

Title: The Condensed Milk and Dried Milk (England) (Regulations) IA No: DEFRA1469 Lead department or agency: Defra Other departments or agencies: Food Standards Agency Scotland, Wales and Northern Ireland	Impact Assessment (IA)		
	Date: 03/05/2013		
	Stage: Final		
	Source of intervention: EU		
	Type of measure: Secondary legislation		
Contact for enquiries: Cath Harris 020 7238 2299			
Summary: Intervention and Options		RPC Opinion: GREEN	

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£-0.008m	£-0.0003m	£0.00004m	Yes IN

What is the problem under consideration? Why is government intervention necessary?

As identified by the Red Tape Challenge Hospitality, Food and Drink theme, the regulatory landscape for food labelling and composition is difficult to navigate, putting unnecessary burdens on business. As part of the Government's solution to improve this, we committed to consolidate The Condensed Milk and Dried Milk (England) Regulations 2003 (S.I No 1596) and The Condensed Milk and Dried Milk (England) (Amendment) Regulations 2008 (S.I No 85) and, as far as possible, to replace the existing criminal sanctions with civil sanctions

What are the policy objectives and the intended effects?

The policy objectives are two-fold:

- (i) To provide in domestic law for proportionate, effective and risk- based enforcement in England of Council Directive 2001/114/EC which applies to partly or wholly dehydrated preserved milk for human consumption, and Council Directive 2007/61/EC amending Council Directive 2001/114/EC.
- (ii) To simplify Regulations by consolidating two sets of regulations making referencing easier for industry and enforcers.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1 - Do nothing – continue with business as usual (the baseline).

Option 2 – Consolidate current regulations reducing the number of statutory instruments from 4 to 1 (There are current 2 SIs, plus amendments were also made to the 2003 Regulations by the Food Additives (England) Regulations 2009 and the Official Feed and Food Control (England) Regulations 2005). The current regulations which apply to composition, standards and labelling would remain unchanged, but the criminal sanctions for breaching the regulations would be replaced with civil sanctions (an improvement notice approach consistent with other similar regulations for food).

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: Month/Year					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: _____ Owen Paterson _____ Date: _____

Summary: Analysis & Evidence

Policy Option 2

Description: Implement the new requirements under one statutory instrument.

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £0.01m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£0.008m		£0.008m

Description and scale of key monetised costs by 'main affected groups'

Industry

One off costs: familiarisation £300 (PV) (EAC £35);

Government

One off costs: familiarisation £8,000 (PV) (EAC £900)

Other key non-monetised costs by 'main affected groups'

There are no non-monetised costs associated with this Option.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

Description and scale of key monetised benefits by 'main affected groups'

There are no monetised benefits associated with this Option.

Other key non-monetised benefits by 'main affected groups'

Industry: A more proportionate enforcement procedure for businesses

Government: Simpler enforcement procedures for enforcement officers

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
Familiarisation costs		
Industry - equivalent of 1 regulatory affairs/production managers per business approximately 1 hour respectively to familiarise; an additional 1 hour each to disseminate the information to other staff in the organisation.		
Government - equivalent of 1 trading standards officers per local authority approximately 1 hour respectively to familiarise.		

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: £0.00004m	Yes	IN
Benefits: 0		
Net: £0.00004m		

Evidence Base (for summary sheets)

References

- The Condensed Milk and Dried Milk (England) Regulations 2003 (S.I No 1596)¹;
- The Condensed Milk and Dried Milk (England) (Amendment) Regulations 2008 (S.I No 85)².

Problem under consideration

1. One of the current Government priorities is to remove burdensome or outdated regulations where they are no longer needed. As part of the Red Tape Challenge Exercise covering the Hospitality theme a review of all existing rules covering food labelling and compositional standards was carried out. It was concluded that the landscape was difficult for businesses to navigate. As a result, the Government committed to merging and repealing a number of food labelling and composition regulations to reduce the regulatory burden on businesses by simplifying the regulatory landscape. There are currently two sets of Condensed Milk and Dried Milk (England) Regulations, plus further amendments have been made by the Food Additives (England) Regulations 2009 and the Official Feed and Food Control (England) Regulations 2005. The aim is to streamline the regulations so that there is one Statutory Instrument (SI) and to replace the criminal sanctions with civil sanctions in line with the government's objectives to reduce the burdens on the industry and others such as enforcers.
2. This impact assessment analyses the Options on an England only basis. Where data is sometimes limited, we have used England and Wales as a proxy for England.

