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WELSH STATUTORY INSTRUMENTS

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## 2003 No. 3053

### The Condensed Milk and Dried Milk (Wales) Regulations 2003

#### Title, commencement and application

1. These Regulations may be cited as the Condensed Milk and Dried Milk (Wales) Regulations 2003, shall come into force on 28th November 2003 and shall apply to Wales only.

#### Interpretation

2. In these Regulations —

“the Act” (“*y Ddeddf*”) means the Food Safety Act 1990;

“catering establishment” (“*sefydliad arlwyo*”) 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” (“*cynnyrch dynodedig*”) means any food specified in column 2 of Schedule 1 (as read with the Notes relating to that Schedule);

“Directive 79/1067/EEC” (“*Cyfarwyddeb 79/1067/EEC*”) means First Commission Directive [1979/1067/EEC\(1\)](#) laying down Community methods of analysis for testing certain partly or wholly dehydrated preserved milk for human consumption;

“Directive 87/524/EEC” (“*Cyfarwyddeb 87/524/EEC*”) means First Commission Directive [1987/524/EEC\(2\)](#) laying down Community methods of sampling for chemical analysis for the monitoring of preserved milk products;

“EEA Agreement” (“*Cytundeb AEE*”) means the Agreement on the European Economic Area(3) signed at Oporto on 2nd May 1992 as adjusted by the Protocol(4) signed at Brussels on 17th March 1993;

“EEA State” (“*Gwladwriaeth AEE*”) means a State which is a Contracting Party to the EEA Agreement;

“food authority” (“*awdurdod bwyd*”) has the same meaning as in section 5(1A) and (3)(a) and (b) of the Food Safety Act 1990;

“the 1996 Regulations” (“*Rheoliadau 1996*”) means the Food Labelling Regulations 1996(5);

“partly dehydrated milk” (“*llaeth wedi'i ddadhydradu'n rhannol*”) 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 have been added provided the addition of totally dehydrated milk does not exceed, in the finished product, 25% of total milk solids;

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(1) OJNo. L327, 24.12.1979, p.29.

(2) OJ No. L306, 28.10.1987, p.24.

(3) OJ No. L1, 3.1.94, p.1.

(4) OJ No. L1, 3.1.94, p.571.

(5) S.I.1996/1499; the relevant amending instrument is S.I. 1998/1398.

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

“reserved description”, (“*disgrifiad neilltuedig*”) 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” (“*gwerthu*”) includes offer or expose for sale or have in possession for sale, and cognate expressions shall be construed accordingly;

“totally dehydrated milk” (“*llaeth wedi'i ddadhydradu'n llwyr*”) 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” (“*cyfanswm y solidau llaeth*”) 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” (“*defnyddiwr olaf*”) 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) the 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) except in the case of the products specified in paragraph 2(a) to (d) of Schedule 1, the percentage of fat-free dried milk extract;
- (d) in the case of the products specified in paragraph 2(a) to (d) of Schedule 1, the recommendations as to the method of dilution or reconstitution and the details of the fat content of the product when diluted or reconstituted;

- (e) in the case of the products specified in paragraph 2(a) to (d) of Schedule 1, 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 product.

(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) If any person contravenes or fails to comply with regulation 4 or 5 of these Regulations that person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) 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 accused 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 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<sup>(6)</sup>.

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

9.—(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 is 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;
- (e) section 22 (defence of publication in the course of business);
- (f) section 30(8) (which relates to documentary evidence);
- (g) section 33(1) (obstruction etc. of officers);

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(6) 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).

- (h) section 33(2), with the modification that the reference to “any such requirement as is mentioned in subsection (1)(b) above” shall be deemed to be a reference to any such requirement as is mentioned in that subsection as applied by sub-paragraph (g) above;
- (i) section 35(1) (punishment of offences) insofar as it relates to offences under section 33(1) as applied by sub-paragraph (g) above;
- (j) section 35(2) and (3) insofar as it relates to offences under section 33(2) as applied by sub-paragraph (h) above;
- (k) section 36 (offences by bodies corporate); and
- (l) section 44 (protection of officers acting in good faith).

