

**EXPLANATORY MEMORANDUM TO  
THE CONDENSED MILK AND DRIED MILK (ENGLAND) (AMENDMENT)  
REGULATIONS 2008**

**2008 No. 85**

1. This Explanatory Memorandum has been prepared by the Food Standards Agency and is laid before Parliament by Command of Her Majesty.
  
2. **Description**
  - 2.1 This Statutory Instrument further amends the Condensed Milk and Dried Milk (England) Regulations 2003, S.I. 2003/1596.
  
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None
  
4. **Legislative Background**
  - 4.1 The Regulations provide for the implementation of Council Directive 2007/61/EC (amending Directive 2001/114/EC) relating to certain partly or wholly dehydrated preserved milk for human consumption. This amendment will permit protein standardisation of these products.
  
5. **Extent**
  - 5.1 This instrument applies to England only. Parallel legislation is being made in Scotland, Wales and Northern Ireland.
  
6. **European Convention on Human Rights**
  - 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.
  
7. **Policy background**
  - 7.1 As part of its Common Agricultural Policy (CAP) regime simplification initiative, the European Commission has adopted a number of Directives relating to the dairy sector. Council Directive 2001/61/EC includes a new

provision enabling the protein content of milk to be adjusted / standardised to 34% by weight expressed on fat free dry matter. Currently, the natural protein content of milk produced in the EU must be maintained, that is, not adjusted. The Directive also sets out the authorised treatments for protein adjustment. (Protein standardisation is optional, however for UK milk entering into the Intervention Scheme, the minimum protein content must be 34% by weight expressed on fat free dry matter. [Defra](#) are responsible for administering this scheme which is used to maintain market prices during short-term fluctuations in supply of skimmed milk powder).

- 7.2 Council Directive 2007/61/EC amending Directive 2001/114/EC was adopted on 26 September 2007 and Member States are expected to bring into force domestic legislation by August 31 2008. UK industry will be legally obliged to comply with the Directive
- 7.3 The UK dairy industry has specifically requested that the Agency amend domestic legislation as soon as possible in order for them to be able to take advantage of the provisions which will allow the protein content of preserved milks (dried and condensed milk) to be modified. The average protein level of milk produced in the UK from August 2006 – August 2007 inclusive, was 37.5%<sup>1</sup>.
- 7.4 National legislation will need to be amended as soon as possible to ensure that the United Kingdom is able to benefit from the provisions afforded by the amended Directive.
- 7.5 The ability to remove protein from preserved milks will benefit UK industry as any protein extracted can be used to manufacture other dairy produce. Thus providing an additional revenue stream for the dairy industry. In addition, EU exporters will be able to compete on a level playing field with their international counterparts, as currently EU producers have to sell powdered milk with a higher protein content than their International competitors, but at the same price
- 7.6 This change will have no impact on consumer interests but is in line with the cross-Government better regulation agenda to simplify legislation, where possible, without removing the protection it affords.

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<sup>1</sup> Dairy UK, October 2007

## **8. Impact**

- 8.1 An Impact Assessment has been prepared. The final version of the Impact Assessment containing a summary of comments received from the Agency consultation exercise is attached to this memorandum.

## **9. Contact**

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who will be able to respond to any enquiries regarding this SI.

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Food Standards Agency</b>	<b>Title:</b> <b>Impact Assessment of The Condensed Milk and Dried Milk (England) (Amendment) Regulations</b>	
<b>Stage:</b> FINAL STAGE	<b>Version:</b> 1	<b>Date:</b> 2 January 2008
<b>Related Publications:</b> The Condensed Milk and Dried Milk (England) Regulations 2003 and European Council Directive 2007/61/EC amending Directive 2001/114/EC		

**Available to view or download at:**

<http://www.opsi.gov.uk/> and <http://eur-lex.europa.eu/en/index.htm>

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

Modifying the protein content of preserved milk is currently not allowed by EU law. This has put the EU industry at a significant economic disadvantage as they cannot extract milk protein from preserved milk as a further revenue stream. EU producers have to sell preserved milk with its higher natural protein content than non-EU producers to third party countries at the same price. Directive 2007/61/EC amends existing EU legislation to permit protein standardisation to 34% by weight (expressed on fat free dry matter) in line with international standards in place since 1999.