Rationale for intervention

3. The aim is to streamline the Regulations and to reduce unnecessary bureaucracy and burdens on business. Merging the SIs requires Government Intervention as it is a change in secondary legislation.

Options Considered

4. The following Options for England have been considered:
 - Option 1** – Do nothing – continue with business as usual (the baseline).
 - 5. **Option 2** – Consolidate the current regulations. The regulations which apply to composition, standards and labelling would remain unchanged, but the criminal sanctions for breaching the regulations would be replaced with civil sanctions (an improvement notice approach consistent with other similar regulations for food). For this Option it will be the responsibility of Local Government Trading Standards officers to familiarise themselves with the new single SI, and understand the move to an improvement notice system for non-compliance of the Regulations.
6. **Option 2** is our preferred Option.

Background

7. In England, The Condensed Milk and Dried Milk (England) Regulations 2003 as amended define “partly dehydrated” and “totally dehydrated” milk and implement the requirements of Directive 2001/114/EC, *relating to certain partly or wholly dehydrated preserved milk for human consumption*³. The Regulations also lay down specifications for preserved milk governing

¹ Statutory Instrument 2003 No. 1596

² Statutory Instrument 2008 No.85

³ OJ No.L15, 17.1.2002, p.19 as adopted by the EEA Joint Committee Decision No.99/2002 (OJ No. L298, 31.10.2002, p.10)

composition, use of reserved descriptions, manufacturing specification and labelling of products. They list the permitted modifications to dried and condensed milk and lay down definitions and common rules governing the composition, manufacturing specifications and the labelling of “certain partly or wholly dehydrated preserved milk” for human consumption, so as to ensure their free movement within the Community. The Regulations cover England only as food is a devolved matter.

8. Preserved milks are essentially liquid milks preserved in powdered/dehydrated, evaporated or condensed form which, apart from blending with other milks, have not otherwise had their composition altered. Products such as powdered/dehydrated milks are primarily intended for reconstitution with water to result in a product similar to fresh liquid milk. They are also used as an ingredient in numerous food products.

Current situation

9. Currently, there are 3 UK condensed milk processors producing approximately 108,000 tonnes of condensed milk and 112,000 tonnes of milk powders annually. Approximately 10% of raw milk produced in the UK is used for milk powder and condensed milk.
10. Market data is limited; currently, it is not possible to identify the size of the firms involved in this sector. We anticipate that these businesses are large.

Legislative framework and description of the new requirements

11. The Condensed Milk and Dried Milk (England) Regulations 2013 (“the Regulations”) will revoke and replace the following two SIs:
 - The Condensed Milk and Dried Milk (England) Regulations 2003 (S.I No 1596);
 - The Condensed Milk and Dried Milk (England) (Amendment) Regulations 2008 (S.I No 85.)

Affected Groups

12. **Preserved milk manufacturers** – Under Option 1, industry will not be affected. However, under Option 2, preserved milk manufacturers are likely to incur a one-off familiarisation cost but will also benefit from reduced enforcement burden from the consolidation of 2 SIs to 1 SI.
13. **Government** – Under Option 1, Government will not be affected. However, under Option 2, local authorities will also incur a one-off familiarisation cost whilst also benefitting from reduced enforcement burden.
14. **Consumers** – Under both Option 1 and Option 2, there is likely to be no impact on consumers. This is because there is no change to processes or products produced.

Costs and Benefits

Assessment of One in Two Out (OITO)

15. Applying the OITO methodology to the policy requirements means that the proposed consolidation of the Condensed Milk and Dried Milk (England) Regulations 2003 (S.I No 1596) and the Condensed Milk and Dried Milk (England) (Amendment) Regulations 2008 (S.I No 85) **is subject to OITO.**
16. Although deregulatory, the proposal incurs a small net cost on business (around £1,200 PV). However as any benefits are non-monetised, this proposal is technically an ‘IN’. A 6 week public consultation took place on the proposed changes between December 2012 and January 2013, however no responses were received. As we do not have any additional information with which to assess the benefits, we have filled out the summary pages on the basis of the monetised information we do have. The business assessment figures on the summary pages therefore reflect this net cost which is, in effect, negligible

Policy Option 1 – Do Nothing (Baseline)

17. This Option would mean continuing with the current rules and would not deliver the RTC commitments.

Costs

18. There are no incremental costs associated with this Option. This is the baseline to which all other Options are compared.

Benefits

19. There are no incremental benefits associated with this Option. This is the baseline against which all other Options are appraised.

