STATUTORY RULES OF NORTHERN IRELAND

2003 No. 300

FOOD

Condensed Milk and Dried Milk Regulations (Northern Ireland) 2003

Made - - - -	*10th June 2003*
Coming into operation	*21st July 2003*

The Department of Health, Social Services and Public Safety(**1**) in exercise of the powers conferred on it by Articles 15(1)(e), 16(1), 25(1) and (3), 26(3) and 47(2) of the Food Safety (Northern Ireland) Order 1991(**2**) and of all other powers enabling it in that behalf, having had regard in accordance with Article 47(3A) of the said Order 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 Article 47(3) and (3B) of the said Order, hereby makes the following Regulations: –

Citation and commencement

1. These Regulations may be cited as the Condensed Milk and Dried Milk Regulations (Northern Ireland) 2003 and shall come into operation on 21st July 2003.

Interpretation

12. In these Regulations –

"the 1996 Regulations" means the Food Labelling Regulations (Northern Ireland) 1996(**4**);

"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;

(**1**) Formerly the Department of Health and Social Services; *see*S.I.1999/283 (N.I. 1), Article 3
(**2**) S.I. 1991/762 (N.I. 7) as amended by S.I. 1996/1633 (N.I. 12) and paragraphs 26 to 42 of Schedule 5 and Schedule 6 to the Food Standards Act 1999 c. 28
(**3**) O.J. No. L31, 1.2.2002, p. 1
(**4**) S.R. 1996 No. 383; the relevant amending Regulations are S.R. 1998 No. 253, S.R. 1999 Nos. 143, 242 and 286, S.R. 2000 Nos. 189 and 303, S.R. 2001 No. 45 and S.R. 2003 No. 159

"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(**5**) 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(**6**) 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(**7**) signed at Oporto on 2nd May 1992 as adjusted by the Protocol(**8**) signed at Brussels on 17th March 1993;

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

"the Order" means the Food Safety (Northern Ireland) Order 1991;

"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 those products and includes such a product to which cream or totally dehydrated milk has 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;

"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;

"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 directly by the removal of water from milk, from wholly or partly skimmed milk, from cream or from 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; 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 the 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;

(**5**) O.J. No. L327, 24.12.1979, p. 29
(**6**) O.J. No. L306, 28.10.1987, p. 24
(**7**) O.J. No. L1, 3.1.94, p. 1
(**8**) O.J. No. L1, 3.1.94, p. 571

(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 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) 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) need appear on the outer packaging only.

Penalties and enforcement

7.—(1) If any person contravenes regulation 4 or 5 he 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 district council shall enforce and execute these Regulations within its district.

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(**9**) relating to certain partly or wholly dehydrated preserved milk for human consumption.

Application of provisions of the Order

9. The following provisions of the Order shall apply for the purposes of these Regulations and any reference in those provisions to the Order shall be construed for the purposes of these Regulations as a reference to these Regulations –

(a) Articles 2(4) and 3 (extended meaning of "sale" etc.);

(b) Article 4 (presumptions that food intended for human consumption);

(c) Article 19 (offences due to fault of another person);

(d) Article 20 (defence of due diligence) as it applies for the purposes of Article 7, 13 or 14 of the Order;

(e) Article 21 (defence of publication in the course of a business);

(f) Article 30(8) (which relates to documentary evidence);

(g) Article 34 (obstruction, etc., of officers);

(h) Article 36 (punishment of offences) in so far as it relates to offences under Article 34(1) and (2) as applied by paragraph (g).

(2) Article 29 of the Order (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 under that Article and the duties of such an officer under any regulations made under the Order, 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 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 (5).

(2) The following entries relating to the Condensed Milk and Dried Milk Regulations (Northern Ireland) 1977(**10**) shall be omitted –

(a) in the Food (Revision of Penalties and Mode of Trial) Regulations (Northern Ireland)1987(**11**), in Schedule 1;

(b) in the Food Safety (Northern Ireland) Order 1991 (Consequential Modifications) Order (Northern Ireland) 1991(**12**), in Schedule 1, Part I, and in Schedules 2, 3 and 5;

(c) in the Food Safety (Exports) Regulations (Northern Ireland) 1991(**13**), in the Schedule;

(d) in the Food (Forces Exemptions) (Revocations) Regulations (Northern Ireland) 1992(**14**), in the Schedule;

(e) in the Miscellaneous Food Additives Regulations (Northern Ireland) 1996, in Schedule 9;

(**9**) O.J. No. L15, 17.1.2002, p. 19, as adopted by the EEA Joint Committee Decision No. 99/2002 (O.J. No. L298, 31.10.2002, p. 10)
(**10**) S.R. 1977 No. 196, as amended by S.R. 1981 No. 305, S.R. 1987 No. 65, S.R. 1989 No. 430, S.R. 1991 Nos. 203 and 344, S.R. 1992 No. 464 and S.R. 1996 Nos. 50 and 383
(**11**) S.R. 1987 No. 38
(**12**) S.R. 1991 No. 203
(**13**) S.R. 1991 No. 344
(**14**) S.R. 1992 No. 464