**What are the policy objectives and the intended effects?**

Directive 2007/61/EC is part of a larger package of EC measures relating to the dairy sector which are part of the Common Agricultural Policy (CAP) simplification initiative. Member States are given until 31 August 2008 to implement this Directive into domestic legislation. UK industry has indicated that they would like this Directive to be implemented as early as possible so that they can benefit from the new revenue stream brought about by the protein extracted from preserved milk. The Agency aim is to implement the policy as soon as possible.

**What policy options have been considered? Please justify any preferred option.**

1. Implement the Directive - Milk protein is a high value commodity in its own right. UK milk tends to have a protein content between 31 – 37%, as such with the standardisation to 34% it is envisaged that additional protein will be extracted from milk and sold or used in the production of other fresh dairy produce such as cheese. This option is preferred.
2. Do not implement the Directive - This would put UK industry at an economic disadvantage internationally. This option contradicts the Government's commitment to meeting its EU obligations and would subsequently lead to infraction proceedings.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** The Agency will review the effect of the amended legislation in August 2011, however, it is expected that the EU will review the CAP in 2009

**Ministerial/CEO Sign-off** For final proposal/implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister/Chief Executive\*:

*Dawn Primarolo* .....Date: 15<sup>th</sup> January 2008

\* for Impact Assessments undertaken by non-ministerial departments/agencies and NOT being considered by Parliament

## Summary: Analysis & Evidence

**Policy Option: 2**

**Description: Implementing EC Directive 2007/61/EC allowing the standardisation of the protein content in preserved milk to 34%**

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' Whilst we would expect such processing equipment to already exist in facilities which manufacture preserved milks, investment in equipment and labelling regarding protein standardisation is made on a commercial basis therefore policy costs are zero. There are some administrative costs, as noted, these are small.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	<b>£ 3,760.10</b>	5	
	<b>Average Annual Cost</b> (excluding one-off)		
	<b>£ Zero</b>		<b>Total Cost (PV)</b> <b>£ 18,800.48</b>
Other <b>key non-monetised costs</b> by 'main affected groups' As noted, ongoing Local Authority costs are being sought.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' This depends upon commercial implementation, please refer to Annex A - this presents the base case as calculated by Defra.
	<b>One-off</b>	<b>Yrs</b>	
	<b>£ Zero</b>	5	
	<b>Average Annual Benefit</b> (excluding one-off)		
	<b>£ 0 - 10.2 Million</b>		<b>Total Benefit (PV)</b> <b>£ 0 - 47.5 Million</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' There is also a potential budgetary implication of the policy change – the European Commission forecasts a drop in spending on export refunds as a result of the policy. This will be translated into a potential UK budgetary saving. See Annex A - this presents the base case as calculated by Defra			

### Key Assumptions/Sensitivities/Risks

Price Base Year 2008	Time Period Years 5	<b>Net Benefit Range (NPV)</b> <b>£ - 15,616 - 47.5 Million</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ 47.5 Million</b>
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What is the geographic coverage of the policy/option?	UK wide			
On what date will the policy be implemented?	Feb / March 2008			
Which organisation(s) will enforce the policy?	Local Authorities			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ Negligible			
Will the proposal have a significant impact on competition?	Yes			
Annual cost (£-£) per organisation (excluding one-off)	Micro 0	Small 0	Medium 0	Large 0
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)	
Increase of	£ 0	Decrease of	£ 0
		<b>Net Impact</b>	<b>£ 0</b>

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Evidence Base (for summary sheets)

### 1. PURPOSE AND INTENDED EFFECT OF MEASURE

1.1 The EU has introduced a policy on simplification and better regulation which has the aim of reducing red tape. The UK is fully supportive of this policy. It was under the EU's simplification and better regulation policy that the Commission published its proposals known as the "mini dairy package"<sup>2</sup>: amendments to three Directives relating to the dairy industry.

1.2 The particular element of the "mini dairy package", under consideration in this Impact Assessment will implement amended legislation that will give Member States the ability to "standardise" (modify) the protein content of preserved milks (powdered / dehydrated, evaporated or condensed milks). This is known as protein standardisation<sup>3</sup>.

