

ORDINANCE OF THE STATES OF ALDERNEY

ENTITLED

The Milk (Hygiene) (Alderney) Ordinance, 1996 *

[CONSOLIDATED TEXT]

NOTE

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* Alderney Ordinance No. IX of 1996; as amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). This Ordinance is prospectively repealed by the European Communities (Food and Feed Controls) (Alderney) Ordinance, 2017 (Alderney Ordinance No. XII of 2017); and the European Communities (Food and Feed Controls) (Alderney) Ordinance, 2017 (Alderney Ordinance No. II of 2019).

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ARRANGEMENT OF SECTIONS

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SCHEDULE 1 Checks for Added Water in Raw Milk.

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Part I Raw Milk For Heat-Treatment.

Part II Heat-Treated Drinking Milk.

(Made on 6th December, 1995.)

The Milk (Hygiene) (Alderney) Ordinance, 1996

THE STATES OF ALDERNEY, in pursuance of their Resolutions of the 6th day of December, 1995 and the 5th day of June, 1996, and in exercise of the powers conferred upon them by sections 2 and 8 of the Milk and Milk Products (Alderney) Law, 1957^a, hereby order: –

General conditions for the handling and marketing of milk.

1. (1) The occupier of a dairy shall not sell for human consumption any heat-treated drinking milk or heat-treated milk intended for the manufacture of milk-based products unless he has complied with the provisions of subsection (2) in relation to it.

(2) The occupier of a dairy shall –

(a) take all necessary measures to ensure that, at all stages of handling of milk at that dairy, the appropriate requirements of this Ordinance are complied with,

(b) carry out his own checks to ensure –

(i) that critical points in the dairy relative to the processes used there are identified,

(ii) that methods for monitoring and controlling such critical points are established,

^a Ordres en Conseil Vol. XVII, p. 151.

- (iii) that appropriate tests are carried out to detect any residues of substances having pharmacological or hormonal action, and of antibiotics, pesticides, detergents and other substances which are harmful to human health or which might alter the organoleptic characteristics of milk or make its consumption harmful to human health if those residues exceed permitted tolerance limits,
 - (iv) the appropriate checks are carried out to detect the presence of any added water in raw milk in accordance with Schedule 1 and in heat-treated drinking milk in compliance with Schedule 2,
 - (v) that samples taken for the purpose of checking compliance with the standards for milk prescribed in Schedules 1 and 2 are analysed and examined as appropriate in a laboratory acceptable to [the Committee],
- (c) ensure that as far as is reasonable and practicable a record in permanent form is kept in respect of the matters specified in paragraph (b) for a period of not less than six months, calculated from the date to which such record relates,
- (d) upon demand by an authorised officer produce or cause to be produced any record the occupier is required to keep by paragraph (c) for inspection by the authorised officer and allow him to take copies and make extracts

from it,

- (e) ensure that [the Committee] is notified immediately when a laboratory examination of samples or any other information in the occupier's possession or under his control reveals a serious health risk,
- (f) furnish [the Committee] with such information and assistance as it may reasonably request so as to enable it to take such action as it may consider necessary under this Ordinance or the Food and Drugs (Guernsey) Law, 1970, as amended^b or any Order made thereunder,
- [(h)] ensure, in the event of an immediate human health risk, the withdrawal from the market of the quantity of milk obtained under technologically similar conditions and likely to present the same risk; and also ensure that any quantity of the milk so withdrawn shall be held under the supervision and control of [the Committee] until it is destroyed, or used for purposes other than human consumption, or, with the agreement of [the Committee], reprocessed in a manner appropriate to ensure it is safe for human consumption.

(3) The occupier of a dairy shall ensure that workers at that dairy are given instruction and training with regard to hygiene matters, but the instructions and training given to a worker need only be such as is appropriate to any task

^b Ordres en Conseil, Vol. XXII, p. 412; Vol. XXV, p. 378; Vol. XXIX, p. 329; No. X of 1995; as extended by the Alderney (Application of Legislation) (Food and Drugs) Ordinance, 1971, as amended (Recueil d'Ordonnances Tome XVII, p. 75; Tome XX, p. 339; No. III of 1996).

undertaken by the worker.

NOTES

In section 1, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016.

In the printed version of this section, the parentheses and figure in square brackets in subsection (2) shown, incorrectly, as "(h)" should read "(g)".

Inspection and supervision.

2. [The Committee] shall carry out such inspection and supervision of any dairy and any sampling, analysis and examination of any milk as it considers necessary to ensure that the requirements of this Ordinance are complied with.

NOTE

In section 2, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016.

Powers of entry.

3. (1) An authorised officer shall, on producing, if so required, some duly authenticated document showing his authority, have a right to enter any dairy at all reasonable hours –

- (a) for the purpose of ascertaining whether there is or has been on, or in connection with, the dairy any contravention of the provisions of this Ordinance, and
- (b) generally for the purpose of the performance by [the Committee] of its functions under this Ordinance.

