

2013 No. 0000

FOOD, ENGLAND

**The Condensed Milk and Dried Milk (England) Regulations
2013**

Made - - - - ***
Laid before Parliament ***
Coming into force - - *1st October 2013*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 6(4), 16(1), 17(1), 26(1) and (3), 31(1) and 48(1) of the Food Safety Act 1990(a) and now vested in the Secretary of State(b) as read with paragraph 1A of Schedule 2 to the European Communities Act 1972(c).

It appears to the Secretary of State that it is expedient for the references to the European instruments listed in regulation 2(2) to be construed as references to those instruments as amended from time to time.

In accordance with section 48(4A) of the Food Safety Act 1990(d), the Secretary of State has taken into account relevant advice given by the Food Standards Agency.

As required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(e) there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

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- (a) 1990 c.16; Section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990, regulations 2 and 3, and section 5(1A) and (2) (meaning of “food authorities” in Wales and Scotland) were respectively inserted by the Local Government (Wales) Act 1994, Schedule 9, paragraph 16(1), and amended by the Local Government etc (Scotland) Act 1994, Schedule 13, paragraph 163(2). Sections 6(4) and 17(1) were amended by paragraphs 10 and 12 respectively of Schedule 5 to the Food Standards Act 1999 (c.28) (“the 1999 Act”).
- (b) Functions formerly exercisable by “the Ministers” (being, in relation to England and Wales and acting jointly, the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales and, in relation to Scotland, the Secretary of State) are now exercisable in relation to England by the Secretary of State pursuant to paragraph 8 of Schedule 5 to the 1999 Act. Those functions, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672, Schedule 1, as read with section 40(3) of the 1999 Act and subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32). Those functions, so far as exercisable in relation to Scotland, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (c.46) as read with section 40(2) of the 1999 Act.
- (c) 1972 c. 68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51), and amended by the European Union (Amendment) Act 2008 (c.7), Part 1 of the Schedule.
- (d) Section 48(4A) was inserted by the 1999 Act, paragraph 21 to Schedule 5.
- (e) O.J. No L 31, 1.2.2002, p 1, as last amended by Regulation (EC) No. 596/2009 (OJ No. L 188, 18.7.2009, p 14)

Citation, commencement and application

1.—(1) These Regulations may be cited as the Condensed Milk and Dried Milk (England) Regulations 2013.

(2) These Regulations come into force on 1st October 2013.

(3) These Regulations apply in relation to England only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Food Safety Act 1990; “catering establishment” means a restaurant, canteen, club, public house, school, hospital or similar establishment (including a vehicle or a fixed or mobile stall) where, in the course of a business, food is prepared for delivery to the ultimate consumer and is ready for consumption without further preparation, and “preparation” includes manufacture and any form of processing or treatment and “prepared” should be construed accordingly;

“designated product” means any food specified in column 2 of Schedule 1 (as read with the Notes to that Schedule), ready for delivery to an ultimate consumer or to a catering establishment;

“partly dehydrated milk” means the liquid product, whether or not sweetened, obtained by the partial removal of water from milk, wholly or partly skimmed milk or a mixture of those products and includes such a product to which cream or totally dehydrated milk has been added provided the addition of totally dehydrated milk does not exceed, in the finished product, 25% of total milk solids;

“reserved description”, as respects any designated product, means any description specified in relation to that product in column 1 of Schedule 1 or any alternative description permitted by Schedule 2;

“sell” includes offer or expose for sale or have in possession for sale, and cognate expressions are to be construed accordingly;

“total milk solids” means all the constituents of milk other than water, including milk fat, the constituents other than milk fat being present in their natural proportions;

“totally dehydrated milk” means the solid product, where the water content does not exceed 5% by weight of the finished product, obtained by the removal of water from milk, wholly or partly skimmed milk, cream or a mixture of those products; and “ultimate consumer” means any person who buys otherwise than for the purpose of resale or for the purposes of—

- (a) a catering establishment, or
- (b) a manufacturing business.

(2) In these Regulations, references to EU instruments are references to those instruments as amended from time to time.

