

2015 No. 675

FOOD, ENGLAND

**The Condensed Milk and Dried Milk (England) Regulations
2015**

<i>Made</i>	- - - -	<i>10th March 2015</i>
<i>Laid before Parliament</i>		<i>13th March 2015</i>
<i>Coming into force</i>	- -	<i>6th April 2015</i>

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), and paragraph 1A of Schedule 2 to, the European Communities Act 1972(c).

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to food and drink intended for sale for human consumption, including the presentation, packaging, labelling, marketing and advertising of such food and drink(d).

The following Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for the references to the European instruments, and the Annex to the European instrument, listed in regulation 2(4) to be construed as references to those instruments and that Annex as amended from time to time.

So far as the following Regulations are made in exercise of powers under the Food Safety Act 1990, the Secretary of State has had regard to relevant advice given by the Food Standards Agency in accordance with section 48(4A) of that Act(e).

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- (a) 1990 c. 16; section 6(4) was amended by the Deregulation and Contracting Out Act 1994 (c. 40), Schedule 9, paragraph 6, the Food Standards Act 1999 (c. 28) (“the 1999 Act”), Schedule 5, paragraph 10(1) and (3) and Schedule 6, and S.I. 2002/794. Section 16(1) was amended by the 1999 Act, Schedule 5, paragraph 8. Section 17(1) was amended by the 1999 Act, Schedule 5, paragraphs 8 and 12(a), and S.I. 2011/1043. Section 26(3) was partially repealed by the 1999 Act, Schedule 6. Sections 31(1) and 48(1) were amended by the 1999 Act, Schedule 5, paragraph 8.
- (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 the Food Standards Act 1999, Schedule 5, paragraph 8.
- (c) 1972 c. 68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a) and the European Union (Amendment) Act 2008 (c. 7), Schedule, Part 1. Paragraph 1A of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006, section 28 and was amended by the European Union (Amendment) Act 2008, Schedule, Part 1 and S.I. 2007/1388.
- (d) S.I. 2005/2766, to which there are amendments not relevant to these Regulations.
- (e) Section 48(4A) was inserted by the Food Standards Act 1999, Schedule 5, paragraph 21.

There has been consultation, 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(a), during the preparation and evaluation of the following Regulations.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Condensed Milk and Dried Milk (England) Regulations 2015 and come into force on 6th April 2015.

(2) These Regulations apply to England only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Food Safety Act 1990;

“designated product” means any product specified in the second column of the table in Schedule 1 (as read with the Notes to that Schedule) ready for delivery to a final consumer or to a mass caterer;

“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 (or both) has been added, provided that 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 the first column of the table in Schedule 1 or any alternative description permitted by Schedule 2;

“sell” includes offer or expose for sale or have in possession for sale;

“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.

“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;

(2) In this regulation, “final consumer” means any person who buys otherwise than for—

- (a) resale;
- (b) a mass caterer; or
- (c) a manufacturing business.

(3) In this regulation, “mass caterer” 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 final consumer and is ready for consumption without further preparation and, for the purposes of this definition, “preparation” includes manufacture and any form of processing or treatment.

(4) In these Regulations, references to the following European instruments and Annex are references to those instruments and that Annex as amended from time to time—

- (a) Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives(b);

(a) OJ No L 31, 1.2.02, p 1, last amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council (OJ No L 188, 18.7.09, p 14).

(b) OJ No L 354, 31.12.08, p 16, last amended by Commission Regulation (EU) No 298/2014 (OJ No L 89, 25.3.14, p 36).

- (b) Regulation (EC) No 1925/2006 of the European Parliament and of the Council on the addition of vitamins and minerals and of certain other substances to foods(a);
- (c) First Commission Directive 79/1067/EEC laying down Community methods of analysis for testing certain partly or wholly dehydrated preserved milk for human consumption(b);
- (d) 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).

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) in the table in 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 in the table in Schedule 1, the percentage of fat-free dried milk extract, and
- (d) in the case of the products specified in paragraph 2 in the table in Schedule 1—
 - (i) 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
 - (ii) a statement that the product is “not intended as a food for infants under 12 months”.

Manner of marking or labelling

5.—(1) The particulars with which a designated product is required to be marked or labelled by virtue of regulation 4(b) or (c) (or both) must appear near the trade name of the product.

(2) Where designated products weighing less than 20 grams per unit are packed in an outer packaging, the particulars required by regulation 4(b) to (d) may appear on the label or the outer packaging.

Application of provisions of the Act

6.—(1) Section 10(1) and (2) of the Act (improvement notices) applies with the modification (in the case of section 10(1)) specified in Part 1 of Schedule 3 for the purposes of—

(a) OJ No L 404, 30.12.06, p 26, last amended by Regulation (EU) No 1169/2011 of the European Parliament and of the Council (OJ No L 304, 22.11.11, p 18).

(b) OJ No L 327, 24.12.79, p 29.

(c) OJ No L 306, 28.10.87, p 24.