Policy Option 2 – Consolidation of 2 SIs to 1 SI

20. This Option makes for a clearer legislative environment and reduces the burden to industry and local authorities. The standardised approach to enforcement - serving an improvement notice on a trader where an authorised officer has reasonable grounds for believing that the trader has not complied with, or is unlikely to comply with, will be taken in the case of the Condensed Milk and Dried Milk (England) Regulations 2013 and will be consistent with other similar regulations for food composition, standards and labelling
21. Enforcement bodies already use the improvement notice approach for a number of other Regulations. Therefore introducing this approach to the new Regulations should not create burdens. In this case it should be seen as a benefit as the sanctions in these Regulations are being brought into line with other existing Regulations. It is anticipated that there will be no additional costs on an ongoing basis.

Costs

Industry

Familiarisation costs (one-off) – This cost has been monetised.

22. There will be a one-off cost to industry for reading and familiarising themselves with the new Regulations. Time will be spent acquiring, reading and understanding the legislation, seeking external advice where necessary. Preserved milk processors will need to become familiar with the new requirements of the Condensed Milk and Dried Milk (England) Regulations 2013.
23. Familiarisation costs are measured in terms of time costs and are therefore quantified by multiplying the time it takes for a member of staff to read and familiarise him/herself with the Regulation by their wage rate. The wages outlined in this impact assessment represent median gross hourly pay including overtime from the Annual Survey of Household Earnings, 2011, for all employees. The relevant average hourly rate⁴ is uprated by 30% to take account of non-wage labour costs and overheads, which is in line with standard cost model methodology⁵.
24. Informal consultation from industry estimate that **1 hour of 2 regulatory affairs/production managers' time** will be spent per business. Given these assumptions, the total one off familiarisation costs for industry in England are estimated at around £300 (Table 1).

⁴ Wage rates are obtained from ASHE 2011

⁵ <http://www.berr.gov.uk/files/file44503.pdf>

25. In order for one-off costs to be compared to annual costs on an equivalent basis across the time span of the policy, one-off costs are converted into Equivalent Annual Costs (EACs) by dividing the one-off cost by an annuity factor⁶. The total one-off familiarisation cost to businesses in England translates to an equivalent annual cost of £35 over a ten year period.

Table 1: Total familiarisation costs and Equivalent Annual Cost to Industry by Country

	Number of preserved milk processors	Total Familiarisation Cost	Equivalent Annual Cost
England and Wales	6	£305	£35
Scotland	0	£0	£0
Northern Ireland	3	£152	£18
UK	9	£457	£53

Government

Familiarisation costs (one-off) – This cost has been monetised.

26. Local authorities will also need to become familiar with the updated Regulations. It is estimated that it would take **1 Trading Standards officer, 1 hour** to read and become familiar with the Regulations and disseminate them to key staff. The average hourly pay rate for *Inspectors of standards and regulations*⁷ is shown in the table below. This has been up-rated by 30% to account for non-wage labour costs and overheads, in accordance with the standard cost model⁸.

27. Given these assumptions, the total one-off familiarisation cost to businesses in England translates to around £8,000 an equivalent annual cost of around £900 over a ten year period (Table 2).

Table 2: Familiarisation costs for trading standards officers, by Country

	Number of Local Authorities	Median average hourly wage (uprated by 30%)	Total Familiarisation Cost	Equivalent Annual Cost
England	433	£18.01	£7,798	£906
Wales	22		£396	£46
Scotland	32		£576	£67
Northern Ireland	26		£468	£54
UK	513		£9,239	£1,073

Benefits

Industry

A more proportionate enforcement procedure for businesses - This is currently a non-monetised benefit.

⁶ The annuity factor is essentially the sum of the discount factors across the time period over which the policy is appraised. The equivalent annual cost formula is as follows:

$$a_{t,r} = \sum_{j=0}^{t-1} \prod_{i=0}^j \left(\frac{1}{1+r_i} \right)$$

⁷ 2011 Annual survey of Hours and Earnings

⁸ <http://www.berr.gov.uk/files/file44503.pdf>

28. There would be a benefit to industry in terms of moving from the current criminal sanctions regime to a new regime providing for enforcement by way of an improvement notice, followed up by a criminal offence in those cases where an improvement notice is not complied with. It is anticipated that the gains will originate from reduced costs and the time saved to businesses in resolving the issues more quickly. This will materialise in the fact that, the vast majority of contraventions will be resolved through the issuing of improvement notices.
29. Information provided in the food standards enforcement actions report for 2010/11 shows that there were 69 food standards prosecutions concluded in England⁹. Although it is not possible to give precise figures, the likelihood is that the number of prosecutions resulting from the contravention of The Condensed Milk and Dried Milk (England) Regulations 2013 will be extremely low or possibly none at all. We would expect the number of cases (if there are any) referred to criminal courts to be reduced. Therefore, this benefit is likely to be small or zero given the number of cases associated with preserved milk is anticipated to be very small, if not zero.

