

Explanatory Memorandum to the Condensed Milk and Dried Milk (Wales) Regulations 2018

This Explanatory Memorandum has been prepared by the Food Standards Agency and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Member's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Condensed Milk and Dried Milk (Wales) Regulations 2018.

Vaughan Gething AM
Cabinet Secretary for Health and Social Services

5 March 2018

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1. Description

The Regulations revoke and replace the Condensed Milk and Dried Milk (Wales) Regulations 2003, principally in order to correct outdated references to other legislation. Currently, the 2003 Regulations refer to the labelling requirements of the Food Labelling Regulations 1996. However, the Food Labelling Regulations 1996 were revoked by the Food Information (Wales) Regulations 2014 so the references to the Food Labelling Regulations need to be removed. The Regulations also allow enforcement authorities to issue improvement notices for non-compliance with specified requirements instead of bringing criminal prosecutions and make provision about Welsh language labelling.

2. Matters of Special Interest to the Constitutional Affairs Committee

None.

3. Legislative Background

The Welsh Ministers have the required powers to make these amending Regulations under sections 6(4), 16(1), 17(1) and (2), 26(1) and (3), and 48(1) of the Food Safety Act 1990.

The powers given by these sections, which were vested in UK Government Ministers prior to devolution, were transferred to the National Assembly for Wales in 1999 by the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) and were subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

The Regulations will be made by statutory instrument subject to the negative resolution procedure.

4. Purpose and Intended Effect of the Legislation

The Condensed Milk and Dried Milk (Wales) Regulations 2003 (“the 2003 Regulations”) transpose the requirements of Directive 2001/114/EC relating to certain partly or wholly dehydrated preserved milk for human consumption. Preserved milks are essentially liquid milks preserved in powdered/dehydrated, evaporated or condensed form which, apart from blending with other milks, have not otherwise had their composition altered.

The 2003 Regulations lay down specifications for preserved milk governing composition, use of reserved descriptions, manufacturing specification and labelling of products.

Incorrect references to the Food Labelling Regulations 1996

Currently, the 2003 Regulations refer to the labelling requirements of the Food Labelling Regulations 1996. However, the Food Labelling Regulations 1996 were revoked by the Food Information (Wales) Regulations 2014. The references to the Food Labelling Regulations in the 2003 Regulations therefore need to be revoked.

Introduction of improvement notices

The 2003 Regulations provide that it is a criminal offence to fail to comply with the 2003 Regulations' requirements on the use of reserved descriptions and on labelling. Conviction is punishable by a fine to be determined by the magistrates (with no maximum fine level).

The Condensed Milk and Dried Milk (Wales) Regulations 2018 will amend the current regulatory regime to allow enforcement officers to issue improvement notices for non-compliance, instead of proceeding to criminal prosecutions. A food business operator who fails to comply with the requirements of the improvement notice will be guilty of a criminal offence and may be prosecuted for not complying with the notice. This would follow the approach introduced in a number of food SIs for non-safety related offences.

Making provision for Welsh language labelling

The 2003 Regulations are silent as to whether manufacturers may display the Welsh language equivalent of the reserved descriptions alongside the mandatory English language text.

The 2018 Regulations will introduce provision to make clear that the reserved description may be displayed in Welsh (or any other language) alongside the English text, and will set out what those Welsh reserved descriptions are.

5. Consultation

A public consultation exercise was carried out by the Food Standards Agency from 9 November 2017 to 21 December 2017. There were no responses to the consultation, as a result there are no changes required to the Regulations.

6. Regulatory Impact Assessment

A Regulatory Impact Assessment has not been prepared to accompany these Regulations as there are no changes to the current controls and therefore no identified costs to consumers, businesses or enforcement authorities associated with implementation of these Regulations.