
STATUTORY INSTRUMENTS

2008 No. 1287

FOOD, ENGLAND

**The Spreadable Fats (Marketing Standards)
and the Milk and Milk Products (Protection
of Designations) (England) Regulations 2008**

<i>Made</i>	- - - -	<i>13th May 2008</i>
<i>Laid before Parliament</i>		<i>20th May 2008</i>
<i>Coming into force</i>	- -	<i>1st July 2008</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 16(1), 17(2), 26(1) and (3) and 48(1) of the Food Safety Act 1990⁽¹⁾, and now vested in him⁽²⁾.

In accordance with section 48(4A) of that Act he has had regard to 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 the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety⁽³⁾, there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

Title, application and commencement

1. These Regulations may be cited as the Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (England) Regulations 2008, apply in relation to England only and come into force on 1st July 2008.

(1) 1990 c. 16. Section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990. Sections 17 and 48 were amended by paragraphs 12 and 21 respectively of Schedule 5 to the Food Standards Act 1999 (1999 c.28), “the 1999Act”. Section 48 was also amended by S.I. 2004/2990. Section 26(3) was amended by Schedule 6 to the 1999 Act. Section 53(2) was amended by paragraph 19 of Schedule 16 to the Deregulation and Contracting Out Act 1994 (1994 c.40), Schedule 6 to the 1999 Act and S.I. 2004/2990.

(2) 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 as read with section 40(3) of the 1999 Act and thereafter 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 (1998 c. 46) as read with section 40(2) of the 1999 Act.

(3) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Commission Regulation (EC) No. 575/2006 (OJ No. L100, 8.4.2006, p.3).

Interpretation

2.—(1) In these Regulations —

“the Act” means the Food Safety Act;

“the Council Regulation” means Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)(4);

“the Commission Regulation” means Commission Regulation (EC) No.445/2007 laying down certain detailed rules for the application of Council Regulation (EC) No. 2991/94 laying down standards for spreadable fats and of Council Regulation (EEC) No. 1898/87 on the protection of designations used in the marketing of milk and milk products(5);

“Community provision” means a provision referred to in regulation 6(2);

“food authority” has the meaning it bears by virtue of section 5(1) of the Act, except that it does not include the appropriate Treasurer referred to in section 5(1)(c) of the Act (which deals with the Inner Temple and Middle Temple);

“sell” includes possess for sale, and offer, expose or advertise for sale;

“sell by retail” means to sell to a person who is not buying for the purpose of re-sale;

“vitamin A” means vitamin A present as such or as its esters and includes beta-carotene on the basis that 6 micrograms of beta-carotene or 12 micrograms of other biologically active carotenoids equal one microgram of retinol equivalent;

“vitamin D” means the anti-rachitic vitamins.

(2) Other expressions used in these Regulations and in the Council Regulation or the Commission Regulation have the same meaning in these Regulations as they have in the Council Regulation or the Commission Regulation.

Exemptions from these Regulations

3.—(1) Except where paragraph (2) applies, unless and until there is a decision by the EEA Joint Committee to amend the EEA Agreement under Article 98 so as to refer to the Council Regulation and the Commission Regulation, these Regulations shall not apply in respect of any spreadable fat to which the EEA Agreement applies and which —

(a) is brought into England —

(i) from an EEA State (other than a member State) in which it was lawfully produced and sold, or

(ii) from another part of the United Kingdom if that spreadable fat was brought there from such an EEA State; and

(b) is suitably labelled to indicate the nature of the spreadable fat.

(2) Regulation 4 does not apply in respect of any margarine which —

(a) is brought into England —

(i) from an EEA State (other than the United Kingdom) in which it was lawfully produced and sold,

(ii) from a member State (other than the United Kingdom) in which it was in free circulation and lawfully sold, or

(4) OJ No. L299, 16.11.2007, p.1. There are amendments to this Regulation but none are relevant to this instrument.

(5) OJ No. L106, 24.4.2007, p.24.

- (iii) from another part of the United Kingdom in which it was lawfully produced and sold or in free circulation and lawfully sold; and
 - (b) is suitably labelled to indicate the nature of the margarine.
- (3) For the purposes of paragraph (2), “free circulation” has the meaning it bears in Article 23(2) of the Treaty establishing the European Community.

