

## 2003 No. 311

## FOOD

The Condensed Milk and Dried Milk (Scotland) Regulations  
2003

<i>Made</i>	<i>11th June 2003</i>
<i>Laid before the Scottish Parliament</i>	<i>13th June 2003</i>
<i>Coming into force</i>	<i>17th July 2003</i>

The Scottish Ministers, in exercise of the powers conferred by sections 6(4), 16(1)(e), 17(1), 26(1) and (3) and 48(1) of the Food Safety Act 1990(a) and of all other powers enabling them in that behalf, having had regard in accordance with section 48(4A)(b) of that Act to relevant advice given by the Food Standards Agency, and after consultation in accordance with section 48(4) and (4B)(c) of that Act, hereby make the following Regulations:

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Condensed Milk and Dried Milk (Scotland) Regulations 2003 and shall come into force on 17th July 2003.

(2) These Regulations shall extend to Scotland 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;

“designated product” means any food specified in column 2 of Schedule 1 to these Regulations (as read with the Notes relating to that Schedule);

“Directive 79/1067/EEC” means First Commission Directive 1979/1067/EEC(d) laying down Community methods of analysis for testing certain partly or wholly dehydrated preserved milk for human consumption;

“Directive 87/524/EEC” means First Commission Directive 1987/524/EEC(e) laying down Community methods of sampling for chemical analysis for the monitoring of preserved milk products;

(a) 1990 c.16; section 6(4) was amended by the Deregulation and Contracting Out Act 1994 (c.40), Schedule 9, paragraph 6 and by the Food Standards Act 1999 (c.28) (“the 1999 Act”), Schedule 5, paragraph 10(3); sections 16(1) and 48(1) were amended by the 1999 Act, Schedule 5, paragraph 8; section 17(1) was amended by the 1999 Act, Schedule 5, paragraphs 8 and 12; section 26(3) was amended by the 1999 Act, Schedule 6; amendments made by the 1999 Act shall be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c.46) by virtue of section 40(2) of the 1999 Act. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.

(c) Section 48(4B) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.

(d) O.J. No. L 327, 24.12.79, p.29.

(e) O.J. No. L 306, 28.10.87, p.24.

“EEA Agreement” means the Agreement on the European Economic Area(a) signed at Oporto on 2nd May 1992 as adjusted by the Protocol(b) signed at Brussels on 17th March 1993;

“EEA State” means a State which is a Contracting Party to the EEA Agreement;

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

“preparation” includes manufacture and any form of processing or treatment and “prepared” shall be construed accordingly;

“the 1996 Regulations” means the Food Labelling Regulations 1996(c);

“reserved description”, as respects any designated product, means any description specified in relation to that product in column 1 of Schedule 1 to these Regulations or any alternative description permitted by Schedule 2 to these Regulations and the use of any such description in these Regulations shall be construed as meaning the product to which that description relates;

“sell” includes offer or expose for sale or have in possession for sale and “sale” and “sold” shall be construed accordingly;

“totally dehydrated milk” means the solid product, where the water content does not exceed 5% by weight of the finished product, obtained directly by the removal of water from milk, from wholly or partly skimmed milk, from cream or from a mixture of these products;

“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; and

“ultimate consumer” means any person who buys otherwise than—

- (a) for the purpose of resale;
- (b) for the purposes of a catering establishment; or
- (c) for the purposes of a manufacturing business.

### **Scope of Regulations**

3. These Regulations apply to designated products intended for human consumption and ready for delivery to the ultimate consumer or to a catering establishment.

### **Reserved descriptions**

4. No person shall 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 or any derivative thereof or any word or description substantially similar thereto 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 of designated products**

5. Without prejudice to the generality of Part II of the 1996 Regulations, no person shall sell any designated product unless it is marked or labelled with the following particulars:—

- (a) a reserved description of the product;
- (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) in the case of the products specified in paragraph 1(a) to (g) of Schedule 1 to these Regulations, the percentage of fat-free dried milk extract;

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(a) O.J. No. L 1, 3.1.94, p.1.

(b) O.J. No. L 1, 3.1.94, p.571.

(c) S.I. 1996/1499; relevantly amended by S.I. 1998/1398.

- (d) in the case of the products specified in paragraph 2(a) to (d) of Schedule 1 to these Regulations, 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
- (e) in the case of the products specified in paragraph 2(a) to (d) of Schedule 1 to these Regulations, that the product is “not intended as a food for infants under 12 months”.

#### **Manner of marking or labelling**

6.—(1) Regulations 35, 36(1) and (5) and 38 of the 1996 Regulations (which relate to the manner of marking or labelling of food) shall apply to the particulars with which a designated product is required to be marked or labelled by regulation 5 of these Regulations as if they were particulars with which food is required to be marked or labelled by the 1996 Regulations.