Reserved descriptions

3. No person may sell any food with a label, whether or not attached to or printed on the wrapper or container, which bears, comprises or includes any reserved description, derivative of a reserved description or substantially similar word or description unless—

- (a) such food is the designated product to which the reserved description relates;
- (b) such description, derivative or word is used in such a context as to indicate explicitly or by clear implication that the substance to which it relates is only an ingredient of that food; or
- (c) such description, derivative or word is used in such a context as to indicate explicitly or by clear implication that such food is not and does not contain a designated product.

Labelling and description

4. No person may sell any designated product unless it is marked or labelled with the following particulars—

- (a) its reserved description;
- (b) except in the case of the products specified in paragraphs 1(d) and (g) and 2(d) of Schedule 1, the percentage of milk fat, expressed by weight in relation to the finished product;
- (c) except in the case of the products specified in paragraph 2(a) to (d) of Schedule 1—
 - (i) the percentage of fat-free dried milk extract;
 - (ii) the recommendations as to the method of dilution or reconstitution and the details of the fat content of the product when diluted or reconstituted; and
 - (iii) a statement that the product is “not intended as a food for infants under 12 months”.

Manner of marking or labelling

5.—(1) Until (and including) 12th December 2014, regulations 35, 36(1) and (5) and 38 (which relate to the manner of marking or labelling of food) of the Food Labelling Regulations 1996^a apply to the particulars with which a designated product is required to be marked or labelled by regulation 4 of these Regulations.

(2) The particulars with which a designated product is required to be marked or labelled by regulation 4(b) and (c)(i) of these Regulations must appear near the name of the product.

(3) Where designated products weighing less than 20 grams per unit are packed in an outer packaging, the particulars required by regulation 4(b) to (c)(ii) of these Regulations must appear on the outer packaging.

Improvement notices

6.—(1) Section 10 of the Act (improvement notices) applies for the purposes of these Regulations with the following modifications.

(2) For subsection (1), substitute—

“(1) If an authorised officer of an enforcement authority has reasonable grounds for believing that a person is failing to comply with regulation 3, 4 or 5 of the Condensed Milk and Dried Milk (England) Regulations 2013, the authorised officer may, by a notice served on that person (in this Act referred to as an “improvement notice”)—

- (a) state the officer’s grounds for believing that the person is failing to comply with the relevant provision;
- (b) specify the matters which constitute the person’s failure so to comply;
- (c) specify the measures which, in the officer’s opinion, the person must take in order to secure compliance; and
- (d) require the person to take those measures, or measures that are at least equivalent to them, within such period as may be specified in the notice”.

(3) Omit subsection (3).

Appeal against improvement notice

7.—(1) Section 37 of the Act (appeals to magistrates’ court or sheriff) applies for the purposes of these Regulations with the following modifications.

(2) For subsection (1), substitute—

(a) SI 1996/1499 amended by SI 1998/1398. There are other amending instruments but none is relevant.

“(1) Any person who is aggrieved by a decision of an authorised officer of an enforcement authority to serve an improvement notice under section 10(1), as applied and modified by regulation 6 of the Condensed Milk and Dried Milk (England) Regulations 2013, may appeal to the First-tier Tribunal”.

(3) Omit subsections (2) to (5).

(4) In subsection (6)—

(a) for “(3) or (4)”, substitute “(1)”; and

(b) in paragraph (a), for “a magistrates’ court or to the sheriff”, substitute “the First-tier Tribunal”.

Enforcement

8.—(1) Each food authority must enforce and execute these Regulations in its area.

(2) In paragraph (1), “food authority” has the meaning that it bears by virtue of section 5 of the Act, except that it does not include—

(a) the council of a district in a non-metropolitan county except where the county functions have been transferred to that council pursuant to a structural change, or

(b) appropriate Treasurer referred to in section 5(1)(c) (which deals with the Inner Temple and Middle Temple).

Application of provisions of the Act

9. The provisions of the Act specified in column 1 of Schedule 3 apply with the modifications specified in column 2 of that Schedule.

Revocations

10. The following Regulations are revoked—

(a) the Condensed Milk and Dried Milk (England) Regulations 2003(a), and

(b) the Condensed Milk and Dried Milk (England) (Amendment) Regulations 2008(b).