Government

Simpler enforcement procedures for enforcement officers – *This benefit is currently non-monetised.*

30. There is a potential benefit to Government in terms of moving from the current criminal sanctions regime to the new civil sanctions regime. It is anticipated that the gains will originate from reduced court costs as the number of hearings will be reduced as issues will be resolved through issuing improvement notices, and the time saved to enforcement officers in resolving the issues more quickly instead of preparing for a court case. However, as above this benefit is likely to be relatively small or zero given the number of cases associated with preserved milk dealt with by enforcers are anticipated to be very small, if not zero.

Summary of monetised costs and benefits

31. Table 3 below provides a summary of the monetised costs and benefits for policy Option 2. This Option is exceptionally low cost. The Net Present Value is around -£8,000 and the Business Net Present Value is -£305, over the ten year period.

Table 3: Summary of Costs and benefits:

	Year 0	Year 1	Year 2	Year 3	Year 4
COSTS					
<u>Industry</u>					
Familiarisation (transition)	£305	£0	£0	£0	£0
Total Industry Costs	£305	£0	£0	£0	£0
<u>Government</u>					
Familiarisation (transition)	£7,798	£0	£0	£0	£0
Total Government Costs	£7,798	£0	£0	£0	£0
TOTAL COSTS	£8,103	£0	£0	£0	£0
BENEFITS					
TOTAL BENEFITS	£0	£0	£0	£0	£0
NET BENEFIT					
Total Net (Benefit)	-£8,103	£0	£0	£0	£0
Total Net Business (Benefit)	-£305	£0	£0	£0	£0

⁹ <http://www.food.gov.uk/multimedia/pdfs/board/fsa111108.pdf>

Year 5	Year 6	Year 7	Year 8	Year 9	Total cost/benefit	Annual Cost or Benefits/EA	PV
£0	£0	£0	£0	£0	£305	£35	£305
£0	£0	£0	£0	£0	£305	£35	£305
£0	£0	£0	£0	£0	£7,798	£906	£7,798
£0	£0	£0	£0	£0	£7,798	£906	£7,798
£0	£0	£0	£0	£0	£8,103	£941	£8,103
£0	£0	£0	£0	£0	£0	£0	£0
£0	£0	£0	£0	£0	-£8,103	-£941	-£8,103
£0	£0	£0	£0	£0	-£305	-£35	-£305

SI Consolidation

32. It is anticipated that there will be no gains to industry from SI consolidation. Gains will only be realised if existing businesses refer to the SI over the 10 year time period, or, if new businesses enter the market and save time from reading just one SI rather than two.
33. Informal consultation with industry suggest that established businesses are unlikely to refer to the SI after familiarising themselves with it unless there is a change to the legislation. Also, there were no new firms in this market from the latest Defra data.
34. Given that the costs in option 2 arise from familiarisation costs associated with the SI consolidation, whilst the (non-monetised) benefits arise from a change in enforcement regime, a theoretical third option would be to keep two SIs, and just to change the enforcement regime. However, a change to only the sanctions regime would necessitate a change to the two SIs also, which would bring even larger familiarisation costs. Therefore, option 2 is the preferred approach in lessening regulatory burden.
35. Given that a straight forward consolidation of SIs would have minimal impact, no specific group identified in the Statutory Equality Duties Impact Test would be disadvantaged.
36. A Post Implementation Review (PIR) would be disproportionate given that there would be no change in policy beyond the enforcement regime.

Conclusion

37. **Option 2 is the preferred Option** because it simplifies the regulatory landscape, although there is a negligible monetised cost. This Option allows for a straightforward consolidation of 2 SIs into 1 SI as well as changes to enforcement procedures. The preferred Option is exceptionally low cost. The Net Present Value is around -£8,000 and the Business Net Present Value is -£305, over the ten year period. However the benefits of the consolidation and change in enforcement regime are not monetised.
38. The costs associated with this Option are attributed to familiarisation costs to both for industry and to local trading standards officers (one-off transition costs). The benefits are likely to originate from both industry and enforcement bodies of using improvement notices instead of criminal sanctions. The public consultation included questions to test the assumptions made, but no responses were forthcoming. Therefore, whilst these benefits are likely to be small, they may outweigh the costs of business familiarising themselves with a single SI over time.