(2) The particulars which are required to appear on the label by virtue of regulation 5(b) and (c) of these Regulations shall appear near the name of the food.

(3) Where designated products weighing less than 20 grams per unit are packed in an outer packaging, the particulars required by regulation 5(b) to (e) of these Regulations need appear on the outer packaging only.

#### **Penalties and enforcement**

7.—(1) Any person who contravenes or fails to comply with regulations 4, 5 or 6(2) of these Regulations shall be guilty of an offence.

(2) A person found guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Each food authority shall enforce and execute these Regulations in its area.

#### **Defence in relation to exports**

8. In any proceedings for an offence under these Regulations it shall be a defence for the person charged to prove—

- (a) that the food in respect of which the offence is alleged to have been committed was intended for export to a country (other than an EEA State) which has legislation analogous to these Regulations and that the food complies with that legislation; and
- (b) in the case of export to an EEA State, that the legislation complies with the provisions of Council Directive 2001/114/EC relating to certain partly or wholly dehydrated preserved milk for human consumption(a).

#### **Transitional provision**

9. In any proceedings for an offence under these Regulations it shall be a defence for the person charged to prove that—

- (a) the food concerned was marked or labelled before 17th July 2004; and
- (b) the matters constituting the alleged offence would not have constituted an offence under the Condensed Milk and Dried Milk (Scotland) Regulations 1977(b) if those Regulations had been in force when the food was marked or labelled.

#### **Application of various provisions of the Food Safety Act 1990**

10.—(1) The following provisions of the Act shall apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part thereof shall be construed for the purposes of these Regulations as a reference to these Regulations—

- (a) section 2 (extended meaning of sale etc.);
- (b) section 3 (presumptions that food intended for human consumption);
- (c) section 20 (offences due to fault of another person);
- (d) section 21 (defence of due diligence) as it applies for the purposes of sections 8, 14 or 15 of the Act;

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(a) O.J. No. L 15, 17.1.02, p.19, as adopted by EEA Joint Committee Decision 99/02 (O.J. No. L 298, 31.10.02, p.10).

(b) S.I. 1977/1027; amended by S.I. 1982/1209, 1983/270, 1985/1068, 1987/26, 1989/1975, 1990/2625, 1991/1476, 1992/2596, 1995/3187 and 1996/1499.

- (e) section 22 (defence of publication in the course of business);
- (f) section 30(8) (which relates to documentary evidence);
- (g) section 33 (obstruction etc. of officers);
- (h) section 35(1) to (3) (punishment of offences) insofar as it relates to offences under section 33(1) or (2) as applied by sub-paragraph (g) above;
- (i) section 36 (offences by bodies corporate);
- (j) section 36A(a) (offences by Scottish partnerships); and
- (k) section 44 (protection of officers acting in good faith).

(2) Section 29 of the Act (procurement of samples) shall apply in relation to the sampling for analysis of designated products for the purposes of these Regulations with the modification that the powers of an authorised officer of an enforcement authority under that section and the duties of such an officer under any regulations made under the Act, shall be exercised and performed in accordance with the methods described in the Annex to Directive 87/524/EEC.

### Amendments and revocations

**11.**—(1) The following entries relating to the Condensed Milk and Dried Milk (Scotland) Regulations 1977 shall be omitted—

- (a) in the Food and Drugs (Scotland) Act 1956 (Transfer of Enforcement Functions) Regulations 1983(b), in Schedule 1;
- (b) in the Food (Revision of Penalties and Mode of Trial) (Scotland) Regulations 1985(c), in Schedules 1 and 2;
- (c) in the Food Safety Act 1990 (Consequential Modifications) (Scotland) Order 1990(d), in Schedule 1, Part I, Schedule 2, Schedule 3, Part II and Schedules 5 and 8;
- (d) in the Food Safety (Exports) Regulations 1991(e), in Schedule 2;
- (e) in the Food (Forces Exemptions) (Revocations) Regulations 1992(f), in the Schedule, Part II;
- (f) in the Miscellaneous Food Additives Regulations 1995(g), in regulation 10(7) and in Schedule 9;
- (g) in the 1996 Regulations, in regulation 49(6); and
- (h) in the Miscellaneous Food Additives (Amendment) Regulations 1999(h), in regulation 14(1).

(2) The Condensed Milk and Dried Milk (Scotland) Regulations 1977, the Condensed Milk and Dried Milk (Scotland) (Amendment) Regulations 1982(i), the Condensed Milk and Dried Milk (Scotland) (Amendment) Regulations 1987(j) and the Condensed Milk and Dried Milk (Scotland) (Amendment) Regulations 1989(k) are hereby revoked.

(3) In the Colours in Food Regulations 1995(l), in Schedule 2, paragraph 6, for “Directive 76/118/EC” substitute “Directive 2001/114/EC”.

