

NATIONAL ASSEMBLY FOR WALES

S T A T U T O R Y I N S T R U M E N T S

2003 No. (W.)

FOOD, WALES

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply to Wales, implement Council Directive 2001/114/EC relating to certain partly or wholly dehydrated preserved milk products intended for human consumption (OJ No. L15, 17.1.2002, p.19). They revoke and replace the Condensed Milk and Dried Milk Regulations 1977, as amended, in relation to Wales.

The Regulations —

- (a) prescribe definitions and reserved descriptions for condensed milk and dried milk products (regulation 2 and Schedules 1 and 2);
- (b) provide for the Regulations to apply to milk and dried milk products intended for human consumption and ready for delivery to the ultimate consumer or to a catering establishment (regulation 3);
- (c) restrict the use of reserved descriptions to the designated condensed and dried milk products to which they relate (regulation 4);
- (d) prescribe labelling requirements for designated condensed and dried milk products (regulation 5);
- (e) prescribe the manner of marking or labelling and apply specified provisions of the Food Labelling Regulations 1996 (regulation 6);
- (f) specify a penalty, enforcement authorities and, in accordance with Articles 2 and 3 of Council Directive 89/397/EEC on the official control of foodstuffs (OJ No. L186, 30.6.89, p.23), a defence in relation to exports (regulations 7 and 8);
- (g) apply various provisions of the Food Safety Act 1990 (regulation 9);

- (h) revoke the previous Regulations and make consequential amendments and transitional provision (regulations 10 and 11). An effect of the revocation made by regulation 10(1) (a), and the absence of the re-enactment of a similar provision, is that Part II of the Food Labelling Regulations 1996 will apply to the products to which these Regulations apply.

A Regulatory appraisal has been prepared pursuant to section 65 of the Government of Wales Act 1998 and placed in the Library of the National Assembly for Wales together with a Transposition Note setting out how the main elements of the European legislation referred to above are transposed in these Regulations. Copies may be obtained from the Food Standards Agency, 11th Floor, Southgate House, Cardiff CF10 1EW.

2003 No. (W.)

FOOD, WALES

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

Made [] 2003

Coming into force 28th November 2003

The National Assembly for Wales, in exercise of the powers conferred by sections 16(1)(e), 17(1), 26(1) and (3) and 48(1) of the Food Safety Act 1990⁽¹⁾ and now vested in it⁽²⁾, having had regard in accordance with section 48(4A) of that Act to relevant advice given by the Food Standards Agency and after consultation both as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council⁽³⁾ 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 and in accordance with section 48(4) and (4B) of the said Act, hereby makes the following Regulations:

Title, application and commencement

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

Interpretation

2. In these Regulations —

“the Act” means the Food Safety Act 1990;

“catering establishment” means a restaurant, canteen, club, public house, school, hospital or

(1) 1990 c.16.

(2) Functions of the Secretary of State under the Food Safety Act 1990, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

(3) OJ No. L31, 1.2.2002, p.1.

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” means any food specified in column 2 of Schedule 1 (as read with the Notes relating to that Schedule);

“Directive 79/1067/EEC” means First Commission Directive 1979/1067/EEC(4) laying down Community methods of analysis for testing certain partly or wholly dehydrated preserved milk for human consumption;

“Directive 87/524/EEC” means First Commission Directive 1987/524/EEC(5) laying down Community methods of sampling for chemical analysis for the monitoring of preserved milk products;

“EEA Agreement” means the Agreement on the European Economic Area(6) signed at Oporto on 2nd May 1992 as adjusted by the Protocol(7) signed at Brussels on 17th March 1993;

“EEA State” means a State which is a Contracting Party to the EEA Agreement;

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

“the 1996 Regulations” means the Food Labelling Regulations 1996(8);

“partly dehydrated milk” 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;

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

“reserved description”, 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;

(4) OJ No. L327, 24.12.1979, p.29.

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

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

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

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

“sell” includes offer or expose for sale or have in possession for sale, and cognate expressions shall be construed accordingly;

“totally dehydrated milk” 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” 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” 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⁽⁹⁾.

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);
- (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

⁽⁹⁾ 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)

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) subparagraph (d);
- (b) in regulation 49 (revocations and amendments), paragraph (6).

(2) The following entries relating to the Condensed Milk and Dried Milk Regulations 1977(**10**) shall (insofar as the following Regulations apply to Wales), be omitted —

- (a) in the Food (Revision of Penalties) Regulations 1982(**11**), in Schedule 1;
- (b) in the Food (Revision of Penalties) Regulations 1985(**12**), in the Schedule, Part I;
- (c) in the Food Safety Act 1990 (Consequential Modifications) (England and Wales) Order 1990(**13**), in Schedule 1, Part I, Schedule 2, Schedule 3, Part I and Schedules 6 and 12;
- (d) in the Food Safety (Exports) Regulations 1991(**14**), in Schedule 1, Part I;
- (e) in the Food (Forces Exemptions) (Revocations) Regulations 1992(**15**), in the Schedule, Part I;
- (f) in the Miscellaneous Food Additives Regulations 1995(**16**), in Schedule 9;
- (g) in the Miscellaneous Food Additives (Amendment) Regulations 1999(**17**), in regulation 14(1);
- (h) in the Miscellaneous Food Additives (Amendment) (Wales) Regulations 2002(**18**), regulation 9(2).