Amendment of the Food Additives (England) Regulations 2009

11.—(1) The Food Additives (England) Regulations 2009(c) are amended as follows.

(2) In regulation 18 (consequential amendments), omit paragraph (3).

Review

12.—(1) The Secretary of State must from time to time—

(a) carry out a review of these Regulations;

(b) set out the conclusions of the review in a report; and

(c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how Council Directive 2001/114/EC relating to certain partly or wholly dehydrated preserved milk for human consumption(d) as amended by Council Directive 2007/61/EC(e) and implemented by means of these Regulations, is implemented in other member States.

(a) S.I. 2003/1596, amended by S.I. 2006/14, 2008/85 and 2009/3238.

(b) S.I. 2008/85.

(c) S.I. 2009/3238, to which there are amendments not relevant to these Regulations.

(d) OJ No L 15, 17.1.2002, p19.

(e) OJ No L 258, 4.10.2007, p27.

- (3) The report must in particular—
- (a) set out the objectives intended to be achieved by these Regulations;
 - (b) assess the extent to which the objectives have been achieved;
 - (c) assess whether the objectives remain appropriate and, if so, the extent to which they could be achieved in a less burdensome way.
- (4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.
- (5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Name
Parliamentary Under Secretary of State

Date Department for Food, Environment and Rural Affairs

SCHEDULE 1

Regulation 2

Partly or wholly dehydrated preserved milk products and their reserved descriptions

<i>Reserved Description</i>	<i>Designated Products</i>
1. Partly dehydrated milk	
<i>—Types of unsweetened condensed milk</i>	
(a) Condensed high-fat milk	Partly dehydrated milk containing, by weight, not less than 15% fat, and not less than 26.5% total milk solids.
(b) Condensed milk	Partly dehydrated milk containing, by weight, not less than 7.5% fat, and not less than 25% total milk solids.
(c) Condensed, partly skimmed milk	Partly dehydrated milk containing, by weight, not more than 1% and less than 7.5% fat, and not less than 20% total milk solids.
(d) Condensed skimmed milk	Partly dehydrated milk containing, by weight, not more than 1% fat, and not less than 20% total milk solids.
<i>—Types of sweetened condensed milk</i>	
(e) Sweetened condensed milk	Partly dehydrated milk with an admixture of sucrose (semi-white sugar, white sugar or extra-white sugar) and containing, by weight, not less than 8% fat and not less than 28% total milk solids
(f) Sweetened condensed, partly skimmed milk	Partly dehydrated milk with an admixture of sucrose (semi-white sugar, white sugar or extra-white sugar) and containing, by weight, not less than 1% and less than 8% fat, and not less than 24% total milk solids.
(g) Sweetened condensed skimmed milk	Partly dehydrated milk with an admixture of sucrose (semi-white sugar, white sugar or extra-white sugar) and containing, by weight, not more than 1% fat and not less than 24% total milk solids.
2. Totally dehydrated milk	
(a) Dried high-fat milk or high-fat	Totally dehydrated milk containing, by weight, not

milk powder	less than 42% fat.
(b) Dried whole milk or whole milk powder	Totally dehydrated milk containing, by weight, not less than 26% and less than 42% fat.
(c) Dried partly skimmed milk or partly skimmed milk powder	Totally dehydrated milk with a fat content of more than 1.5% and less than 26% by weight.
(d) Dried skimmed milk or skimmed-milk powder	Totally dehydrated milk containing, by weight, not more than 1.5% fat.

Notes

1. Authorised additions and raw materials:

- (a) Any designated product may contain—
 - (i) any substance permitted pursuant to Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives(a), and
 - (ii) vitamins and minerals in accordance with the requirements of Regulation (EC) No 1925/2006((b)on the addition of vitamins and minerals and of certain other substances to foods.
- (b) Authorised raw materials for protein adjustment purposes referred to in Note 4 are as follows:
 - (i) Milk retentate, which is the product obtained by concentrating milk protein by ultra filtration of milk, partly skimmed milk or skimmed milk;
 - (ii) Milk permeate, which is the product obtained by removing milk proteins and milk fat from milk, partly skimmed milk or skimmed milk by ultra filtration; and
 - (iii) Lactose, which is a natural constituent of milk normally obtained from whey with an anhydrous lactose content of not less than 99.0% m/m on a dry basis. It may be anhydrous or contain one molecule of water of crystallisation or be a mixture of both forms.