(2) If the Chairman of the Court is satisfied by information on oath

—

(a) that there is a reasonable ground for entry into any dairy for any such purpose as aforesaid, and

(b) is also satisfied either —

(i) that admission to the dairy has been refused, or a refusal is apprehended and that notice of the intention to apply for a warrant has been given to the occupier, or

(ii) that an application for admission, or the giving of such a notice would defeat the object of the entry, or that the case is one of urgency, or that the dairy is unoccupied or the occupier is temporarily absent,

he may grant a warrant authorising [the Committee] by any authorised officer to enter the dairy, if need be by reasonable force.

(3) An authorised officer entering any dairy by virtue of this section, or of a warrant issued thereunder, may take with him such other persons as may be necessary, and on leaving any unoccupied dairy which he has entered by virtue of such a warrant shall leave it as effectively secured against trespassers as he found it.

(4) Every warrant granted under this section shall continue in force for a period of one month.

(5) An authorised officer entering a dairy by virtue of this section, or of a warrant issued thereunder, may inspect any records (in whatever form they are held) relating to any provision of this Ordinance and, where any such records are kept by means of a computer –

- (a) may have access to, and inspect and check the operation of, any computer and associated apparatus or material which is or has been in use in connection with the records, and
- (b) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him such assistance as he may reasonably require.

(6) Any authorised officer exercising any power conferred by subsection (5) may –

- (a) seize and detain any records which he has reason to believe may be required as evidence in proceedings under any of the provisions of this Ordinance, and
- (b) where the records are kept by means of a computer, may require the records to be produced in a form in which they may be taken away.

NOTE

In section 3, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 5, with

effect from 1st May, 2016.

Offences and penalties.

4. If –

- (a) a person (other than [the Committee]) contravenes any provision of this Ordinance or the Milk and Milk Products (Alderney) Law, 1957, or
- (b) the occupier of a dairy fails to take all reasonable steps to secure the compliance by any person employed by him or any person admitted to that dairy with any provision of this Ordinance,

he is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the Alderney uniform scale.

NOTE

In section 4, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016.

Prohibition notices.

5. (1) If –

- (a) the occupier of a dairy is convicted of an offence under section 4, and
- (b) [the Committee] is satisfied that the health risk condition is fulfilled with respect to that dairy,

[the Committee] shall by notice impose the appropriate prohibition (a "**prohibition notice**").

(2) The health risk condition referred to in subsection (1)(b) is fulfilled with respect to any dairy if any of the following involves a risk of injury to health –

- (a) the use for the purposes of the dairy's business of any process or treatment,
- (b) the construction, state, condition or use of the dairy premises or of the equipment used therein.

(3) The appropriate prohibition referred to in subsection (1) is –

- (a) in a case falling within subsection (2)(a), a prohibition on the use of the process or treatment for the purposes of the dairy's business,
- (b) in a case falling within subsection (2)(b), a prohibition on the use of the dairy premises or of the equipment therein.

(4) As soon as practicable after the imposing of an appropriate prohibition under subsection (1), [the Committee] shall –

- (a) serve a copy of the prohibition notice upon the occupier of the dairy, and
- (b) affix a copy of the notice in a conspicuous position on

the dairy premises,

and a person who knowingly contravenes such a notice is guilty of an offence.

(5) A prohibition notice shall cease to have effect upon its withdrawal by [the Committee] once it is satisfied that the occupier has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the dairy.

(6) [The Committee] shall withdraw a prohibition notice under subsection (5) within three days of its being satisfied as mentioned in that subsection; and on an application by the occupier for such withdrawal, [the Committee] shall –

- (a) determine, as soon as is reasonably practicable and in any event within 14 days, whether or not it is so satisfied, and
- (b) if it determines that it is not so satisfied, give notice to the occupier of the reasons for that determination.

(7) A person aggrieved by a decision of [the Committee] to issue or withdraw a prohibition notice may, within a period of 28 days immediately following the date of the notice of the decision required to be served under subsection (4) or (6), appeal against the decision to the Court.

(8) The grounds of the appeal shall be that the decision was ultra vires or unreasonable.

(9) The appeal shall be instituted by way of summons served on [the President] of [the Committee].

(10) The summons shall set out the grounds and the material facts upon which the appellant relies.

(11) On an appeal under subsection (7) the appellant shall have the burden of proof and the final right of reply.

(12) On an appeal under subsection (7) the Court may –

- (a) set the decision aside and, if the Court considers it appropriate to do so, remit the matter to [the Committee] with such directions as the Court thinks fit, or
- (b) confirm the decision.

