

1976/1



Reprint under section 7 of the Regulations Act 1936 of the Dairy Factories (Licensing) Regulations 1936 (Gazette 1936, p. 422), as amended by the following enactments:

Amendment No. 1, S.R. 1949/114

Amendment No. 2, S.R. 1951/243

Decimal Currency Act 1964, s. 7

Ministry of Agriculture and Fisheries Amendment Act 1972, s. 3 (6) (a) and (b)

Amendment No. 3, S.R. 1974/86.

NOTE: Except where otherwise indicated, all references to money in decimal currency in square brackets were substituted for references to money in the former currency by s. 7 of the Decimal Currency Act 1964.

## THE DAIRY FACTORIES (LICENSING) REGULATIONS 1936 (REPRINT)

GALWAY, Governor-General

### ORDER IN COUNCIL

At the Government House at Wellington this 4th day of March 1936

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Agriculture (Emergency Powers) Act 1934, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, doth hereby revoke the Dairy Factories (Licensing) Regulations 1935, made under the said Act on the 12th day of July 1935 and published in the *Gazette* on the 16th day of the same month, at page 1935, and doth hereby make the following regulations in lieu thereof.

### ANALYSIS

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1. Title, commencement, interpretation, etc.</li> <li>2. Application of regulations</li> <li>3. Licence required for use of premises as a dairy factory</li> <li>4. Application for licence</li> <li>5. Options for Director and applicant</li> <li>6. Referral to committee if licence refused</li> <li>7. Security for costs of investigation</li> <li>8. Issue of licence</li> <li>9. Director may impose terms and conditions; later variations and objections by licensee</li> </ol> | <ol style="list-style-type: none"> <li>10. Licences granted under revoked regulations to be valid</li> <li>11. Reasons for revocation of licence</li> <li>12. Director to approve of alterations to buildings or plant</li> <li>13. Payment to committee members</li> <li>14. Register of licences to be kept</li> <li>15. Transfer of licence</li> <li>15A. Refusal of transfer of licence</li> <li>15B. Transfer of ownership in a dairy factory</li> <li>16. Penalties Schedule</li> </ol> |
|--|---|

## REGULATIONS

**1. Title, commencement, interpretation, etc.**—(1) These regulations may be cited as the Dairy Factories (Licensing) Regulations 1936.

(2) These regulations shall come into force on the date of the publication hereof in the *Gazette*.

(3) In these regulations, unless inconsistent with the context,—  
“Director” means the Director of the Dairy Division of [the Ministry of Agriculture and Fisheries]:

“Minister” means [the Minister of Agriculture and Fisheries].

(4) All licences, registers, and generally all acts of authority which originated under the regulations hereby revoked and are subsisting or in force on the coming into operation of these regulations shall enure for the purposes of these regulations as fully and effectually as if they had originated under the corresponding provisions of these regulations, and accordingly shall, where necessary, be deemed to have so originated.

In subclause (2) the date of publication was 5 March 1936.

In subclause (3), in the definition of the term “Director”, the reference to the Ministry of Agriculture and Fisheries was substituted for a reference to the Department of Agriculture by s. 3 (6) (b) of the Ministry of Agriculture and Fisheries Amendment Act 1972, and in the definition of the term “Minister”, the reference to the Minister of Agriculture and Fisheries was substituted for a reference to the Minister of Agriculture by s. 3 (6) (a) of that Act.

**2. Application of regulations**—These regulations shall apply to all premises used as dairy factories with the exception of premises the buildings of which on the coming into force of these regulations are and continue to be duly registered pursuant to [the Dairy Produce Regulations 1938], and which are not after the coming into force of these regulations totally or substantially rebuilt, whether on the same or any other site, or altered whether structurally or by way of additions thereto, and the plant erected in which is not after the last-mentioned date so altered or extended as to increase the manufacturing capacity of the premises [but the foregoing exception of any premises shall apply only so long as such premises are not used for any purpose except the manufacture of dairy produce permitted on those premises under the regulations aforesaid according to the class of manufacturing dairy to which the premises are registered as belonging.]

The Dairy Produce Regulations 1938 (S.R. 1938/91, reprinted S.R. 1970/118), being the corresponding enactment in force at the date of this reprint, have been substituted for the revoked Dairy Produce General Regulations 1933.

