SCOTTISH STATUTORY INSTRUMENTS

2003 No. 311

FOOD

The Condensed Milk and Dried Milk (Scotland) Regulations 2003

Made - - - -	*11th June 2003*
Laid before the Scottish Parliament - - - -	*13th June 2003*
Coming into force - -	*17th July 2003*

The Scottish Ministers, in exercise of the powers conferred by sections 6(4), 16(1)(e), 17(1), 26(1) and (3) and 48(1) of the Food Safety Act 1990 [F1] and of all other powers enabling them in that behalf, having had regard in accordance with section 48(4A) [F2] of that Act to relevant advice given by the Food Standards Agency, and after consultation in accordance with section 48(4) and (4B) [F3] of that Act, hereby make the following Regulations:

F1 1990 c. 16; section 6(4) was amended by the Deregulation and Contracting Out Act 1994 (c. 40), **Schedule 9**, paragraph 6 and by the Food Standards Act 1999 (c. 28) ("the 1999 Act"), Schedule 5, paragraph 10(3); sections 16(1) and 48(1) were amended by the 1999 Act, Schedule 5, paragraph 8; section 17(1) was amended by the 1999 Act, Schedule 5, paragraphs 8 and 12; section 26(3) was amended by the 1999 Act, Schedule 6; amendments made by the 1999 Act shall be taken as pre commencement enactments for the purposes of the Scotland Act 1998 (c. 46) by virtue of section 40(2) of the 1999 Act. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

F2 Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.

F3 Section 48(4B) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Condensed Milk and Dried Milk (Scotland) Regulations 2003 and shall come into force on 17th July 2003.

(2) These Regulations shall extend to Scotland only.

Interpretation

2.—(1) In these Regulations–

"the Act" means the Food Safety Act 1990;

"catering establishment" 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" means any food specified in column 2 of Schedule 1 to these Regulations (as read with the Notes relating to that Schedule);

"Directive 79/1067/EEC" means First Commission Directive 1979/1067/EEC[F4] 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[F5] 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 [F6] signed at Oporto on 2nd May 1992 as adjusted by the Protocol [F7] signed at Brussels on 17th March 1993;

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

"partly dehydrated milk" means the liquid product, whether or not sweetened, obtained [F8]... 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 or both 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;

[[F9]"Regulation (EU) No 1169/2011" means Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, as last amended by Regulation (EU) 2015/2283 of the European Parliament and of the Council on novel foods;**]**

[F10]...

"reserved description", as respects any designated product, means any description specified in relation to that product in column 1 of Schedule 1 to these Regulations or any alternative description permitted by Schedule 2 to these Regulations and the use of any such description in these Regulations shall be construed as meaning the product to which that description relates;

"sell" includes offer or expose for sale or have in possession for sale and "sale" and "sold" 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 [F8]... 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.

F4 O.J. No. L 327, 24.12.79, p.29.
F5 O.J. No. L 306, 28.10.87, p.24.
F6 O.J. No. L 1, 3.1.94, p.1.

F7 O.J. No. L 1, 3.1.94, p.571.
F8 Word in reg. 2 omitted (22.2.2008) by virtue of The Condensed Milk and Dried Milk (Scotland) Amendment Regulations 2008 (S.S.I. 2008/12), regs. 1(1), **3**
F9 Words in reg. 2 inserted (28.3.2019) by The Food Standards and Hygiene (Miscellaneous Amendments) (Scotland) Regulations 2019 (S.S.I. 2019/33), regs. 1(1), **6(2)(a)**
F10 Words in reg. 2 omitted (28.3.2019) by virtue of The Food Standards and Hygiene (Miscellaneous Amendments) (Scotland) Regulations 2019 (S.S.I. 2019/33), regs. 1(1), **6(2)(b)**

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 **[**F11Regulation (EU) No 1169/2011**]**, no person shall sell any designated product unless it is marked or labelled with the following particulars:–

(a) a 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) in the case of the products specified in paragraph 1(a) to (g) of Schedule 1 to these Regulations, 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 to these Regulations, 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

(e) in the case of the products specified in paragraph 2(a) to (d) of Schedule 1 to these Regulations, that the product is "not intended as a food for infants under 12 months".