1.3 Milk protein is a high value commodity. At present the natural protein content of EU produced preserved milks must be maintained, which means that Member States cannot benefit from extracting protein from their milk. The practice of removing protein from milks has been allowed internationally since 1999, when Codex standards for preserved milks were published, allowing the modification of the protein content of preserved milks to 34% by weight (expressed on fat free dry matter).

1.4 The publication of the amended Directive which allows preserved milks to have a protein content of at least 34% by weight (expressed on fat free dry matter), will allow the EU dairy sector to benefit economically, as they will be able to extract and subsequently use milk protein for the production of other fresh produce such as cheese, or sell the milk protein to third party countries.

1.5 This change will have no impact on consumer interests (see paragraph 2.7) but is in line with the cross-Government better regulation agenda to simplify legislation, where possible, without removing the protection it affords.

1.6 The amendment to Directive 2001/114/EC also sets out the revised descriptions for "totally" and "partially dehydrated milk" and also sets out the permitted methods for protein standardisation.

### 2. BACKGROUND

2.1 In England, The Condensed Milk and Dried Milk (England) Regulations 2003<sup>4</sup> defines "partly dehydrated" and "totally dehydrated" milk and implements the requirements of Directive 2001/114/EC, *relating to certain partly or wholly dehydrated preserved milk for human consumption*<sup>5</sup>. It also lays down specifications for preserved milk governing composition, use of reserved descriptions, manufacturing specification and labelling of products. It lists the permitted modifications to dried and condensed milk and lays 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.

2.2 Preserved milks are essentially liquid milks preserved in powdered / dehydrated, evaporated or condensed form which, apart from blending with other milks, have not otherwise

<sup>2</sup> [http://www.europarl.europa.eu/news/expert/infopress\\_page/032-10005-246-09-36-904-20070823IPR09768-03-09-2007-2007-false/default\\_en.htm](http://www.europarl.europa.eu/news/expert/infopress_page/032-10005-246-09-36-904-20070823IPR09768-03-09-2007-2007-false/default_en.htm)

<sup>3</sup> <http://www.food.gov.uk/foodindustry/regulation/europeleg/euupdates/milkupdate0703>

<sup>4</sup> Statutory Instrument 2003 No. 1596

<sup>5</sup> 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)

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.

2.3 As part of its Common Agricultural Policy (CAP) simplification initiative, The EC proposed amendments to three Directives relating to the dairy sector. The Agency is responsible for implementing one of these, Directive 2007/61/EC<sup>6</sup> amending Directive 2001/114/EC into domestic legislation. This amendment will permit protein standardisation.

2.4 Protein standardisation involves changing the protein content of preserved milks to a standard value, in this case 34% by weight (expressed on fat free dry matter). The protein content of milk varies according to season and bovine diet therefore, in practice, for UK producers this means the lowering of protein levels. The average protein level of milk in the UK from August 2006 – August 2007 inclusive, was 37.5%<sup>7</sup>

2.5 The ability to standardise the protein content of milk has long been requested by EU producers, as EU produced milk tends to have a higher protein content<sup>8</sup> (31 – 37%) than milk produced in third party countries (countries that produce milk outside of the EU). This is particularly important when considering the UK export market for preserved milks such as milk powders. The ability to remove protein from preserved milks will benefit UK industry as any protein extracted can be used to manufacture other dairy produce. Thus providing an additional revenue stream for the dairy industry. In addition, protein standardisation will allow the manufacture and export of a product with a consistent protein content as specified by a third country customer. Currently preserved milk is produced with a protein content exceeding customers' specification, thus the excess protein is not being utilised, and the resultant selling price may not be competitive, leading to loss of business.