The words in the second set of square brackets were added by regulation 4 of S.R. 1949/114.

**3. Licence required for use of premises as a dairy factory**—(1) No person shall use as a dairy factory any premises to which these regulations apply unless such person is the holder of a licence in that behalf in respect of such premises granted pursuant to these regulations.

(2) No person, being the holder of a licence in respect of any premises licensed as a dairy factory under these regulations, shall use such premises contrary to any term or condition specified in the licence.

**4. Application for licence**—(1) Every person desiring to obtain a licence in respect of premises to which these regulations apply shall make application in writing to the Director in or to the effect of the form numbered 1 in the Schedule hereto.

【(2) In the case of an application for a licence in respect of premises to be totally or substantially rebuilt or altered, whether structurally or by way of additions thereto, the application shall be accompanied by plans of the existing or proposed building or proposed alterations, together with particulars of the site on which the building is or is to be erected and of the materials to be used in the carrying-out of any proposed work.

(3) In the case of an application for a licence in respect of premises to which the last preceding subclause does not apply, it shall be sufficient if the application contains the particulars required by paragraph 9 or paragraph 10 of the said form No. 1 in the Schedule hereto, according to whether the application relates to a variation of the purpose for which the premises are to be used or to proposed alterations or extensions of the plant erected in the buildings comprised in the said premises.

(4) If in the opinion of the Director any information or particulars required by the said form numbered 1, or required to accompany the said form, as the case may be, are insufficiently given or furnished, the Director may require the applicant to furnish such further details, information, and particulars as the Director thinks necessary.】

(5) *Revoked by regulation 5 of S.R. 1949/114.*

Subclauses (2)–(4) were substituted for the original subclauses (2)–(5) by regulation 5 of S.R. 1949/114.

**5. Options for Director and applicant**—(1) If the Director is of opinion that the application should be acceded to according to its terms he may, subject to compliance by the applicant with the provisions of 【the Dairy Produce Regulations 1938】, as to registration of manufacturing dairies, forthwith grant a licence to the applicant pursuant to these regulations in the form numbered 2 in the Schedule hereto.

(2) If the Director is of opinion that the application should be acceded to in part but not wholly he shall give the applicant an intimation to that effect, and the applicant may elect to accept a licence in accordance with the Director's intimation, and thereupon the Director shall, subject as aforesaid, forthwith grant a licence to the applicant as aforesaid.

(3) If the applicant elects not to accept a licence under the last preceding subclause hereof, or if the Director is of opinion that the application should be wholly refused, the Director may refer the application to a committee consisting of 3 persons who shall be appointed by the Minister.

In subclause (1) the Dairy Produce Regulations 1938 (S.R. 1938/91, reprinted S.R. 1970/118), being the corresponding enactment in force at the date of this reprint, have been substituted for the revoked Dairy Produce General Regulations 1933.

**6. Referral to committee if licence refused**—In respect of any application referred to a committee pursuant to subclause (3) of the last preceding regulation hereof, the committee shall make such investigations as it thinks fit and shall consider such representations as may be made to it by the owners of any other dairy factories in the locality, and shall report the result of its investigations to the Director. In particular, the committee shall advise the Director upon the following matters in relation to the application:

- (a) Whether or not there is any economic necessity or justification for the establishment of such premises as a dairy factory or an additional dairy factory in the locality in which the premises are to be erected or for the carrying-out of the proposed work:
- (b) The prospect of carrying on successfully the manufacture of dairy produce in the premises sought to be licensed, and according to the capacity or proposed capacity of such premises having regard to all relevant circumstances:
- (c) The probable or possible effect of competition from the premises sought to be licensed on the quality of the dairy produce which might be manufactured therein, or in any dairy duly registered pursuant to **the Dairy Produce Regulations 1938**, and proposed to be used in connection therewith or in competing dairies duly registered pursuant to the said regulations:
- (d) Whether in the opinion of the committee the application for a licence should be acceded to either wholly or in part.

In para. (c) the Dairy Produce Regulations 1938 (S.R. 1938/91, reprinted S.R. 1970/118), being the corresponding enactment in force at the date of this reprint, have been substituted for the revoked Dairy Produce General Regulations 1933.