(13) No appeal shall lie from a decision of the Court under this section except on a question of law; and an appeal on a question of law shall be made to the Royal Court within such period and in such manner as may be prescribed by Order of the Royal Court.

NOTE

In section 5, the words "T/the Committee" and "the President" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 2, Schedule 1, paragraph 5 and section 5(1), Schedule 3, paragraph 6, with effect from 1st May, 2016.¹

Protection for authorised officers acting in good faith.

6. An authorised officer is not personally liable in respect of any act done by him in the execution or purported execution of this Ordinance within the scope of his employment if he did that act in the honest belief that his duty under this

Ordinance required or entitled him to do it:

Provided that nothing in this subsection shall be construed as relieving the States of Alderney from any liability in respect of acts of authorised officers.

Interpretation.

7. (1) In this Ordinance, unless the context otherwise requires –

"**authorised officer**" means a person authorised by [the Committee] in writing, either generally or specially, to act in matters of any specified kind or in any specified matter,

"[**the Committee**]" means the States of Guernsey [Committee for Health & Social Care],

"**the Court**" means the Court of Alderney,

"**dairy**" means any premises at which milk is heat-treated,

"**drinking milk**" means milk intended for delivery as such to the ultimate consumer,

"**handling**" includes preparing, processing, packaging, treating, wrapping or rewrapping in the course of a business,

"**heat-treatment**" means any treatment of milk involving heating that causes, immediately after such treatment, a negative reaction to the phosphatase test and "**heat-treated**" shall be construed accordingly,

"**heat-treated milk**" means milk obtained by heat-treatment,

"heat-treated drinking milk" means either –

- (a) drinking milk intended for sale to the ultimate consumer or to institutions, obtained by heat-treatment and presented as pasteurised, UHT or sterilised milk, or
- (b) milk treated by pasteurisation, at the request of an individual consumer, for sale in bulk to that consumer,

"hermetically sealed container" means a container which, when sealed, is impervious and is intended to protect its contents against the entry of micro-organisms during and after heat-treatment,

"milk" means the milk of cows, ewes or goats intended for human consumption,

"milk-based product" means –

- (a) a milk product exclusively derived from milk to which other substances necessary for its manufacture may have been added, provided that those substances do not replace in part or in whole any milk constituent, and
- (b) a composite milk product of which no part replaces or is intended to replace any milk constituent and of which milk or a milk product is an essential part either in terms of quantity or for characterisation of the product,

intended for human consumption,

"occupier" means any person carrying on the business of a producer

or handler of milk or his duly authorised representative,

"pasteurisation" means the process of heat-treating milk in accordance with paragraph 2(a) of Schedule 2;

"pasteurised milk" means milk obtained by pasteurisation,

"prohibition notice" has the meaning assigned to it by section 5(1);

"producer" means a person keeping one or more milk-producing cows, ewes or goats,

"raw" in relation to milk means milk produced by the secretion of the mammary glands of one or more cows, ewes or goats, which is not pasteurised milk, sterilised milk or UHT milk,

"Royal Court" means the Royal Court of Guernsey sitting as an Ordinary Court,

"sell" includes offer, expose, advertise or have in possession for sale,

"sterilised milk" means milk which has been heat-treated in accordance with paragraph 5 of Schedule 2;

"UHT milk" means milk which has been heat-treated in accordance with paragraph 6(a) of Schedule 2.

(2) Unless the context otherwise requires a reference in this Ordinance to any enactment includes a reference to that enactment as amended, repealed and replaced, extended or applied by or under any enactment including this Ordinance.

(3) The Interpretation (Guernsey) Law, 1948^c applies to the interpretation of this Ordinance as it applies to the interpretation of an enactment in force in the Island of Guernsey.

NOTES

In section 7, the words in, first, the first and, second, the second pairs of square brackets in the definition of the expression "the Committee" in subsection (1) and, third, the words "the Committee" in square brackets wherever else occurring were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 6, section 2, Schedule 1, paragraph 5 and section 5(1), Schedule 3, paragraph 6, with effect from 1st May, 2016.²

The functions, rights and liabilities of the Health and Social Services Department and of its Minister or Deputy Minister arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Committee for Health & Social Care and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 5, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.³

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

Citation.

8. This Ordinance may be cited as the Milk (Hygiene) (Alderney) Ordinance, 1996.

Commencement.

9. This Ordinance shall come into force on the 5th June, 1996.

^c Ordres en Conseil Vol. XIII, p. 355.