2.6 Currently, six businesses (3 in England and 3 in Northern Ireland) manufacture preserved milk in the UK. In 2005, 36,000 tonnes of skimmed milk powder was exported from the UK<sup>9</sup>. The UK Dairy Industry comprises of 20,313 dairy farms. In 2006 77,000 tonnes of skimmed milk powder, 52,000 tonnes of whole milk powder and 142,000 tonnes of concentrated milks were produced. Exports are valued at EUR 1,030 million<sup>10</sup>. The UK has the third largest dairy industry in Europe<sup>11</sup>. The market for skimmed milk powder for 2008 is envisaged to be firm so long as supply and demand conditions remain or exceed those figures during 2006.<sup>12</sup>

2.7 The ability to modify the protein content of preserved is not expected to have an adverse effect on the consumer, in terms of health or purchasing patterns. In the UK, preserved milks do not form as significant a part of the diet as fresh liquid milk. During 2005/2006, the average figure for purchases of liquid whole milk (including school milk, full price and welfare milk), skimmed and other milks (including milk drinks) was 1657 millilitres (ml) per person per week, whereas the average figure for purchases of condensed, evaporated, instant dried and dried milk products was 31 ml per person per week<sup>13</sup>, or just 1.8% of the weekly milk intake when compared to liquid whole milks which contributed 98% of the average weekly milk intake. Therefore, consumption of preserved milks is very low in the UK compared to fresh milk as shown by the National Statistics Expenditure and Food Survey<sup>14</sup> data. In addition protein intakes in the UK are well above Dietary Reference Values in all age groups and there is no

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<sup>6</sup> OJ No. L2584.10.2007, p.27

<sup>7</sup> Dairy UK, October 2007

<sup>8</sup> European Parliament Report on the proposal for a Council directive amending Directive 2001/114/EC <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A6-2007-0282+0+DOC+XML+V0//EN>

<sup>9</sup> Milk Development Council, October 2006

<sup>10</sup> European Dairy Magazine, 2007, The Future of the UK Dairy Industry.

<sup>11</sup> Troisième producteur de lait en Europe. (UK dairy industry.) RLF (Revue Laitière Française)

2007

<sup>12</sup> Dairy Supply Chain Margins – October 2006, Milk Development Council

<sup>13</sup> Family Food in 2005-06 - A National Statistics Publication by Defra, 2007 The Stationery Office

<sup>14</sup> <http://www.statistics.gov.uk/about/services/UnpublishedData/ssd/efs.asp>

evidence of low intakes<sup>15</sup>. Milk (excluding cheese) provides around 10% of protein intake in the UK - the major contributors to protein intake are meat and meat products and cereals and cereal products<sup>16</sup>. As such, any possible reduction in the protein content of preserved milks on the UK market is not envisaged as having an adverse affect on the protein intake of the average consumer.

2.8 A leading UK Dairy processor has estimated that an annual revenue of at least £1million might be achieved<sup>17</sup> as a result of the ability to standardise the protein content of preserved milk.

2.9 Member States have been given until 31 August 2008 to bring in to force their own domestic legislation implementing the requirements of Directive 2007/61/EC.

### **3. OPTIONS:**

Option 1 – Implement the Directive

Option 2 – Do nothing

#### **Analysis of options**

3.1 Option 1 (amend the Regulations and apply the 34% by weight (expressed on fat free dry matter) standardisation to milk protein) – this would ensure continuing compliance with EU law and would help businesses take advantage of additional revenue brought about by the protein extracted from fresh milk destined to be manufactured into preserved milks.

3.2 Option 2 (do nothing) – this would breach an EU obligation and leave the UK open to infraction proceedings by the Commission. It would also not allow UK business' to benefit from protein standardisation as the natural protein content of collected milk would have to be maintained.

### **4. COST AND BENEFITS**

#### **4.1 Business sectors affected**

4.1.1 The businesses affected would be those engaged in the production and marketing of "*certain partly and wholly dehydrated preserved milk for human consumption*".

#### **4.2 Benefits**

Option 1 (amend the Regulations and apply the 34% standardisation to milk protein)

4.2.1 Consumers will not gain significant additional benefit from the new regulations; however, they may be able to benefit from potentially lower prices of preserved milks such as skimmed milk powder, forecasted by Defra to be equivalent to 17p per person<sup>18</sup> - Please refer to Scenario 1 in Annex A. Consumers will not be adversely affected in terms of their health; due to the consumption frequency patterns of preserved milks (see section 2.7). The protein standardisation of condensed and dried milks in the UK is not envisaged as having a major impact on the nutrition of the nation and is neither seen to affect the purchasing behaviour of consumers of preserved milks.