**7. Security for costs of investigation**—(1) Whenever the Director determines to refer an application to a committee he shall notify the applicant to that effect.

(2) The applicant shall forthwith lodge with the Director security for the payment of the costs of the committee's investigations in the sum of **£100** by way of deposit or of bond with 2 approved sureties, or in such other form as the Director may deem sufficient.

(3) Until the security is completed by the applicant it shall not be obligatory to take any further steps towards setting up a committee or referring the application to the committee.

(4) If in the opinion of the committee the application should be acceded to either wholly or to an extent substantially greater than in accordance with the Director's intimation to the applicant under subclause (2) of regulation 5 hereof, then the security given by the applicant shall forthwith be discharged.

(5) If in the opinion of the committee the application should be wholly refused, or should be acceded to an extent not substantially greater than in accordance with the Director's intimation to the applicant under subclause (2) of regulation 5 hereof, then the costs of investigation by the committee not exceeding the sum of **£100** shall be borne by the applicant and may be raised out of the security given as aforesaid or recovered as a debt due to the Crown.

(6) A certificate under the hand of the Director setting out the costs of any such investigation shall be final and conclusive in all respects.

(7) *Revoked by regulation 6 of S.R. 1949/114.*

**8. Issue of licence**—(1) In deciding to grant or refuse a licence the Director shall take into consideration the report of the committee to which the application has been referred pursuant to subclause (3) of regulation 5 hereof, and may, if he thinks fit, refer the application again to the committee for a further report, and in any case (whether the application has been referred to a committee or not) in which the Director is of the opinion that the application should be granted whether

wholly or in part, the Director shall, subject to compliance by the applicant with the provisions of [the Dairy Produce Regulations 1938], as to registration of manufacturing dairies, grant a licence to the applicant pursuant to these regulations in the form numbered 2 in the Schedule hereto.

(2) Every such licence shall authorise the licensee to use the premises specified in the licence as a dairy factory pursuant to these regulations to the extent only of any term or condition in that behalf specified in the licence.

In subclause (1) the Dairy Produce Regulations 1938 (S.R. 1938/91, reprinted 1970/118), being the corresponding enactment in force at the date of this reprint, have been substituted for the revoked Dairy Produce General Regulations 1933.

**9. Director may impose terms and conditions; later variations and objections by licensee—**(1) In granting any licence under these regulations the Director may impose as a term or condition of the licence a term or condition limiting the purpose for which the premises specified in the licence may be used, and fixing the maximum quantity of any specified kind of dairy produce that may be manufactured in the licensed premises during any period or periods specified in that behalf in the licence.

[(2) Where a licence has been granted before or after the commencement of this subclause the Director may, at any time after the grant of the licence, by written notice of variation given to the licensee not less than 3 months before the date on which the notice is to take effect, vary the licence—

(a) By imposing any such term or condition as a term or condition of the licence; or

(b) By amending or revoking any term or condition of the licence which has been imposed under this regulation.

(3) The licensee may, by written notice of objection given to the Director within 14 days after the date of the giving of the notice of variation, object to the notice of variation in whole or in part.

(4) Where any notice of objection is given to the Director as aforesaid, he shall either withdraw the notice of variation to the extent required by the notice of objection or shall offer to refer the notice of objection to a committee of 3 persons to be appointed by the Minister. The provisions of regulation 7 of these regulations shall apply to the notice of objection as if it were an application for a licence.

(5) Upon security for the payment of the costs of the committee's investigation being completed by the licensee, the Director shall, as soon as practicable, refer the notice of objection together with a copy of the notice of variation to a committee of 3 persons who shall be appointed by the Minister; and, so far as the licensee has objected to the notice of variation, it shall be of no effect until it is confirmed under paragraph (b) of subclause (7) of this regulation, and then only so far as it is so confirmed; but the notice of variation shall be of full force and effect so far as the licensee has not objected thereto.