SCHEDULE 1

Section 1

CHECKS FOR ADDED WATER IN RAW MILK

1. Raw milk shall be subjected to regular checks and sampling to ascertain if water is being added to such milk.

2. Such checks shall include regular checks on the freezing point of raw milk supplied to the dairy and shall be carried out in accordance with the following procedure –

- (a) raw milk supplied to the dairy shall be subjected regularly to random sampling,
- (b) where the raw milk of a single producer is delivered directly to the dairy, the samples for checking shall be taken –
 - (i) when the raw milk is collected from the producer for transport to the dairy, provided that adequate precautions are taken to prevent any fraud during such transport of the raw milk, or
 - (ii) before unloading the raw milk at the dairy, when the delivery there is made by the producer, and
- (c) where raw milk delivered to a dairy consists of a mixture of raw milk obtained from more than one producer, the samples for checking shall be taken –
 - (i) in accordance with sub-paragraph (b), or

- (ii) when the raw milk enters the dairy, provided that spot checks are also carried out at the premises from which the raw milk was obtained, and
- (iii) if the results of any of the checks on a sample of such mixture of raw milk lead to a suspicion that water has been added to such milk, samples for checking shall be taken from all the premises from which the raw milk was obtained.

SCHEDULE 2
REQUIREMENTS FOR DRINKING MILK

Section 1

PART I
RAW MILK FOR HEAT-TREATMENT

1. Raw milk, at the time of its acceptance at a dairy, unless treated within 4 hours of acceptance, shall be cooled to a temperature not exceeding 6°C and maintained at that temperature until heat-treated.

2. Where raw cows' milk is not treated within 36 hours of acceptance at a dairy, a further test shall be carried out on such milk before it is heat-treated. If it is found by means of a direct or indirect method that the plate count of that milk at 30°C exceeds 300,000 per ml, then such milk shall not be used for the production of heat-treated drinking milk.

PART II
HEAT-TREATED DRINKING MILK

1. Heat-treated drinking milk shall not contain –

- (a) any antibiotics, or
- (b) any added water.

2. In addition to complying with paragraph 1, pasteurised milk shall –

- (a) have been obtained by means of a heat-treatment involving a high temperature for a short time (at least 71.7°C for 15 seconds or any equivalent combination) or a pasteurisation process using different time and

temperature combinations to obtain an equivalent effect,

- (b) show a negative reaction to the phosphatase test and a positive reaction to the peroxidase test and, in the case of high temperature pasteurised milk, show a negative reaction to both tests and be labelled as "high-temperature pasteurised", and
- (c) meet the following microbiological standards in any random sampling checks carried out in the treatment establishment –

Pathogenic micro-organisms	Absence in 25g, n = 5, c = 0
Coliforms (per ml)	n = 5, c = 1 m = 0, M = 5
Plate count at 21°C (per ml) after incubation at 6°C for five days	n = 5, c = 1 m = 50,000 M = 500,000

3. For the purposes of the table set out in paragraph 2, the symbols referred to shall have the following meanings –

n = number of sample units comprising the sample,

- c = number of sample units where the bacterial count may be between 'm' and 'M', the sample being considered acceptable if the bacterial count of the other sample units is 'm' or less,
- m = threshold value for the number of bacteria, the result is considered satisfactory if the number of bacteria in all sample units does not exceed 'm',
- M = maximum value for the number of bacteria, the result is considered unsatisfactory if the number of bacteria in one or more sample units is 'M' or more.

4. In addition to complying with paragraph 1, sterilised milk and UHT milk shall, after it has spent fifteen days in a closed container at a temperature of 30°C or where necessary, seven days in a closed container at a temperature of 55°C, meet the following standards –

- (a) be organoleptically normal,
- (b) not show any sign of deterioration, and
- (c) have a plate count at 30°C which does not exceed 100 per ml.

5. In addition to complying with paragraphs 1 and 3, sterilised milk shall have been heated and sterilised either in a hermetically sealed wrapping or container, the seal of which shall remain intact during such heat-treatment, or by use of the continuous flow process.

6. In addition to complying with paragraphs 1 and 3, UHT milk shall –
- (a) be obtained by applying heat to a continuous flow of raw milk entailing the application of a high temperature for a short time (not less than 135°C for not less than a second) so that all residual spoilage micro-organisms and their spores are destroyed, but the chemical, physical and organoleptic changes to the milk are minimal,
 - (b) be placed immediately after completion of the heat-treatment process in aseptic opaque containers, or containers made opaque by the packing, and
 - (c) in cases where it is obtained from a heat-treatment process which employs the direct contact of milk and steam, the steam shall be obtained from potable water. Such steam shall not leave deposits of foreign matter in the milk or affect it adversely. The use of this process shall be so as not to cause any change in the water content of the treated milk.

¹ The words "the President" were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 4, with effect from 6th May, 2004.

² The words "Committee for Health & Social Care" were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 4, with effect from 6th May, 2004.

³ The functions, rights and liabilities of the Health and Social Services Department and its Minister arising under or by virtue of this Ordinance were previously transferred to and vested in them, respectively, from the Board of Health and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 4, with effect from 6th

May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.