

Explanatory Memorandum to the Condensed Milk and Dried Milk (Wales) (Amendment) Regulations 2008

This Explanatory Memorandum has been prepared by the Food Standards Agency Wales and is laid before the National Assembly for Wales.

Description

These regulations implement European Commission Directive 2007/61/EC which amends Directive 2001/114/EC relating to certain partly or wholly dehydrated preserved milk for human consumption. The proposed amendments to domestic legislation will allow the protein content of dried or condensed milk to be standardised in line with CODEX Standards on preserved milks (milk powder and condensed milk) in place since 1999.

Matters of special interest to the Subordinate Legislation Committee

None.

Legislative Background

The powers enabling the Regulations to be made are contained in sections 16 (1) (e), 17(1) and 48(1) of The Food Safety Act 1990 and section 2(2) of the European Communities Act 1972 by virtue of them being designated in relation to measures relating to food (including drink). These are exercisable by Welsh Ministers. The Regulations are subject to the negative resolution procedure.

Purpose and Intended effect of the legislation

The EU has introduced a policy on simplification and better regulation which has the aim of reducing red tape. The UK is fully supportive of this policy. It was under the EU's simplification and better regulation policy that the Commission published its proposals known as the "mini dairy package"¹: amendments to three Directives relating to the dairy industry.

The particular element of the "mini dairy package" which is the subject of these regulations will give Member States the ability to "standardise" (modify) the protein content of preserved milks (powdered / dehydrated, evaporated or condensed milks). This is known as protein standardisation².

Milk protein is a high value commodity. At present the natural protein content of EU produced preserved milks must be maintained, which means that Member States cannot benefit from extracting protein from their milk. The

¹ http://www.europarl.europa.eu/news/expert/infopress_page/032-10005-246-09-36-904-20070823IPR09768-03-09-2007-2007-false/default_en.htm

² <http://www.food.gov.uk/foodindustry/regulation/europeleg/euupdates/milkupdate0703>

practice of removing protein from milks has been allowed internationally since 1999, when Codex standards for preserved milks were published, allowing the modification of the protein content of preserved milks to 34% by weight (expressed on fat free dry matter).

The publication of the amended Directive which allows preserved milks to have a protein content of at least 34% by weight (expressed on fat free dry matter), will allow the EU dairy sector to benefit economically, as they will be able to extract and subsequently use milk protein for the production of other fresh produce such as cheese, or sell the milk protein to third party countries.

This change will have no impact on consumer interests but is in line with the better regulation agenda to simplify legislation, where possible, without removing the protection it affords.

The amendment to Directive 2001/114/EC also sets out the revised descriptions for “totally” and “partially dehydrated milk” and sets out the permitted methods for protein standardisation.

The proposed Regulations will, in Wales, implement Directive 2007/61/EC amending Directive 2001/114/EC relating to certain partly or wholly dehydrated preserved milk for human consumption by amendment of the Condensed Milk and Dried Milk (Wales) Regulations 2003. In summary, the Regulations:

- Permit the standardisation of the protein content of preserved milk to 34% in line with internationally agreed standards (CODEX³). The authorised raw materials for protein adjustment processes are listed.
- Revise the definitions of ‘totally dehydrated milk’ and ‘partially dehydrated milk’
- Now make reference to Regulation (EC) No. 1925/2006/EC on the addition of vitamins and minerals and of certain other substances to foods in the context of authorised additions to condensed and dried milk

Background

In Wales, The Condensed Milk and Dried Milk (Wales) Regulations 2003⁴ define “partly dehydrated” and “totally dehydrated” milk and implement

³ The codex alimentarius commission was created in 1963 by FAO and WHO, to develop food standards, guidelines and related text such as codes of practice under the Joint FAO/WHO Foods Standards Programme. The main purposes of this Programme are protecting the health of the consumers and ensuring fair trade practices in the food trade, and promoting coordination of all foods standards work undertaken by international governmental and non-governmental organisations.