<sup>15</sup> Diet and Nutrition Surveys Branch, Nutrition Division, Food Standards Agency October 2007

<sup>16</sup> Diet and Nutrition Surveys Branch, Nutrition Division, Food Standards Agency October 2007

<sup>17</sup> Dairy UK, October 2007

<sup>18</sup> Defra, Agricultural and Economic Unit October 2007

4.2.2 Producers will be more affected by the proposed Regulation. Producers who choose to modify the protein content of their milk will potentially benefit from being able to utilise any extracted protein for use in the production of other fresh dairy produce or by selling the extracted milk protein. It is currently not possible to fully quantify benefits as protein standardisation is an option *per se* – and is dependent upon the protein level of milk used for the production of preserved milks. However, based on Defra's modelling in Annex A, it is expected that the annual benefits could range from £0 -£47.5 million

#### Option 2 (do nothing)

4.2.3 This option will not generate any incremental benefit to consumer or business.

### **4.3 Costs for businesses, charities and voluntary organisations**

#### Option 1 (amend the Regulations and apply the 34% by weight (expressed on fat free dry matter) standardisation to milk protein)

##### Compliance Costs

4.3.1 Condensed and dried milk intended for human consumption are already subject in England to the Condensed Milk and Dried Milk Regulations (England) 2003 and the general labelling provisions of the Food Labelling Regulations 1996. The changes are not envisaged to have an adverse effect on the costs associated with labelling, as any labelling changes will be made on a commercial basis.

4.3.2 Dairy Producers / Processors may have to invest in specialist equipment in order to modify and monitor the protein content of preserved milks. Therefore they are provided the market flexibility to seek to alter protein levels in preserved milks as they commercially see fit.

4.3.3 In addition, as milk production varies from season to season, if UK produced milk does not contain high enough yields of protein due to season / diet / lower milk production – then any potential monies invested in obtaining equipment for protein standardisation may not be recouped.

4.3.4 It is not anticipated that these regulations would affect charities and voluntary organisations.

##### Familiarisation Costs

4.3.5 There are 469 local authorities in the UK<sup>19</sup>, based on allowing 2 people 1 hour to read the new legislation at a rate of £19.90<sup>20</sup>, it would cost £18,666.20 There are 6 businesses involved in the production of preserved milks (see Paragraph 2.6). Based on allowing 2 people 1 hour to read the new legislation at a rate of £11.19<sup>21</sup>, it would cost £134.28. Therefore based on these figures the total cost would be £18,800.48

### **Costs for a typical business**

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<sup>19</sup> Food Standards Agency, Enforcement Division – November 2007

<sup>20</sup> 2006 Annual Survey of Hours and Earnings (ASHE) Analysis by Government Office Region by Occupation - UK Business And Public Service Professionals (National Audit Office)

<sup>21</sup> 2006 Annual Survey of Hours and Earnings (ASHE) Analysis by Industry - UK Manufacture of food products and beverages (National Audit Office)

4.3.6 As noted previously, industry are provided the market flexibility to seek to alter protein levels in preserved milks as they commercially see fit, it is not a mandatory requirement therefore any incremental costs salient to this Impact Assessment are zero.

#### Option 2 (do nothing)

4.3.7 This option will not generate any incremental costs to consumer or business.

## 5. TIMING

5.1 Council Directive 2007/61/EC amending Directive 2001/114/EC was adopted on 26 September this year and Member States are expected to bring into force domestic legislation by August 31 2008. The UK dairy industry has specifically requested that the Agency amend domestic legislation as soon as possible in order for them to be able to take advantage of the provisions which will allow the protein content of preserved milks (dried and condensed milk) to be modified. Currently the natural protein content of collected milk must be maintained.

## 6. CONSULTATION

6.1 The “dairy package” proposals were first issued for consultation by Defra<sup>22</sup> in April 2007. The consultation package contained the 3 proposed amendments to existing legislation and a Partial Regulatory Impact Assessment. These documents can be found as annexes in the Impact Assessment which Defra are preparing for the dairy package amendment directives they are responsible for.