(**10**) 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).

(**11**) S.I. 1982/1727.

(**12**) S.I. 1985/67.

(**13**) S.I. 1990/2486.

(**14**) S.I. 1991/1476.

(**15**) S.I. 1992/2596.

(**16**) S.I. 1995/3187.

(**17**) S.I. 1999/1136.

(**18**) S.I. 2002/329(W.42).

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

- (a) the Condensed Milk and Dried Milk Regulations 1977⁽¹⁹⁾;
- (b) the Condensed Milk and Dried Milk (Amendment) Regulations 1982⁽²⁰⁾;
- (c) the Condensed Milk and Dried Milk (Amendment) Regulations 1986⁽²¹⁾;
- (d) the Condensed Milk and Dried Milk (Amendment) Regulations 1989⁽²²⁾.

(4) In the Colours in Food Regulations 1995⁽²³⁾, insofar as they apply to Wales, in Schedule 2, paragraph 6, for the reference to “Directive 76/118/EEC”⁽²⁴⁾ there is substituted a reference to “Directive 2001/114/EC”⁽²⁵⁾.

(5) In the Miscellaneous Food Additives Regulations 1995⁽²⁶⁾, 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⁽²⁷⁾.

⁽¹⁹⁾ S.I. 1977/928.

⁽²⁰⁾ S.I. 1982/1066.

⁽²¹⁾ S.I. 1986/2299.

⁽²²⁾ S.I. 1989/1959.

⁽²³⁾ S.I. 1995/3124.

⁽²⁴⁾ OJ No.L24, 30.1.1976, p.49.

⁽²⁵⁾ OJ No.L15, 17.1.2002, p.19.

⁽²⁶⁾ S.I. 1995/3187.

⁽²⁷⁾ 1998 c.38.

Date

The Presiding Officer of the National Assembly

SCHEDULE 1

Regulation 2

PARTLY OR WHOLLY DEHYDRATED PRESERVED MILK PRODUCTS AND THEIR RESERVED DESCRIPTIONS

<i>Column 1</i> <i>Reserved Descriptions</i>	<i>Column 2</i> <i>Designated Products</i>
<p>1. Partly dehydrated milk</p> <p><i>Types of unsweetened condensed milk</i></p> <p>(a) Condensed high-fat milk</p> <p>(b) Condensed milk</p> <p>(c) Condensed, partly skimmed milk</p> <p>(d) Condensed skimmed milk</p>	<p>Partly dehydrated milk containing, by weight, not less than 15% fat, and not less than 26.5% total milk solids.</p> <p>Partly dehydrated milk containing, by weight, not less than 7.5% fat, and not less than 25% total milk solids.</p> <p>Partly dehydrated milk containing, by weight, not less than 1% and less than 7.5% fat, and not less than 20% total milk solids.</p> <p>Partly dehydrated milk containing, by weight, not more than 1% fat, and not less than 20% total milk solids.</p>
<p><i>Types of sweetened condensed milk</i></p> <p>(e) Sweetened condensed milk</p> <p>(f) Sweetened condensed, partly skimmed milk</p> <p>(g) Sweetened condensed skimmed milk</p>	<p>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.</p> <p>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.</p> <p>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.</p>

<i>Column 1</i> <i>Reserved Descriptions</i>	<i>Column 2</i> <i>Designated Products</i>
<p>2. Totally dehydrated milk</p> <p>(a) Dried high-fat milk or high-fat milk powder</p> <p>(b) Dried whole milk or whole milk powder</p> <p>(c) Dried partly skimmed milk or partly skimmed-milk powder</p> <p>(d) Dried skimmed milk or skimmed-milk powder</p>	<p>Totally dehydrated milk containing, by weight, not less than 42% fat.</p> <p>Totally dehydrated milk containing, by weight, not less than 26% and less than 42% fat.</p> <p>Totally dehydrated milk with a fat content of more than 1.5% and less than 26% by weight.</p> <p>Totally dehydrated milk containing, by weight, not more than 1.5% fat.</p>

Notes:

1. Any designated product may contain any substance permitted pursuant to Council Directive 89/107/EEC on the approximation of laws of Member States concerning food additives authorised for use in foodstuffs intended for human consumption⁽²⁸⁾ and any vitamin.

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 specified in paragraph 1(e) to (g).

3. Without prejudice to the generality of Part V of the Dairy Products (Hygiene) Regulations 1995⁽²⁹⁾, the preservation of the designated products shall be achieved —

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

4. The levels of dry matter, moisture content, fat, sucrose, lactic acid and lactates and phosphatase activity in the designated products shall be determined in accordance with the methods set out in Directive 79/1067.

⁽²⁸⁾ OJ No. L40, 11.2.1989, p.27.

⁽²⁹⁾ S.I. 1995/1086, relevant amendment made by S.I. 1996/1699.

SCHEDULE 2

Regulation 2

ALTERNATIVES 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.
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%.