

2008 No. 12

FOOD

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

<i>Made</i> - - - -	<i>21st January 2008</i>
<i>Laid before the Scottish Parliament</i>	<i>22nd January 2008</i>
<i>Coming into force</i> - -	<i>22nd February 2008</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 16(1)(a) and (e), 17(1) and 48(1) of the Food Safety Act 1990(a) and all other powers enabling them to do so.

In accordance with section 48(4A) of that Act the Scottish Ministers have had regard to relevant advice given by the Food Standards Agency(b).

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

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Condensed Milk and Dried Milk (Scotland) Amendment Regulations 2008, and come into force on 22nd February 2008.

(2) These Regulations extend to Scotland only.

Amendment of the Condensed Milk and Dried Milk (Scotland) Regulations 2003

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

(a) 1990 c.16; section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990; sections 16 and 48(1) were amended by the Food Standards Act 1999 (c.28) (“the 1999 Act”), Schedule 5, paragraph 8; section 17 was amended by the 1999 Act, Schedule 5, paragraphs 8 and 12; section 48(4) is disappplied in respect of these Regulations by virtue of section 48(4C) which was inserted by S.I. 2004/2990; amendments made by Schedule 5 to the 1999 Act should be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c.46) (“the 1998 Act”) by virtue of section 40(2) of the 1999 Act. The functions of the Secretary of State, in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. In so far as not so transferred those functions were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849).

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

(c) O.J. No. L 31, 1.2.02, p.1. The Regulation was amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (O.J. No. L 245, 29.9.03, p.4) and Commission Regulation (EC) No. 575/2006 (O.J. No. L 100, 8.4.06, p.3).

(d) S.S.I. 2003/311. The Regulations have been amended by S.S.I. 2003/492, 2004/395, 2005/616 and 2006/3.

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. 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.”.

(b) for Note 2 substitute the following–

“2. 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(a) 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(b).

(b) Authorised raw materials for protein adjustment purposes referred to in Note 1 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.”.

(c) at the beginning of Note 4 insert “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(c)”.

Consequential amendments

5. In the Colours in Food Regulations 1995(d), in paragraph 6 of Schedule 2, after the words “Directive 2001/114/EC” add the words “as amended by Directive 2007/61/EC(e)”.

(a) O.J. No. L 40, 11.2.89, p.27. This Directive was amended by European Parliament and Council Directive 94/34/EC (O.J. No. L 237, 10.9.94, p.1) and Regulation (EC) No. 1882/2003 of the European Parliament and of the Council (O.J. No. L 284, 31.10.03, p.1).

(b) O.J. No. L 404, 30.12.06, p.26.

(c) O.J. No. L 139, 30.4.04, p.55. The revised text of Regulation (EC) No. 853/2004 is now set out in a Corrigendum (O.J. No. L 226, 25.6.04, p.22). The Regulation was amended by Regulation 2074/2005 (O.J. No L338, 22.12.05, p.27), Regulation 2076/2005 (O.J. No. L 338, 22.12.05, p.83) , Commission Regulation (EC) No. 1662/2006 (O.J. No. L 320, 18.11.06, p.1) and Council Regulation (EC) No. 1791/2006 (O.J. No. L 363, 20.12.06, p.1).

(d) S.I. 1995/3124. The words “Directive 2001/114/EC” were substituted by S.S.I. 2003/311. There are other amendments not relevant to these Regulations.

(e) O.J. No. L 258, 4.10.07, p.27.

6. In the Miscellaneous Food Additives Regulations 1995^(a), in column 1 of Schedule 7, after the words “Partially dehydrated and totally dehydrated milk as defined in Directive 2001/114/EC” add the words “as amended by Directive 2007/61/EC^(b)”.

SHONA ROBISON

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
21st January 2008

(a) S.I. 1995/3187. The entry for milk in Schedule 7 of these Regulations was substituted by S.S.I. 2003/311. There are other amendments not relevant to these Regulations.
(b) O.J. No. L 258, 4.10.07, p.27.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, implement Council Directive 2007/61/EC by amending the Condensed Milk and Dried Milk (Scotland) Regulations 2003 (“the Principal Regulations”).

The Regulations amend the definitions of partly dehydrated milk and totally dehydrated milk in the Principal Regulations (*regulation 3*).

The Regulations make amendments to the Notes to Schedule 1 of the Principal Regulations (*regulation 4*). Those amendments relate to the adjustment of protein content of partly dehydrated milk and totally dehydrated milk, the materials that can be used for adjusting protein content and the substances that can be added to these milks.

The Regulations make consequential amendments to the Colours in Food Regulations 1995 and the Miscellaneous Food Additives Regulations 1995 (*regulations 5 and 6*).

A full regulatory impact assessment of the effect that these Regulations will have on business costs has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Food Standards Agency, 6th Floor, St Magnus House, 25 Guild Street, Aberdeen, AB11 6NJ.

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