6.2 The proposal for an amendment to Directive 2001/114/EC<sup>23</sup> which was issued for consultation by Defra is identical to Directive 2007/61/EC, aside from the addition of a reference to Regulation EC 1925/2006 *on the addition of vitamins and minerals and of certain other substances to foods*.

6.3 Defra informed the Agency that the responses to the consultation were broadly supportive (apart from one objection to the whole package on principle), and the comments received helped to inform the UK’s negotiating position during a technical Council Working Group at the EU Special Committee for Agriculture and in the Agriculture Council.

6.4 The Agency issued a consultation on the draft amending domestic legislation. The consultation exercise closed on 2 January 2008.

6.5 Four responses were received in total (three from Industry and one from Local Government). No objections were raised towards the new Regulations; the main UK wide industry body is highly supportive, one Welsh respondent had no comment, another raised concerns with potential increased costs to their small cheese manufacturing business. However, they did not object to the amendment and stated that in the long run, protein standardisation will lead to the production of a more consistent product. No other concerns were raised by other similar manufacturers. The Local Authorities Coordinators of Regulatory Services (LACORS) take the view that there will be no additional burdens for enforcement authorities resulting from the introduction of the Regulations. The Agency has published a summary of these consultation responses on its website.

6.6 No additional information was provided for the purpose of updating this Impact Assessment.

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<sup>22</sup> : <http://www.defra.gov.uk/corporate/consult/dairy-package/letter.htm>

<sup>23</sup> COM/2007/0058 final-CNS 2007/0025

[http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007PC0058\(01\):EN:HTML](http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007PC0058(01):EN:HTML)

## **7. DEVOLUTION**

7.1 This Impact Assessment contains figures on a UK wide basis. The Food Standards Agency Scotland will be producing a separate Regulatory Impact Assessment, however, this will also contain figures on a UK - wide basis.

7.2 Similar but separate existing legislation on preserved milk applies in Scotland, Wales and Northern Ireland and will be amended on a devolved basis. The amended European Council Directive must be implemented into national legislation in order to bring these provisions into line with the Community legislation by 31 August 2008. However, a common entry into force date for domestic legislation is desired and aimed towards.

## **8. CONSULTATION WITH SMALL BUSINESS: THE SMALL FIRMS IMPACT TEST**

8.1 The Enterprise Directive (BERR) has been consulted on this issue, as have a UK leading trade body. In the Agency Regulatory Impact Assessment produced for the 2003 Regulations the following was stated:

*8.2 The markets affected by this regulation are those for condensed and dried milk products. Milk processing in the UK is characterised by five large companies who together account for 60% of the market; there are a few other smaller producers. Eight companies account for over 99% of UK milk powder production; 92% of condensed milk production is accounted for four companies. All these markets currently appear to be competitive producing good value for UK consumers, and being a mature market is characterised by slow change -*

8.3 We consider that the situation for 2007 remains much the same and have not received any information contrary to this during the public consultation.

8.4 The Defra consultation asked whether the dairy package would have a disproportionate impact on small firms. No response was received.

## **9. COMPETITION ASSESSMENT**

9.1 By removing a regulatory requirement which prevented the protein levels of preserved milk from being altered, the change to domestic legislation will now allow protein extracted from UK milk to be used more effectively, this change is expected to allow UK companies to be more pro-competitive in world markets and may lead to lowering the price of milk protein for all companies.

## **10. ENFORCEMENT AND SANCTIONS**

10.1 Enforcement of the England Regulations will be the responsibility of Local Authority Trading Standards or Environmental Health Departments. This remains unchanged from the existing enforcement arrangements.

10.2 The penalty on conviction for an offence under the regulations is a fine not exceeding level 5 on the standard scale (currently £5,000).

10.3 Local Authority enforcement bodies already have responsibility for the enforcement of the current requirements for condensed milk and dried milk. It is not anticipated that enforcement of the new provisions will place a significant additional burden on enforcement bodies.

10.4 The Defra consultation on the dairy package asked for suggestions to simplify current enforcement rules. No suggestions came forward.