⁴ Statutory Instrument 2003 No.3053 (W.291)

the requirements of Directive 2001/114/EC, relating to certain partly or wholly dehydrated preserved milk for human consumption⁵. They also lay down specifications for preserved milk governing composition, use of reserved descriptions, manufacturing specification and labelling of products. They list the permitted modifications to dried and condensed milk and lay down definitions and common rules governing the composition, manufacturing specifications and the labelling of “certain partly or wholly dehydrated preserved milk” for human consumption, so as to ensure their free movement within the Community.

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. Products such as powdered / dehydrated milks are primarily intended for reconstitution with water to result in a product similar to fresh liquid milk. They are also used as an ingredient in numerous food products.

Protein standardisation involves changing the protein content of preserved milks to a standard value, in this case 34% by weight (expressed on fat free dry matter). The protein content of milk varies according to season and bovine diet therefore, in practice, for UK producers this means the lowering of protein levels. The average protein level of milk in the UK from August 2006 – August 2007 inclusive, was 37.5%.⁶

The ability to standardise the protein content of milk has long been requested by EU producers, as EU produced milk tends to have a higher protein content ⁷ (31 – 37%) than milk produced in third party countries (countries that produce milk outside of the EU). This is particularly important when considering the UK export market for preserved milks such as milk powders. The ability to remove protein from preserved milks will benefit UK industry as any protein extracted can be used to manufacture other dairy produce. Thus providing an additional revenue stream for the dairy industry. In addition, protein standardisation will allow the manufacture and export of a product with a consistent protein content as specified by a third country customer. Currently preserved milk is produced with a protein content exceeding customers' specification, thus the excess protein is not being utilised, and the resultant selling price may not be competitive, leading to loss of business.

Currently, six businesses (3 in England and 3 in Northern Ireland) manufacture preserved milk in the UK. In 2005, 36,000 tonnes of skimmed milk powder was exported from the UK⁸. The UK Dairy Industry comprises of 20,313 dairy farms. In 2006, 77,000 tonnes of skimmed milk powder, 52,000 tonnes of whole milk powder and 142,000 tonnes of concentrated milks were

⁵ OJ No.L15, 17.1.2002, p.19 as adopted by the EEA Joint Committee Decision No.99/2002 (OJ No. L298, 31.10.2002, p.10)

⁶ Dairy UK, October 2007

⁷ European Parliament Report on the proposal for a Council directive amending Directive 2001/114/EC <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A6-2007-0282+0+DOC+XML+V0//EN>.

⁸ Milk Development Council, October 2006

produced. Exports are valued at EUR 1,030 million⁹. The UK has the third largest dairy industry in Europe.¹⁰ The market for skimmed milk powder for 2008 is envisaged to be firm so long as supply and demand conditions remain or exceed those figures during 2006.¹¹

The ability to modify the protein content of preserved milk is not expected to have an adverse effect on the consumer, in terms of health or purchasing patterns. In the UK, preserved milks do not form as significant a part of the diet as fresh liquid milk. During 2005/2006, the average figure for purchases of liquid whole milk (including school milk, full price and welfare milk), skimmed and other milks (including milk drinks) was 1657 millilitres (ml) per person per week, whereas the average figure for purchases of condensed, evaporated, instant dried and dried milk products was 31 ml per person per week¹², or just 1.8% of the weekly milk intake. Therefore, consumption of preserved milks is very low in the UK compared to fresh milk as shown by the National Statistics Expenditure and Food Survey¹³ data. In addition protein intakes in the UK are well above Dietary Reference Values in all age groups and there is no evidence of low intakes¹⁴. Milk (excluding cheese) provides around 10% of protein intake in the UK - the major contributors to protein intake are meat and meat products and cereals and cereal products¹⁵. As such, any possible reduction in the protein content of preserved milks on the UK market is not envisaged as having an adverse affect on the protein intake of the average consumer.

A leading UK Dairy processor has estimated that an annual revenue of at least £1million might be achieved¹⁶ as a result of the ability to standardise the protein content of preserved milk.