(6) Where any notice of objection and copy of notice of variation is referred to a committee as aforesaid, the committee shall make such investigations as it thinks fit and shall consider such representations as may be made to it by the owners of any other dairy factories in the locality, and shall report the result of its investigations to the Director,

who may thereafter, if he so desires, refer the matter to the committee again for a further report. In particular, the committee shall advise the Director upon the following matters in relation to the notice of variation and notice of objection:

- (a) The effect of the variation of the terms and conditions of the licence on the operations of the licensee and the prospect of carrying on successfully the manufacture of dairy produce in the licensed premises under the licence as so varied; and
- (b) The effect on licensees and owners of other dairy factories in the locality, in respect of competition for supply and on the quality of dairy produce manufactured, of continuing the licence without the variations to which the licensee has objected; and
- (c) Whether in the opinion of the committee the notice of variation should take effect according to its terms or should be withdrawn or further varied.

(7) As soon as practicable after the Director has received the report of the committee and any further report which he has requested the committee to furnish, he shall, at his discretion, either—

- (a) Give written notice to the licensee withdrawing the notice of variation to the extent required by the notice of objection; or
- (b) By written notice to take effect not less than 3 months after the date on which it is given to the licensee, do either or both of the following:
  - (i) Confirm so far as he thinks fit any variation or variations of the licence which were specified in the notice of variation and have become of no effect by reason of the objection:
  - (ii) Further vary the licence in any manner authorised by subclause (2) of this regulation for the purpose of giving effect to all or any of the recommendations of the committee.

(8) Any notice to be given to any person under this regulation may be so given by sending it by post in a registered letter addressed to him at his last known or usual place of business and, when sent by post as aforesaid, shall be deemed to have been given at the time at which the letter would have been delivered in the ordinary course of post.】

Subclauses (2)–(8) were added by regulation 2 of S.R. 1951/243.

**10. Licences granted under revoked regulations to be valid**—Any licence heretofore granted under the regulations hereby revoked containing as a term or condition of the licence a term or condition purporting to limit the purpose for which the licensed premises may be used, and/or to fix the maximum quantity and kind of dairy produce that may be manufactured in the licensed premises during any period or periods specified in the licence, shall be as valid and effectual as if such licence containing the said term or condition had been granted under these regulations.

**11. Reasons for revocation of licence**—Any licence may be revoked by the Director in writing addressed to the licensee in any of the following events:

- (a) If the licensee of the licensed premises so requests:
- (b) If during the period of 12 months immediately preceding such revocation the licensee of the licensed premises has been convicted of any offence under these regulations or under 【the

Dairy Industry Act 1952] or [the Food and Drug Act 1969], or any regulations for the time being in force under either of those Acts:

- (c) If in the opinion of the Director there has been a substantial breach of or non-compliance with any term or condition of the licence or of these regulations.

In para. (b) the Dairy Industry Act 1952 and the Food and Drug Act 1969, being the corresponding enactments in force at the date of this reprint, have been substituted for the repealed Dairy Industry Act 1908 and the repealed Sale of Food and Drugs Act 1908.

**12. Director to approve of alterations to buildings or plant—**(1) No person being the holder of a licence in respect of any premises licensed as a dairy factory under these regulations shall, except with the prior approval in writing of the Director, make or permit or cause to be made—

- (a) Any alterations whether structural or by way of additions to the buildings comprised in the licensed premises; or  
 (b) Any alteration to or extension of the plant erected in the said buildings, being an alteration or extension designed to increase the manufacturing capacity of the licensed premises; [or]  
 [(c) Any change in or addition to the kind of dairy produce manufactured under the licence in the licensed premises.]

[(2) The provisions of regulations 4 to 7 of these regulations shall, so far as they are applicable and with the necessary modifications, apply to any application for approval under this regulation as if the application were an application for a licence under these regulations.]

In subclause (1) (b) the word “or” was added by regulation 3 (1) (a) of S.R. 1951/243.

In subclause (1), para. (c) was added by regulation 3 (1) (b) of S.R. 1951/243.

Subclause (2) was substituted for the original subclause (2) by regulation 3 (2) of S.R. 1951/243.

**13. Payment to committee members—**Every member of a committee appointed pursuant to these regulations may be paid such fee not exceeding [£4.20] as may be considered reasonable by the Minister for each day or part of a day on which he is engaged on the business of the committee together with all reasonable and actual expenses incurred by him in respect of his attendance on the business of the committee.

**14. Register of licences to be kept—**(1) The Director shall cause a register to be kept of every licence issued under these regulations.