## **11 ADMINISTRATIVE BURDENS**

11.1 There are no requirements in the amended legislation which require that additional records are kept. Any additional costs are voluntary regarding the decision by industry to standardise the protein content of preserved milks. Therefore, no additional administrative burdens are envisaged.

## Mini Dairy Impact Assessment – Modelling Results

**This work has been undertaken by The Department for Environment Food and Rural Affairs (Defra) for the mini dairy impact assessment, examining the protein standardisation element of the mini dairy package.**

### Background

1. The merged Dairy model is the amalgamation of the Defra dairy model and the OECD Aglink model. The resulting model is a partial equilibrium model which models the dairy sector in the EU25 on a country by country basis, and models the world markets in dairy products, cereals and livestock products, disaggregated into over 25 countries and regions. Within the dairy sector, there is an interdependent relationship between milk and four key milk products – butter, cheese, SMP and WMP, based upon the availability and price of protein and fat for factory use.
2. The baseline results which are used for the purpose of comparison are based on a continuation of the current policy situation. It is assumed within the baseline that the proportion of fat in milk consumed will continue on a downward trend, reflecting the continued switch from whole fat milk to semi-skimmed and skimmed milk and thus a fall in the average fat content in milk consumed.
3. The dairy model also includes the welfare effects of the scenarios. In economic terms, welfare attempts to capture the fact that at the equilibrium, there are consumers who would have been willing to pay more for the good than the market price, and there are producers who would have been willing to sell the good at a lower price than the market price. For producers, the producer surplus is the total extra revenue that producers receive compared to a situation where each unit was sold at the price at which producers would have been willing to supply. Similarly, the consumer surplus is the total difference between the market price and the amount that consumers would have been willing to pay for each individual unit. We are able to capture the welfare effects for milk, by looking at the change in welfare relative to the baseline.

### Scenario

4. Protein Standardisation policy has been modelled as a shift to a 34% by weight (expressed on fat free dry matter) protein content in SMP, (previously 36%). This brings the EU into line with international standards which will benefit exports who were previously selling higher protein content SMP at the world price, not realising the full value of the protein.

### Results:

5. Most of the effects of the shock are contained within the SMP market. As a result of the protein standardisation, we assume that the average protein content of SMP falls from 36% to 34% by weight (expressed on fat free dry matter). This fall of around 6% results in a 5% fall in price and a 7% increase in the production of SMP.
6. This has some knock on effects on the butter, cheese, WMP and milk markets which are detailed below, although the largest of these changes is still less than 0.5%. The main reason for this is that the extra protein which is available as a result of the policy change leads to SMP becoming more competitive, increasing the levels of exports and domestic consumption.

7. The below tables concern UK change in 2008 relative to the baseline. All quantity units are in thousand kg and all prices are in £ per 100kg.

<b>Skimmed Milk Powder</b>	<b>% Diff</b>	<b>Abs. Diff</b>
Production (QP)	5.97	7.10%
Consumption (QC)	2.31	2.45%
Price (PP)	-8.24	-5.37%
Exports (EX)	3.14	7.94%
Imports (IM)	-0.52	-1.04%

<b>Butter (BT)</b>	<b>Abs. Diff</b>	<b>% Diff</b>
Production (QP)	0.43	0.30%
Consumption (QC)	-0.01	-0.01%
Price (PP)	0.12	0.07%
Exports (EX)	0.00	0.00%
Imports (IM)	-0.45	-0.38%

<b>Cheese (CH)</b>	<b>Abs. Diff</b>	<b>% Diff</b>
Production (QP)	-0.30	-0.07%
Consumption (QC)	-0.19	-0.03%
Price (PP)	0.09	0.04%
Exports (EX)	0.00	0.00%
Imports (IM)	0.11	0.03%

<b>WMP</b>	<b>Abs. Diff</b>	<b>% Diff</b>
Production (QP)	-0.22	-0.56%
Consumption (QC)	0.03	0.03%
Price (PP)	-0.26	-0.17%
Exports (EX)	0.00	0.00%
Imports (IM)	0.01	0.03%