F11 Words in reg. 5 substituted (28.3.2019) by The Food Standards and Hygiene (Miscellaneous Amendments) (Scotland) Regulations 2019 (S.S.I. 2019/33), regs. 1(1), **6(3)**

Manner of marking or labelling

6.—F12(1) . . . . . .

(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 food.

(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.

F12 Reg. 6(1) omitted (28.3.2019) by virtue of The Food Standards and Hygiene (Miscellaneous Amendments) (Scotland) Regulations 2019 (S.S.I. 2019/33), regs. 1(1), **6(4)**

Penalties and enforcement

7.—(1) Any person who contravenes or fails to comply with regulations 4, 5 or 6(2) of these Regulations shall be guilty of an offence.

(2) A person found guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Each food authority shall enforce and execute these Regulations in its area.

Defence in relation to exports

F13 8. . . . . . .

F13 Reg. 8 revoked (1.1.2006) by The Official Feed and Food Controls (Scotland) Regulations 2005 (S.S.I. 2005/616), reg. 1(b), **sch. 6**

Transitional provision

9. In any proceedings for an offence under these Regulations it shall be a defence for the person charged 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 (Scotland) Regulations 1977 **F14** if those Regulations had been in force when the food was marked or labelled.

F14 S.I. 1977/1027; amended by S.I. 1982/1209, 1983/270, 1985/1068, 1987/26, 1989/1975, 1990/2625, 1991/1476, 1992/2596, 1995/3187 and 1996/1499.

Application of various provisions of the Food Safety Act 1990

10.—(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 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 (obstruction etc. of officers);

(h) section 35(1) to (3) (punishment of offences) insofar as it relates to offences under section 33(1) or (2) as applied by sub-paragraph (g) above;

(i) section 36 (offences by bodies corporate);

(j) section 36A [F15] (offences by Scottish partnerships); and

(k) section 44 (protection of officers acting in good faith).

(2) Section 29 of the Act (procurement of samples) 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.

F15 Section 36A was inserted by paragraph 16 of Schedule 5 to the 1999 Act.

Amendments and revocations

11.—(1) The following entries relating to the Condensed Milk and Dried Milk (Scotland) Regulations 1977 shall be omitted–

(a) in the Food and Drugs (Scotland) Act 1956 (Transfer of Enforcement Functions) Regulations 1983 [F16], in Schedule 1;

(b) in the Food (Revision of Penalties and Mode of Trial) (Scotland) Regulations 1985 [F17], in Schedules 1 and 2;

(c) in the Food Safety Act 1990 (Consequential Modifications) (Scotland) Order 1990 [F18], in Schedule 1, Part I, Schedule 2, Schedule 3, Part II and Schedules 5 and 8;

(d) in the Food Safety (Exports) Regulations 1991 [F19], in Schedule 2;

(e) in the Food (Forces Exemptions) (Revocations) Regulations 1992 [F20], in the Schedule, Part II;

(f) in the Miscellaneous Food Additives Regulations 1995 [F21], in regulation 10(7)and in Schedule 9;

(g) in the 1996 Regulations, in regulation 49(6); and

(h) in the Miscellaneous Food Additives (Amendment) Regulations 1999 [F22], in regulation 14(1).

(2) The Condensed Milk and Dried Milk (Scotland) Regulations 1977, the Condensed Milk and Dried Milk (Scotland) (Amendment) Regulations 1982 [F23], the Condensed Milk and Dried Milk (Scotland) (Amendment) Regulations 1987 [F24] and the Condensed Milk and Dried Milk (Scotland) (Amendment) Regulations 1989 [F25] are hereby revoked.

(3) In the Colours in Food Regulations 1995 [F26], in Schedule 2, paragraph 6, for "Directive 76/118/EC" substitute " Directive 2001/114/EC ".

(4) In the Miscellaneous Food Additives Regulations, in Schedule 7, in column 1, for "Partially dehydrated and dehydrated milk as defined in Directive 76/118/EEC" substitute " Partially dehydrated and totally dehydrated milk as defined in Directive 2001/114/EC ".

F16 S.I. 1983/270 to which there are amendments not relevant to these Regulations.
F17 S.I. 1985/1068 to which there are amendments not relevant to these Regulations.
F18 S.I. 1990/2625 to which there are amendments not relevant to these Regulations.
F19 S.I. 1991/1476 to which there are amendments not relevant to these Regulations.