(2) A copy certified by the Director of any entry in the register shall be *prima facie* evidence of such entry and of the facts appearing therein, and a certificate under the hand of the Director of the absence of an entry in the register shall be *prima facie* evidence of the facts stated in such certificate.

**15. Transfer of licence—**(1) The holder of any licence in respect of any premises licensed as a dairy factory under these regulations who desires to transfer such licence shall make application for a transfer of the licence in writing to the Director in or to the effect of the form numbered 3 in the Schedule hereto.

(2) Every such application shall be accompanied by the licence to which the same relates.

(3) [If the Director is of the opinion that he should accede to the application he shall forthwith] endorse on the licence the words "Transferred to [*Full name and address of transferee*]," and shall sign such endorsement, and shall thereupon record the transfer in his register accordingly, and forward the licence duly endorsed as aforesaid to the new licensee in respect of the premises mentioned in the licence.

(4) A licence so endorsed shall enure for the purposes of these regulations as if it had been issued to the transferee named therein.

In subclause (3) the words in square brackets were substituted for the words "The Director on receipt of such application shall, upon being satisfied as to the facts," by regulation 2 of S.R. 1974/86.

**115A. Refusal of transfer of licence**—(1) If the Director is of the opinion that any application for a transfer should be refused he shall refer the application to a committee consisting of 3 persons who shall be nominated by the Minister.

(2) The Director shall notify the applicant and the proposed transferee of his reference of the application to the committee and of the names and addresses of the members of the committee.

(3) The applicant, if he wishes his application to be investigated by the committee, shall forthwith lodge with the Director security for the payment of the costs of the committee's investigations in the sum of \$100 by way of deposit, or by bond with 2 approved sureties, or in such other form as the Director shall consider sufficient.

(4) The committee may make such investigations as it thinks fit, and shall consider such representation as may be made to it, and shall report the results of its investigations to the Director. In particular the committee shall advise the Director on the following matters in relation to the application:

- (a) The probable or possible effect of competition on any neighbouring dairies duly registered under the Dairy Produce Regulations 1938\*:
- (b) The desirability or otherwise in the public interest of approving the proposed transfer:
- (c) The effect of the proposed transfer on the organisation and orderly development in New Zealand of co-operative dairy companies as defined in the Co-operative Dairy Companies Act 1949.

(5) The committee shall report its recommendations to the Director who shall, after taking into consideration the recommendations of the committee, grant or refuse the application as he thinks fit. If the Director grants the application he shall do so in the form set out in accordance with subclause (3) of regulation 15 of these regulations.

(6) If the Director, after considering the recommendation of the committee, decides to refuse the application to transfer the licence he shall notify the applicant and the proposed transferee of his decision. His decision shall be final.

(7) The costs of investigation by the committee, not exceeding the sum of \$100, shall be borne by the applicant and may be received out of the security given as aforesaid or be owing as a debt due to the Crown.

(8) A certificate under the hand of the Director setting out the costs of any investigation shall be final.



**15B. Transfer of ownership in a dairy factory**—(1) Nothing in this regulation shall apply to—

(a) The transfer of shares or any change in the beneficial ownership of shares in a company registered under the Co-operative Dairy Companies Act 1949 if the proposed transferee or beneficial owner is or intends to become a supplying shareholder of that company; or

(b) The transfer of any shares or any change in the beneficial ownership of shares under the will or on the intestacy of any person.

(2) If a company is the holder of a licence for any premises licensed as a dairy factory under these regulations no transfer of shares in the company or change in the beneficial ownership of those shares shall take place except with the approval of the Director.

(3) Every person who desires to transfer any shares in the company or any beneficial interest in those shares shall make application in writing to the Director for approval of the transfer.

(4) If the Director is of the opinion that the transfer should be approved he shall so advise the applicant and the company holding the licence and thereafter it shall be lawful for the company, in accordance with its articles of association, to register the transfer or change of beneficial ownership.

(5) If the Director is of the opinion that the proposed transfer should not be approved he may refer the application to a committee of 3 persons who shall be nominated by the Minister and thereafter the provisions of subclauses (2) to (8) of regulation 15A of these regulations shall apply as if the application for the transfer of shares or change in the beneficial ownership of shares were an application for a transfer of licence.]

Regulations 15A and 15B were inserted by regulation 3 of S.R. 1974/86.

