STATUTORY INSTRUMENTS

# 2015 No. 675

# FOOD, ENGLAND

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

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| *Made - - - -* | *10th March 2015* |
| *Laid before Parliament* | *13th March 2015* |
| *Coming into force - -* | *6th April 2015* |

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(**1**) and now vested in the Secretary of State(**2**), and paragraph 1A of Schedule 2 to, the European Communities Act 1972(**3**).

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(**4**).

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(**5**).

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

(**1**) 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 Section 26(3) was partially repealed by the 1999 Act, Schedule 6.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.

(**2**) 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.

(**3**) 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.

(**4**) S.I. 2005/2766, to which there are amendments not relevant to these Regulations.

(**5**) Section 48(4A) was inserted by the Food Standards Act 1999, Schedule 5, paragraph 21.

food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(**6**), 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.

**Commencement Information**

**I1** Reg. 1 in force at 6.4.2015, see **reg. 1(1)**

### 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.

(**6**) 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).

(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(**7**);

(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(**8**);

(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(**9**);

(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(**10**).

**Commencement Information**

**I2** Reg. 2 in force at 6.4.2015, see **reg. 1(1)**

### 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.

**Commencement Information**

**I3** Reg. 3 in force at 6.4.2015, see **reg. 1(1)**

### 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—

(**7**) 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).
(**8**) 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).
(**9**) OJ No L 327, 24.12.79, p 29.
(**10**) OJ No L 306, 28.10.87, p 24.

(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".

**Commencement Information**

**I4** Reg. 4 in force at 6.4.2015, see **reg. 1(1)**

### 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.

**Commencement Information**

**I5** Reg. 5 in force at 6.4.2015, see **reg. 1(1)**

### 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) 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.

**Commencement Information**

**I6** Reg. 6 in force at 6.4.2015, see **reg. 1(1)**

### 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).

**Commencement Information**

**I7** Reg. 7 in force at 6.4.2015, see **reg. 1(1)**

### Revocations

**8.** The following Regulations are revoked—

(a) the Condensed Milk and Dried Milk (England) Regulations 2003(**11**);

(b) the Condensed Milk and Dried Milk (England) (Amendment) Regulations 2008(**12**).

**Commencement Information**

**I8** Reg. 8 in force at 6.4.2015, see **reg. 1(1)**

### 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(**13**) (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.

(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.

(**11**) S.I. 2003/1596, amended by S.I. 2005/2626, 2006/14, 2008/85 and 2009/3238.
(**12**) S.I. 2008/85.
(**13**) 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).