- (a) enabling an improvement notice to be served on a person requiring the person to comply with regulation 3, 4 or 5; and
- (b) making the failure to comply with a notice referred to in sub-paragraph (a) an offence.

(2) Section 37(1) and (6) of the Act (appeals) applies with the modifications specified in Part 2 of Schedule 3 for the purpose of enabling a decision to serve a notice referred to in paragraph (1)(a) to be appealed.

(3) Section 39 of the Act (appeals against improvement notices) applies with the modifications (in the case of section 39(1) and (3)) specified in Part 3 of Schedule 3 for the purpose of dealing with appeals against a decision to serve a notice referred to in paragraph (1)(a).

(4) The provisions of the Act specified in the first column of the table in Part 4 of Schedule 3 apply with the modifications specified in the second column of that table for the purposes of these Regulations.

(5) Paragraphs (1) to (3) apply without prejudice to the application of sections 10, 37 and 39 of the Act to these Regulations for purposes other than those specified in those paragraphs.

Enforcement

7.—(1) Each food authority must enforce these Regulations in its area.

(2) In paragraph (1), “food authority” has the meaning given by 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) the appropriate Treasurer referred to in section 5(1)(c) (which relates to the Inner Temple and Middle Temple).

Revocations

8. The following Regulations are revoked—

- (a) the Condensed Milk and Dried Milk (England) Regulations 2003(a);
- (b) the Condensed Milk and Dried Milk (England) (Amendment) Regulations 2008(b).

Review

9.—(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(c) (which is implemented by means of these Regulations) is implemented in other member States.

(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 are achieved; and
- (c) assess whether the objectives remain appropriate and, if so, the extent to which they could be achieved in a less burdensome way.

(a) S.I. 2003/1596, amended by S.I. 2005/2626, 2006/14, 2008/85 and 2009/3238.

(b) S.I. 2008/85.

(c) OJ No L 15, 17.1.02, p 19, last amended by Regulation (EU) No 1021/2013 of the European Parliament and of the Council (OJ No L 287, 29.10.13, p 1).

(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.

10th March 2015

George Eustice
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

SCHEDULE 1

Regulation 2(1)

Partly or totally dehydrated preserved milk products and their reserved descriptions

<i>Reserved descriptions</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 less 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 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 containing, by weight, more than 1.5% and less than 26% fat
(d) Dried skimmed milk or skimmed milk powder	Totally dehydrated milk containing, by weight, not more than 1.5% fat

Notes

1. Any designated product may contain—

- (a) any substance permitted pursuant to Regulation (EC) No 1333/2008 of the European Parliament and of the Council(a); and
- (b) vitamins and minerals in accordance with the requirements of Regulation (EC) No 1925/2006(b).

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 referred to in paragraph 1(e), (f) or (g) in the table in this Schedule.

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 must be achieved—

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

4.—(1) Without prejudice to the compositional requirements set out in the table in this Schedule, 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 or withdrawal (or both) of milk constituents in such a way as not to alter the ratio of whey protein to casein in the milk being adjusted.

(2) Authorised raw materials for protein adjustment purposes referred to in paragraph (1) are as follows—

- (a) milk retentate, which is the product obtained by concentrating milk protein by ultrafiltration of milk, partly skimmed milk or skimmed milk;
- (b) milk permeate, which is the product obtained by removing milk proteins and milk fat from milk, partly skimmed milk or skimmed milk by ultrafiltration; and
- (c) 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 (mass over mass) on a dry basis, and which may be anhydrous or contain one molecule of water of crystallisation or be a mixture of both forms.

5. The levels of dry matter, moisture content, fat, sucrose, lactic acid and lactates and phosphatase activity in the designated products must be determined in accordance with the methods set out in First Commission Directive 79/1067/EEC(d).

SCHEDULE 2

Regulation 2(1)

Permitted alternative descriptions 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.

(a) OJ No L 354, 31.12.08, p 16, last amended by Commission Regulation (EU) No 298/2014 (OJ No L 89, 25.3.14, p 36).

(b) OJ No L 404, 30.12.06, p 26, last amended by Regulation (EU) No 1169/2011 of the European Parliament and of the Council (OJ No L 304, 22.11.11, p 18).

(c) OJ No L 139, 30.4.04, p 55 (corrected version in OJ No L 226, 25.6.04, p 22), last amended by Commission Regulation (EU) No 218/2014 (OJ No L 69, 8.3.14, p 95).

(d) OJ No L 327, 24.12.79, p 29.

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 6

Application and modification of provisions of the Act

PART 1

Modification of section 10(1)

1. For section 10(1) of the Act (improvement notices) 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 2015, 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.”.

PART 2

Modification of section 37(1) and (6)

2.—(1) For section 37(1) of the Act (appeals) substitute—

“(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, and Part 1 of Schedule 3 to, the Condensed Milk and Dried Milk (England) Regulations 2015, may appeal to the First-tier Tribunal.”.

(2) In section 37(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”.