**16. Penalties**—(1) Every person who uses as a dairy factory any premises to which these regulations apply and who is not the holder of a licence in respect of such premises granted pursuant to these regulations commits an offence and is liable to a penalty of **£10** for every day on which such premises are so used.

(2) Every holder of a licence in respect of premises licensed as a dairy factory under these regulations who uses such premises contrary to any term or condition specified in his licence commits an offence and is liable to a penalty of **£10** for every day on which such premises are so used without prejudice to the power of revocation set out in regulation 11 hereof.

(3) Every holder of a licence in respect of premises licensed as a dairy factory under these regulations who, without having obtained the approval in writing of the Director thereto, makes or commences to make or permits or causes to be made—

(a) Any alterations whether structural or by way of additions to the buildings comprised in his licensed premises; or

(b) Any alteration or extension of the plant erected in the said buildings being an alteration or extension designed to increase the manufacturing capacity of the licensed premises; **[or]**

**[(c) Any change in or addition to the kind of dairy produce manufactured under the licence in the licensed premises,—]**

3462

415640

commits an offence and shall be liable (without prejudice to the powers of revocation set out in regulation 11 hereof) to a penalty of **£10** for every day on which such premises are used as a dairy factory after any such alteration, addition, or extension is commenced and before the Director's approval of such alteration, extension, or addition has been duly issued.

In subclause (3) (b) the word "or" was added by regulation 4 (a) of S.R. 1951/243.

In subclause (3), para. (c) was added by regulation 4 (b) of S.R. 1951/243.

---

### SCHEDULE

Reg. 4 (1)

Form No. 1

*The Dairy Factories (Licensing) Regulations 1936*  
APPLICATION FOR LICENCE IN RESPECT OF A DAIRY FACTORY

The Director of the Dairy Division,  
Ministry of Agriculture and Fisheries, Wellington.

APPLICATION is hereby made for a licence under the above-entitled regulations to use as a dairy factory the premises particulars of which are set out below:

1. Name of premises: .
2. Particulars of site: .
3. Name of owner: .
4. If owner is a company, name of secretary: .
5. Postal address: .
6. Name of and distance to nearest—
  - (a) Post office: .
  - (b) Telegraph or telephone office: .
  - (c) Railway station: .
  - (d) Shipping port: .

7. Average number of cows from which the daily milk-supply will be obtained: .

8. Average number of milk and/or cream suppliers: .
9. State kind of dairy produce to be manufactured in premises: .
10. (a) Particulars of proposed alterations or extensions of plant: .
  - (b) Size and capacity of existing plant: .
  - (c) Size and capacity of new or additional plant: .

Dated at , this day of 19 .

[Signature of owner or secretary.]

---

SCHEDULE—*continued*

Form No. 2

Reg. 8 (1)

*The Dairy Factories (Licensing) Regulations 1936*

LICENCE IN RESPECT OF A DAIRY FACTORY

, of , is hereby licensed to use as a dairy factory under the above-entitled regulations pursuant to an application in that behalf dated the day of 19 , the undermentioned premises:  
[*Situation and description of premises and conditions, if any, of licence.*]

Dated at Wellington this day of 19 .

.....  
Director of the Dairy Division,  
Ministry of Agriculture and Fisheries.

Form No. 3

Reg. 15 (1)

*The Dairy Factories (Licensing) Regulations 1936*

APPLICATION FOR TRANSFER OF LICENCE IN RESPECT OF A DAIRY FACTORY

The Director of the Dairy Division,  
Ministry of Agriculture and Fisheries, Wellington.

APPLICATION is hereby made for a transfer of the attached licence to use as a dairy factory the premises situate at , of which licence the undersigned is the holder, to [*Name and address of proposed transferee*].

Dated at , this day of 19 .

[*Signature of present holder of licence.*]

I agree to accept a transfer of the above licence.

[*Signature of transferee.*]

C. A. JEFFERY,  
Clerk of the Executive Council.

*Certified for the purposes of section 7 of the Regulations Act 1936 this 23rd day of December 1975.*

P. I. WILKINSON, *Attorney-General.*

Issued under the authority of the Regulations Act 1936.

Date of notification of principal regulations in *Gazette*: 5 March 1936.

These regulations are administered in the Ministry of Agriculture and Fisheries.