2. An additional quantity of lactose, not greater than 0.03% by weight of the finished product, may be added in the manufacture of any designated product specified in paragraph 1(e) to (g).

3. Without prejudice to Regulation (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin(c), the preservation of the designated products shall be achieved—

- (a) by heat treatment for the products referred to in paragraph 1(a) to (d) of column 1 of this Schedule;
- (b) by the addition of sucrose for the products referred to in paragraph 1(e) to (g) of column 1 of this Schedule; and
- (c) by dehydration for the products referred to in paragraph 2 of column 1 of this Schedule.

4. Without prejudice to the compositional requirements set out in the table above, the protein content of milk may be adjusted to a minimum content of 34% by weight (expressed on fat-free dry matter) by the addition and/or withdrawal of milk constituents in such a way as not to alter the ratio of whey protein to casein in the milk being adjusted.

5. The levels of dry matter, moisture content, fat, sucrose, lactic acid and lactates and phosphatase activity in the designated products shall be determined in accordance with the

(a) OJ No L 354 , 31.12.2008, p16, as last amended by Commission Regulation (EU) No 675/2012 (OJ No L 196, 24.7.2012. p52)

(b) OJ No L 404 , 30.12.2006, p26, as last amended by Commission Regulation (EU) No 1161/2011 (OJ No L 296, 15.11.2011. p29).

(c) OJ No L 139, 30.4.2004, p55 as last amended by Commission Regulation (EU) No 16/2012 (OJ No L 8, 12.1.2012. p29).

methods set out in First Commission Directive 1979/1067/EEC laying down Community methods of analysis for testing certain partly or wholly dehydrated preserved milk for human consumption^(a);

SCHEDULE 2

Regulation 2

Alternatives to the reserved descriptions specified in Schedule 1

1. The term “evaporated milk” may be used instead of the term “condensed milk” in the case of partly dehydrated milk containing, by weight, at least 9% fat and 31% total milk solids.

2. The term “evaporated semi-skimmed milk” may be used instead of the term “condensed partly skimmed milk” in the case of partly dehydrated milk containing, by weight, between 4% and 4.5% fat and not less than 24% total milk solids.

3. The term “semi-skimmed milk powder” or dried semi-skimmed milk” may be used instead of the term “dried partly skimmed milk” or “partly skimmed milk-powder” in the case of totally dehydrated milk with a fat content of between 14% and 16%.

SCHEDULE 3

Regulation 9

Application and modification of provisions of the Act

<i>Provision of the Act</i>	<i>Modifications</i>
Section 2 (extended meaning of “sale”)	For “this In subsection (1), for this Act” substitute “the Condensed Milk and Dried Milk (England) Regulations 2013”
Section 3 (presumptions that food intended for human consumption)	For “this Act” substitute “the Condensed Milk and Dried Milk (England) Regulations 2013”
Section 20 (offences due to fault of another person)	For “any of the preceding provisions of this Part” substitute “section 10(2), as applied by regulation 6(1) of the Condensed Milk and Dried Milk (England) Regulations 2013”.
Section 21(b) (defence of due diligence)	In subsection (1), for “any of the preceding provisions of this Part” substitute “section 10(2) as applied by regulation 6(1) of the Condensed Milk and Dried Milk (England) Regulations 2013”.
Section 29 (procurement of samples)	After the words “enforcement authority” insert the following— “when carrying out duties under this section in relation to the Condensed Milk and Dried Milk (England) Regulations 2013, must exercise and perform those duties in accordance with the methods described in the Annex to First Commission Directive 87/524/EEC laying down Community methods of sampling for chemical analysis for the monitoring of preserved milk products(c), and”.
Section 30(8) (which relates to evidence of	For “this Act” substitute “the Condensed Milk and

(a) O J No L 372, 24.12.79, p29.