PART 3

Modification of section 39(1) and (3)

3.—(1) For section 39(1) of the Act (appeals against improvement notices) substitute—

“(1) On an appeal against an improvement notice served under section 10(1), as applied and modified by regulation 6 of, and Part 1 of Schedule 3 to, the Condensed Milk and Dried Milk (England) Regulations 2015, the First-tier Tribunal may either cancel or affirm the

notice and, if it affirms it, may do so either in its original form or with such modifications as the First-tier Tribunal may in the circumstances think fit.”.

(2) In section 39(3), omit “for want of prosecution”.

PART 4

Application and modification of other provisions of the Act

<i>Provision of the Act</i>	<i>Modifications</i>
Section 2(a) (extended meaning of “sale” etc.)	In subsection (1), for “this Act” substitute “the Condensed Milk and Dried Milk (England) Regulations 2015”. In subsection (2), for “This Act” substitute “The Condensed Milk and Dried Milk (England) Regulations 2015”.
Section 3 (presumptions that food intended for human consumption)	In subsection (1), for “this Act” substitute “the Condensed Milk and Dried Milk (England) Regulations 2015”.
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 2015,”.
Section 21(1) (defence of due diligence)	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 2015”. Omit “, subject to subsection (5) below,”.
Section 29 (procurement of samples)	After the words “enforcement authority”, insert “, when carrying out duties under this section in relation to the Condensed Milk and Dried Milk (England) Regulations 2015, 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(b) and”.
Section 30(8) (evidence of certificates given by a food analyst or examiner)	For “this Act” substitute “the Condensed Milk and Dried Milk (England) Regulations 2015”.
Section 33 (obstruction etc. of officers)	In sub-paragraph (a) omit “under subsection (6) above”. In subsection (1), for “this Act” (in each place where it occurs) substitute “the Condensed Milk and Dried Milk (England) Regulations 2015”.
Section 35(1)(c) and (2) (punishment of offences)	In subsection (1), after “section 33(1) above”, insert “, as applied and modified by regulation 6(4) of, and Part 4 of Schedule 3 to, the Condensed Milk and Dried Milk (England) Regulations 2015,”. After subsection (1), insert— <p style="margin-left: 40px;">“(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 2015, shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.”.</p> In subsection (2)— <p style="margin-left: 40px;">(a) for “any other offence under this Act” substitute “an offence under section 33(2), as applied by regulation 6(4) of, and Part 4 of Schedule 3 to, the Condensed Milk and</p>

(a) Section 2(1) was amended by the Food Standards Act 1999 (c. 28), Schedule 5, paragraph 8.

(b) OJ No L 306, 28.10.87, p 24.

(c) Section 35(1) is amended by the Criminal Justice Act 2003 (c. 44), Schedule 26, paragraph 42 from a date to be appointed.

<i>Provision of the Act</i>	<i>Modifications</i>
	Dried Milk (England) Regulations 2015,”; and (b) in paragraph (b), for “the relevant amount” substitute “the statutory maximum”.
Section 36 (offences by bodies 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 2015,”.
Section 36A(a) (offences by Scottish partnerships)	For “this Act” substitute “section 10(2) as applied by regulation 6(1) of the Condensed Milk and Dried Milk (England) Regulations 2015,”.
Section 44 (protection of officers acting in good faith)	For “this Act” (in each place where it occurs) substitute “the Condensed Milk and Dried Milk (England) Regulations 2015”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in relation to England only, revoke and replace the Condensed Milk and Dried Milk (England) Regulations 2003 (S.I. 2003/1596) and revoke the Condensed Milk and Dried Milk (England) (Amendment) Regulations 2008 (S.I. 2008/85). They implement Council Directive 2001/114/EC relating to certain partly or wholly dehydrated preserved milk products intended for human consumption (OJ No L 15, 17.1.02, p 19).

Regulation 2 and Schedules 1 and 2 define condensed milk and dried milk products and the reserved descriptions that apply to them.

Regulation 3 prohibits the labelling with reserved descriptions of food other than the designated condensed and dried milk products to which they relate.

Regulation 4 sets out the labelling requirements for designated condensed and dried milk products.

Regulation 5 sets out the manner of marking or labelling in accordance with 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, 22.11.11, p 18) which will apply to the way in which the particulars required by regulation 4 must be presented.

Regulation 6 and Schedule 3 apply certain provisions of the Food Safety Act 1990 (1990 c. 16) with modifications. This includes the application of section 10(1) (with modifications) and (2), enabling an improvement notice to be served to require compliance with regulations 3, 4 and 5. The provisions, as applied, make the failure to comply with an improvement notice an offence under section 10(2).

Regulation 7 imposes an obligation on food authorities to enforce these Regulations.

Regulation 8 revokes previous Regulations (as set out above).

Regulation 9 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

No impact assessment has been prepared for this instrument as no impact, or no significant impact, on the private or voluntary sector is foreseen. An Explanatory Memorandum is published alongside the Regulations on www.legislation.gov.uk.

(a) Section 36A was inserted by the Food Standards Act 1999, Schedule 5, paragraph 16.

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