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(a) Section 36A was inserted by paragraph 16 of Schedule 5 to the 1999 Act.  
 (b) S.I. 1983/270 to which there are amendments not relevant to these Regulations.  
 (c) S.I. 1985/1068 to which there are amendments not relevant to these Regulations.  
 (d) S.I. 1990/2625 to which there are amendments not relevant to these Regulations.  
 (e) S.I. 1991/1476 to which there are amendments not relevant to these Regulations.  
 (f) S.I. 1992/2596 to which there are amendments not relevant to these Regulations.  
 (g) S.I. 1995/3187 which are relevantly amended by S.I. 1999/1136.  
 (h) S.I. 1999/1136.  
 (i) S.I. 1982/1209.  
 (j) S.I. 1987/26.  
 (k) S.I. 1989/1975.  
 (l) S.I. 1995/3124.

(4) In the Miscellaneous Food Additives Regulations, in Schedule 7, in column 1, for “Partially dehydrated and dehydrated milk as defined in Directive 76/118/EEC” substitute “Partially dehydrated and totally dehydrated milk as defined in Directive 2001/114/EC”.

St Andrew’s House,  
Edinburgh  
11th June 2003

*TOM McCABE*  
Authorised to sign by the Scottish Ministers

## SCHEDULE 1

PARTLY OR WHOLLY DEHYDRATED PRESERVED MILK PRODUCTS AND  
THEIR RESERVED DESCRIPTIONS

<i>Column 1</i> <i>Reserved Descriptions</i>	<i>Column 2</i> <i>Designated Products</i>
<b>1. Partly dehydrated milk</b>	
– <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 less than 1% and less than 7.5% 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.
<b>2. Totally dehydrated milk</b>	
(a) Dried high-fat milk or high-fat milk powder	Totally dehydrated milk containing, by weight, not 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. Any vitamin may be added to any designated product.
2. Any substance permitted pursuant to Council Directive 89/107/EEC on the approximation of the laws of Member States concerning food additives authorised for use in foodstuffs intended for human consumption<sup>(a)</sup> may be added.

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(a) O.J. No. L 40, 11.2.89, p.27.

3. 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).
4. Without prejudice to the generality of Part V of the Dairy Products (Hygiene) (Scotland) Regulations 1995<sup>(a)</sup>, 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 this Schedule;
  - (b) by the addition of sucrose for the products referred to in paragraph 1(e) to (g) of this Schedule;
  - (c) by dehydration for the products referred to in paragraph 2 of this Schedule.
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 methods set out in Directive 79/1067/EEC.

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<sup>(a)</sup> S.I. 1995/1372, relevantly amended by S.I. 1996/1499, 1996/2465, 1997/1729, 1998/2424 and 2002/445.

SCHEDULE 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%.



## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which extend to Scotland, implement Council Directive 2001/114/EC relating to certain partly or wholly dehydrated preserved milk products for human consumption (O.J. No. L 15, 17.1.02, p.19). They also implement First Commission Directive 79/1067/EEC which lays down Community methods of analysis for testing condensed milk and dried milk products (O.J. No. L 327, 24.12.79, p.29) and First Commission Directive 1987/524/EEC which lays down Community methods of sampling for chemical analysis for the monitoring of preserved milk products (O.J. No. L 306, 28.10.87, p.24). They revoke and replace the Condensed Milk and Dried Milk (Scotland) Regulations 1977, as amended.

The Regulations—

- (a) prescribe definitions and reserved descriptions for condensed milk and dried milk products and prescribe methods of analysis for testing of condensed milk and dried milk products (regulation 2 and Schedules 1 and 2);
- (b) provide for the Regulations to apply to milk and dried milk products intended for human consumption and ready for delivery to the ultimate consumer or to a catering establishment (regulation 3);
- (c) restrict the use of reserved descriptions to the designated condensed and dried milk products to which they relate (regulation 4);
- (d) prescribe labelling requirements for designated condensed and dried milk products (regulation 5);
- (e) prescribe the manner of marking or labelling and apply specified provisions of the Food Labelling Regulations 1996 (regulation 6);
- (f) specify a penalty, enforcement authorities and, in accordance with Articles 2 and 3 of Council Directive 89/397/EEC on the official control of foodstuffs (O.J. No. L 186, 30.6.89, p.23) and the European Economic Area Agreement, a defence in relation to exports (regulations 7 and 8);
- (g) make transitional provisions (regulation 9);
- (h) apply various provisions of the Food Safety Act 1990 and prescribe methods of sampling for chemical analysis for the monitoring of designated condensed milk and dried with products (regulation 10); and
- (i) revoke the previous Regulations and make consequential amendments (regulation 11).

A Regulatory Impact Assessment, which includes a compliance cost assessment of the effect that these Regulations would have on business costs, has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Food Standards Agency, 6th Floor, St Magnus House, 25 Guild Street, Aberdeen, AB11 6NJ.





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