(2) Section 29 of the Act (sampling) 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

**10.**—(1) In the 1996 Regulations (insofar as they apply to Wales) the following provisions shall be omitted —

- (a) in regulation 4(2) (scope of Part II), sub-paragraph (d);
- (b) in regulation 49 (revocations and amendments), paragraph (6).

(2) The following entries relating to the Condensed Milk and Dried Milk Regulations 1977(7) shall (insofar as the following Regulations apply to Wales), be omitted —

- (a) in the Food (Revision of Penalties) Regulations 1982(8), in Schedule 1;
- (b) in the Food (Revision of Penalties) Regulations 1985(9), in the Schedule, Part I;
- (c) in the Food Safety Act 1990 (Consequential Modifications) (England and Wales) Order 1990(10), in Schedule 1, Part I, Schedule 2, Schedule 3, Part I and Schedules 6 and 12;
- (d) in the Food Safety (Exports) Regulations 1991(11), in Schedule 1, Part I;
- (e) in the Food (Forces Exemptions) (Revocations) Regulations 1992(12), in the Schedule, Part I;
- (f) in the Miscellaneous Food Additives Regulations 1995(13), in Schedule 9;
- (g) in the Miscellaneous Food Additives (Amendment) Regulations 1999(14), in regulation 14(1);
- (h) in the Miscellaneous Food Additives (Amendment) (Wales) Regulations 2002(15), regulation 9(2).

(3) The following Regulations are hereby revoked (insofar as they apply to Wales):

- (a) the Condensed Milk and Dried Milk Regulations 1977(16);

(7) S.I. 1977/928; relevant amending instruments S.I. 1982/1066, 1986/2299, 1989/1959, 1990/2486, 1991/1476, 1992/2596, 1995/3187, 1996/1499, 1999/1136, 2001/1787(W.128) and 2002/329(W.42).

(8) S.I. 1982/1727.

(9) S.I. 1985/67.

(10) S.I. 1990/2486.

(11) S.I. 1991/1476.

(12) S.I. 1992/2596.

(13) S.I. 1995/3187.

(14) S.I. 1999/1136.

(15) S.I. 2002/329(W.42).

(16) S.I. 1977/928.

- (b) the Condensed Milk and Dried Milk (Amendment) Regulations 1982(17);
  - (c) the Condensed Milk and Dried Milk (Amendment) Regulations 1986(18);
  - (d) the Condensed Milk and Dried Milk (Amendment) Regulations 1989(19).
- (4) In the Colours in Food Regulations 1995(20), insofar as they apply to Wales, in Schedule 2, paragraph 6, for the reference to “Directive 76/118/EEC”(21) there is substituted a reference to “Directive 2001/114/EC”(22).
- (5) In the Miscellaneous Food Additives Regulations 1995(23), insofar as they apply to Wales —
- (a) in regulation 10, paragraph (7) is revoked;
  - (b) in Schedule 7, in column 1, for the words “Partially dehydrated and dehydrated milk as defined in Directive 76/118/EEC” there is substituted “Partially dehydrated and totally dehydrated milk as defined in Directive 2001/114/EC”.

### **Transitional provision**

**11.** In any proceedings for an offence under these Regulations it shall be a defence for the person accused 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 Regulations 1977 as they stood immediately before the coming into force of these Regulations.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(24).

26th November 2003

*D. Elis-Thomas*  
The Presiding Officer of the National Assembly

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(17) S.I. 1982/1066.

(18) S.I. 1986/2299.

(19) S.I. 1989/1959.

(20) S.I. 1995/3124.

(21) OJ No. L24, 30.1.1976, p.49.

(22) OJ No. L15, 17.1.2002, p.19.

(23) S.I. 1995/3187.

(24) 1998 c. 38.