ultimate consumer, shall be marked in a conspicuous place in such a way as to be easily visible.

(4) Such words shall not in any way be hidden, obscured or interrupted by any other written or pictorial matter.

(5) In this regulation 'ultimate consumer' has the meaning assigned to it by the Food Labelling Regulation - 1987.

**General requirements as to labelling and advertising of ice-cream and Parev ice.**

7.(1) No person shall—

- (a) give with any ice-cream, any Parev ice or any composite article of food sold by him, any label, whether attached to or borne on the container or not, or display with any ice-cream, any Parev ice or any composite article of food offered or exposed by him for sale, any ticket or notice, or
- (b) publish, or be a party to the publication of, any advertisement for any ice-cream, any Parev ice or any composite article of food, being a label, ticket, notice or advertisement, as the case may be, which bears or includes—
  - (i) the expression 'ice-cream', 'dairy ice-cream', 'dairy cream ice', 'cream ice', 'milk ice', 'parev ice' or 'Kosher ice' unless—
    - (aa) such food complies with the appropriate compositional requirements specified in relation to food of that kind in regulation 4 of these regulations, or
    - (ab) the expression is used in such a context as to indicate clearly that the ice-cream or Parev ice, as the case may be, to which the expression relates is an ingredient with one of more others, of such food and such ice-cream or Parev ice complies with the compositional requirements specified in relation thereto in regulation 4 of these regulations.'
  - (ii) any word, not being part of a true statement of all the ingredients of such ice-cream, or any pictorial device which refers to, or is suggestive of, butter, cream or milk or of anything connected with the dairy interest unless the ice-cream to which such label, ticket, notice or advertisement, as the case may be, relates, contains no fat other than any milk fat or any fat present by reason of the use as an ingredient of such ice-cream of any egg, any flavouring substance or any emulsifying or stabilising agent:

Provided that such label, ticket or notice may bear or such advertisement may include, as the case may be, a true statement to the effect that the ice-cream contains skimmed milk solids.

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(2) Nothing in these regulations shall prevent the use in or on any label, ticket, notice or advertisement of—

- (a) the expression ‘ice-cream’, in respect of any ice-cream which complies with the appropriate compositional requirements specified in regulation 4 of these regulations.’ or
- (b) the name of the manufacturer, packer or advertiser of ice-cream or Parev ice or of any person selling ice-cream or Parev ice.

**Penalties.**

8. 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 liable on summary conviction to a fine not exceeding £1 ,000.

**Defences.**

9.(1) In any proceedings for an offence against 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 ice-cream, any Parev ice or any composite article of food 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.**

10. 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 maybe pleaded as a defence) and 52 (which relates to offences in relation to warranties and certificates of analysis) of 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.

**Revocation.**



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11. The Ice Cream Regulations are hereby revoked as from the date of coming into operation of these Regulations.