(b) Section 21(2) was amended by S.I. 2004/3279.

(c) O.J. L 306 28.10.87 p.24.

certificates given by a food analyst or examiner) Section 33(obstruction etc. of officers)	Dried Milk (England) Regulations 2013”. In subsection (1), for “this Act”(in each place occurring) substitute “the Condensed Milk and Dried Milk (England) Regulations 2013”.
Section 35(1)(a) and (2) (punishment of offences)	In subsection (1), after “section 33(1) above” insert “, as applied and modified by regulation 9 of, and Schedule 3 to, the Condensed Milk and Dried Milk (England) Regulations 2013”. After subsection (1), insert the following subsection— “(1A) A person guilty of an offence under section 10(2), as applied by regulation 6(1) of the Condensed Milk and Dried Milk (England) Regulations 2013, shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale”. In subsection (2)— (a) for “any other offence under this Act”, substitute “an offence under section 33(2), as applied by regulation 9 of and Schedule 3 to, the Condensed Milk and Dried Milk (England) Regulations 2013,”; and (b) in paragraph (b), for “the relevant amount”, substitute “the statutory maximum”.
Section 36 (offences by body corporate)	In subsection (1), for “this Act” substitute “section 10(2) as applied by regulation 6(1) of the Condensed Milk and Dried Milk (England) Regulations 2013,”.
Section 36A(b) (offences by Scottish partnerships)	In subsection (1), for “this Act” substitute “section 10(2) as applied by section 6(1) of the Condensed Milk and Dried Milk (England) Regulations 2013,”.
Section 44 (protection of officers acting in good faith)	For “this Act” (in each place occurring) substitute “the Condensed Milk and Dried Milk (England) Regulations 2013”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply to England, revoke and replace the Condensed Milk and Dried Milk (England) Regulations 2003 (“the 2003 Regulations”) as amended and revoke the Condensed Milk and Dried Milk (England) (Amendment) Regulations 2008 (S.I. 2008/85) (“the 2008 Regulations”). The Regulations—

- (a) implement—
 - (i) Council Directive 2001/114/EC relating to certain partly or wholly dehydrated preserved milk products intended for human consumption (OJ No L 15, 17.1.2002, p19) as amended by
 - (ii) Council Directive 2007/61/EC (OJ No L 258, 4.10.2007, p27);

- (a) Section 35(1) is amended by paragraph 42 of Schedule 26 to the Criminal Justice Act 2003 (c.44) from a date to be appointed.
- (b) Section 36A was inserted by paragraph 16 of Schedule 5 to the Food Standards Act 1999.

- (b) prescribe definitions and reserved descriptions for condensed milk and dried milk products (regulation 2 and Schedules 1 and 2);
- (c) restrict the use of reserved descriptions to the designated condensed and dried milk products to which they relate (regulation 3);
- (d) prescribe labelling requirements for designated condensed and dried milk products (regulation 4);
- (e) prescribe the manner of marking or labelling and apply specified provisions of the Food Labelling Regulations 1996 (S.I. 1996/1499) until 12th December 2014. From 13th December 2014, Regulation (EU) No. 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers (OJ No L 304, 22.11.2011, p18) will apply to any name, description, indication, information or other wording with which designated products must be labelled in accordance with regulation 4 (regulation 5);
- (f) apply certain provisions of the Food Safety Act 1990 (1990 c.16), with modifications (regulations 6, 7 and 9, and Schedule 3) including (in regulation 6), the application (with modifications) of section 10(1), enabling an improvement notice to be served to require compliance with regulations 3, 4, and 5;
- (g) revoke the 2003 Regulations and the 2008 Regulations (regulation 10);
- (h) amend the Food Additives (England) Regulations 2009 (regulation 11)
- (i) make provision for a review of the Regulations (regulation 12).

A full impact assessment of the effect these Regulations will have on the costs of business, the voluntary sector and the public sector is available from the Food Policy Unit, Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR and is published with the Explanatory Memorandum alongside the Regulations on www.legislation.gov.uk.