Vitamin content of margarine

4. No person may sell by retail any margarine unless it contains in every 100 grams —
- (a) not less than 800 micrograms and not more than 1,000 micrograms of vitamin A, and
 - (b) not less than 7.05 micrograms and not more than 8.82 micrograms of vitamin D,
- and a proportionate amount in any part of 100 grams.

Enforcement

5. Each food authority in its area shall execute and enforce the Community provisions and these Regulations.

Offences and penalty

- 6.—(1) Any person who contravenes or fails to comply with —
- (a) regulation 4; or
 - (b) any Community provision,
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (2) The Community provisions are —
- (a) Article 114(1) of the Council Regulation (prescribed descriptions for milk and milk products) as read with Annex XII to that Regulation;
 - (b) Article 115 of the Council Regulation (marketing standards applying to spreadable fats, including compositional criteria for reserved descriptions), as read with —
 - (i) Annex XV to the Council Regulation,
 - (ii) Article 1 of and Annex I to the Commission Regulation, or
 - (iii) Article 2 of and Annex II to the Commission Regulation; and
 - (c) Article 3 of the Commission Regulation (requirements relating to the use of the designation “butter” for composite products) as read with Annex III to that Regulation.

Application of various provisions of the Act

- 7.—(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 is to be construed 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 section 14 or 15;
 - (e) section 22 (defence of publication in the course of a business);

- (f) section 30(8) (which relates to documentary evidence);
- (g) section 33 (obstruction of officers);
- (h) section 35(1) to (3) (punishment of offences) in so far as it relates to offences under section 33(1) and (2);
- (i) section 36 (offences by bodies corporate); and
- (j) section 36A (offences by Scottish partnerships).

(2) Section 44 (protection of officers acting in good faith) of the Act shall apply for the purposes of these Regulations and, unless the context otherwise requires, any reference to the Act in that section shall be construed for the purposes of these Regulations as including a reference to the Community provisions.

Revocations

8. The following instruments are revoked —
- (a) The Milk and Milk Products (Protection of Designations) Regulations 1990⁽⁶⁾, in so far as they apply in relation to England;
 - (b) The Spreadable Fats (Marketing Standards) (England) Regulations 1999⁽⁷⁾;
 - (c) The Spreadable Fats (Marketing Standards) (England) (Amendment) Regulations 2007⁽⁸⁾.

Signed by Authority of the Secretary of State for Health.

13th May 2008

Dawn Primarolo
Minister of State,
Department of Health

⁽⁶⁾ S.I. 1990/607, as amended by S.I. 1990/2486.
⁽⁷⁾ S.I. 1999/2457.
⁽⁸⁾ S.I. 2007/1615.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations provide for the execution and enforcement, in relation to England only, of certain provisions of Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (OJ No. L299, 16.11.2007, p.1) (“the Council Regulation”).

2. The Council Regulation repeals a number of other EU instruments and re-enacts their provisions without amendment. These Regulations provide for the enforcement of provisions formerly contained in two of the repealed EC instruments and formerly enforced in two separate statutory instruments.

3. The provisions of the Council Regulation include:

- (a) the requirement that milk and milk products marketed for human consumption must comply with certain specifications as to names and composition (*Article 114(1) and Annex XII*); and
- (b) the requirement that certain spreadable fats intended for human consumption must comply with specifications relating to their sales description, labelling and presentation, and use of terminology (*Article 115 and Annex XV*).

4. The provisions contained in the Council Regulation as regards spreadable fats are supplemented by [Commission Regulation \(EC\) No. 445/2007](#) (OJ No. L106, 24.4.2007, p.24).

5. The Regulations in this instrument —

- (a) provide an exemption for spreadable fats imported from an EEA State other than a Member State (*regulation 3(1)*);
- (b) specify the required levels for certain vitamins in margarine (*regulation 4*), subject to an exemption for margarines brought into England from elsewhere in the EEA or the UK that do not comply with these national rules (*regulation 3(2)*);
- (c) designate the authorities responsible for enforcement of these Regulations and the EU Regulations mentioned in paragraphs 3 and 4 above (*regulation 5*);
- (d) create a summary offence of failing to comply with the requirements of these Regulations or the relevant EU provisions (*regulation 6*); and
- (e) apply certain provisions of the Food Safety Act 1990 for the purposes of these Regulations.

6. A full regulatory assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.