<b>Milk (MK)</b>	<b>Abs. Diff</b>	<b>% Diff</b>
Production (QP)	3.49	0.02%
Consumption (QC)	-3.94	-0.06%
Price (PP)	0.03	0.15%
Exports (EX)	0.00	0.00%
Imports (IM)	0.00	0.00%

## Welfare effects

8. The net welfare benefit is generated mainly from SMP consumers and producers, benefiting from the increased quantities (for producers, the fall in price is more than offset by the increase in quantity) There is also an impact from the small increase in the milk price, beneficial to producers but detrimental to consumers. The overall benefit is roughly equivalent to 17p per person in the UK

	Welfare Effects
Milk consumption	-£1.7m
Butter Consumption	-£0.2m
Cheese consumption	-£0.6m
SMP consumption	£7.5m
WMP consumption	£0.2m
Milk production	£3.8m
Butter Production	£0.5m
WMP production	-£0.1m
SMP Production	£1.1m
Cheese production	-£0.2m
<b>Total Welfare Effects</b>	<b>£10.2m</b>

## Specific Impact Tests: Checklist

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

## EU Annex

The implementation of Council Directive 2007/61/EC relating to certain partly or wholly dehydrated preserved milk for human consumption is compulsory under EC legislation

At the moment protein standardisation of dried and condensed milks is not permitted. This proposed amendment will permit protein standardisation of these products to 34% by weight (expressed on fat free dry matter).

The proposal to allow protein standardisation of dried and condensed milks is one of a group of proposed changes to several existing pieces of European Dairy legislation (Council Directive 2001/114/EC, Council Regulation (EC) No 1255/1999 and Council Regulation (EC) No 2597/97). The FSA is responsible for the specific legislation on dried and condensed milk.

## **Competition Assessment**

See evidence base, section 10.

## **Small Firms Impact Test**

See evidence base, section 9.

## **Sustainable development**

A sustainability and diversity assessment has been carried out by the Agency and the economic impacts are potentially beneficial to the consumer. Neither positive nor negative environmental or social impacts or costs have been identified.

Directive 2007/61/EC forms part of a wider European package of measures to simplify administration of the CAP scheme, therefore implementation of amended legislation may be seen as aiding towards sustainable development

## **Race equality issues**

The amended legislation does not impose any restrictions or involve any requirements which a person of a particular racial background, disability or gender would have difficulty complying with.

## **Gender equality issues**

The amended legislation does not impose any restrictions or involve any requirements which a person of a particular racial background, disability or gender would have difficulty complying with.

## **Disability equality issues**

The amended legislation does not impose any restrictions or involve any requirements which a person of a particular racial background, disability or gender would have difficulty complying with.

## TRANSPOSITION NOTE

This transposition note outlines how the requirements of *Council Directive 2007/61/EC amending Directive 2001/114/EC relating to certain partly or wholly dehydrated preserved milk for human consumption (the Directive)*, which allows for the protein content of milk powders and condensed milk to be standardised to a minimum non-fat dry matter (protein) content of 34% (as set out in the standards agreed by Codex Alimentarius Committee) have been transposed into domestic law by the Condensed Milk and Dried Milk (England) Regulations 2008 (the Regulations).

- (Council Directive 2001/114/EC is transposed into English legislation by The Condensed Milk and Dried Milk (England) Regulations 2003. Separate, similar Regulations apply in Scotland, Wales and Northern Ireland.)

Provision of the Directive	Purpose	Provision of Regulations
<p><b>2 Article 1.2 (throughout) plus</b></p> <p><b>3 Annex, points 1 and 2</b></p>	Amends definitions of “Partly dehydrated milk” and “Totally dehydrated milk”	<b>4 Regulation 3</b>
<b>Annex, point 3(a)</b>	Updates reference to the relevant Community food hygiene legislation	<b>Regulation 4(b)</b>
<b>Annex, point (3)(b)</b>	Sets out the new provision for protein content of milk to be adjusted to a minimum content of 34% by weight (expressed on fat free dry matter)	<b>Regulation 4(c)</b>
<b>Annex, point 4</b>	Sets out the authorised additions for protein adjustment purposes	<b>Regulation 4(a)</b>