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STATUTORY INSTRUMENTS

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**2008 No. 85**

**FOOD, ENGLAND**

**The Condensed Milk and Dried Milk  
(England) (Amendment) Regulations 2008**

<i>Made</i>	- - - -	<i>15th January 2008</i>
<i>Laid before Parliament</i>		<i>22nd January 2008</i>
<i>Coming into force</i>	- -	<i>22nd February 2008</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 16(1)(e), 17(1) and 48(1) of the Food Safety Act 1990<sup>(1)</sup>, and now vested in him<sup>(2)</sup>.

In accordance with section 48(4A) of that Act, he has had regard to relevant advice given by the Food Standards Agency.

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 food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety<sup>(3)</sup>, there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

**Title application and commencement**

1. These Regulations may be cited as the Condensed Milk and Dried Milk (England) (Amendment) Regulations 2008, apply in relation to England only and come into force on 22nd February 2008.

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- (1) 1990 c. 16. Section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990. Sections 17 and 48 were amended by paragraphs 12 and 21 respectively of Schedule 5 to the Food Standards Act 1999 (1999 c.28), (“the 1999Act”). Section 48 was also amended by S.I. 2004/2990. Section 53(2) was amended by paragraph 19 of Schedule 16 to the Deregulation and Contracting Out Act 1994 (1994 c.40), Schedule 6 to the 1999 Act and S.I. 2004/2990.
- (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 paragraph 8 of Schedule 5 to the 1999 Act. Those functions, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act, and thereafter transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (2006 c.32). Those functions, so far as exercisable in relation to Scotland, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (1998 c. 46) as read with section 40(2) of the 1999 Act.
- (3) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Commission Regulation (EC) No. 575/2006 (OJ No. L100, 8.4.2006, p.3).

**Amendment of the Condensed Milk and Dried Milk (England) Regulations 2003**

2. The Condensed Milk and Dried Milk (England) Regulations 2003(4) are amended in accordance with regulations 3 and 4.

3. In regulation 2 (interpretation), the word “directly” is omitted from the definitions of “partly dehydrated milk” and “totally dehydrated milk”.

4. In the Notes to Schedule 1 (partly or wholly dehydrated preserved milk products and their reserved descriptions) —

(a) For Note 1 substitute the following —

“1. Authorised additions and raw materials:

(a) 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(5) and vitamins and minerals in accordance with the requirements of 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(6).

(b) Authorised raw materials for protein adjustment purposes referred to in Note 4 are as follows:

(i) Milk retentate, which is the product obtained by concentrating milk protein by ultra filtration of milk, partly skimmed milk or skimmed milk;

(ii) Milk permeate, which is the product obtained by removing milk proteins and milk fat from milk, partly skimmed milk or skimmed milk by ultra filtration; and

(iii) Lactose, which is a natural constituent of milk normally obtained from whey with an anhydrous lactose content of not less than 99.0% m/m on a dry basis. It may be anhydrous or contain one molecule of water of crystallisation or be a mixture of both forms.”.

(b) In Note 3, for the words before the first indent substitute the following —

“3. Without prejudice to Regulation (EC) No. [853/2004](#) of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin(7), the preservation of the designated products shall be achieved—”.

(c) For Note 4 substitute the following —

“4. Without prejudice to the compositional requirements set out in the table above, the protein content of milk may be adjusted to a minimum content of 34% by weight (expressed on fat-free dry matter) by the addition and/or withdrawal of milk constituents in such a way as not to alter the ratio of whey protein to casein in the milk being adjusted.”.

(d) As Note 5 add the following —

“5. 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/EEC](#).”.

(4) [S.I. 2003/1596](#), as amended by [S.I. 2006/14](#); there are other amending instruments but none is relevant.

(5) OJ No. L40, 11.2.1989, p.27. This Directive was last amended by Regulation (EC) No. [1882/2003](#) of the European Parliament and of the Council (OJ No. L284, 31.10.2003, p.1).

(6) OJ No. L404, 30.12.2006, p.26.

(7) OJ No. L139, 30.4.2004, p.55. The corrected version was set out in a corrigendum (OJ No. L226, 25.6.2004, p.22). The Regulation was last amended by Council Regulation (EC) No. [1791/2006](#) (OJ No. L363, 20.12.2006, p.1).

### **Consequential amendments**

5. In the Colours in Food Regulations 1995(8), in so far as they apply in relation to England, in paragraph 6 of Schedule 2, after the expression “Directive 2001/114/EC” add the words “as amended by Directive 2007/61/EC(9)”.

6. In the Miscellaneous Food Additives Regulations 1995(10), in so far as they apply in relation to England, in column 1 of Schedule 7, after the expression “Partially dehydrated and totally dehydrated milk as defined in Directive 2001/114/EC” add the words “as amended by Directive 2007/61/EC(11)”.

Signed by authority of the Secretary of State for Health

15th January 2008

*Dawn Primarolo*  
Minister of State  
Department of Health

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(8) S.I. 1995/3124, amended by S.I. 2003/1596; there are other amending instruments but none is relevant.

(9) OJ No. L258, 4.10.2007, p.27.

(10) S.I. 1995/3187, as amended by S.I. 2003/1596; there are other amending instruments but none is relevant.

(11) OJ No. L258, 4.10.2007, p.27.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

1. These Regulations, which apply in relation to England only, further amend the Condensed Milk and Dried Milk (England) Regulations 2003 (S.I. 2003/1596) (“the 2003 Regulations”). They make provision 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 (OJ No. L258, 4.10.2007, p.27).

2. These Regulations amend the definitions of partly dehydrated milk and totally dehydrated milk in the 2003 Regulations (*regulation 3*).

3. These Regulations also make certain amendments to the Notes to Schedule 1 of the 2003 Regulations, in particular amending Notes 1 and 3, introducing a new Note 4 and re-numbering the former Note 4 as Note 5 (*regulation 4*).

4. The Regulations make a consequential amendment to the Colours in Food Regulations 1995 (S.I. 1995/3124) (*regulation 5*) and to the Miscellaneous Food Additives Regulations (S.I. 1995/3187) (*regulation 6*).

5. A full regulatory assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Food Law Policy Division of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.