Implementation

Member States have been given until 31 August 2008 to bring in to force their own domestic legislation implementing the requirements of Directive 2007/61/EC. The UK dairy industry has specifically requested that the Agency amend domestic legislation as soon as possible in order for them to be able to take advantage of the provisions which will allow the protein content of preserved milks to be modified. Currently the natural protein content of collected milk must be maintained.

It is intended that these regulations will come into force on 22 February 2008. Parallel legislation will also come into force in England and Northern Ireland on 22 February 2008. The Scottish Regulations will come into force slightly later.

⁹ European Dairy Magazine, 2007, The Future of the UK Dairy Industry.

¹⁰ Troisième producteur de lait en Europe. (UK dairy industry.) RLF (Revue Laitière Française) 2007

¹¹ Dairy Supply Chain Margins – October 2006, Milk Development Council

¹² Family Food in 2005-06 - A National Statistics Publication by Defra , 2007 The Stationery Office

¹³ <http://www.statistics.gov.uk/about/services/UnpublishedData/ssd/efs.asp>

¹⁴ Diet and Nutrition Surveys Branch, Nutrition Division, Food Standards Agency October 2007

¹⁵ Diet and Nutrition Surveys Branch, Nutrition Division, Food Standards Agency October 2007

¹⁶ Dairy UK, October 2007

Consultation

Full details of the consultation undertaken are included in the Regulatory Impact Assessment below.

Regulatory Impact Assessment

Options

Option 1 – Implement the Directive

Option 2 – Do nothing

Analysis of options

Option 1 (amend the Regulations and apply the 34% standardisation to milk protein)

This would ensure continuing compliance with EU law and would help businesses take advantage of additional revenue brought about by the protein extracted from fresh milk destined to be manufactured into preserved milks.

Option 2 (do nothing)

This would breach an EU obligation and leave the UK open to infraction proceedings by the Commission. It would also not allow UK business' to benefit from protein standardisation as the natural protein content of collected milk would have to be maintained.

Costs and Benefits

Business sectors affected

The businesses affected would be those engaged in the production and marketing of those partly and wholly dehydrated preserved milks covered by the Directive.

Benefits

Option 1 (amend the Regulations and apply the 34% standardisation to milk protein)

Consumers will not gain significant additional benefit from the new regulations; however, they may be able to benefit from potentially lower prices of preserved milks such as skimmed milk powder, forecasted by Defra to be equivalent to 17p per person.¹⁷ - Please refer to the scenario in Annex

¹⁷ Defra, Agricultural and Economic Unit October 2007

A. Consumers will not be adversely affected in terms of their health; due to the consumption frequency patterns of preserved milks. The protein standardisation of condensed and dried milks in the UK is not envisaged as having a major impact on the nutrition of the nation and is neither seen to affect the purchasing behaviour of consumers of preserved milks.

Producers will be more affected by the proposed Regulation. Producers who choose to modify the protein content of their milk will potentially benefit from being able to utilise any extracted protein for use in the production of other fresh dairy produce or by selling the extracted milk protein. It is currently not possible to fully quantify benefits as protein standardisation is an option *per se* – and is dependent upon the protein level of milk used for the production of preserved milks. However, based on Defra's modelling in Annex A, it is expected that the annual benefits could range from £0 -£47.5 million.

Option 2 (do nothing)

This option will not generate any incremental benefit to consumer or business.

Costs for businesses, charities and voluntary organisations

Option 1 (amend the Regulations and apply the 34% standardisation to milk protein)

Compliance Costs

Condensed and dried milk intended for human consumption are already subject in Wales to the Condensed Milk and Dried Milk Regulations (Wales) 2003 and the general labelling provisions of the Food Labelling Regulations 1996. The changes are not envisaged to have an adverse effect on the costs associated with labelling, as any labelling changes will be made on a commercial basis.

Dairy Producers / Processors may have to invest in specialist equipment in order to modify and monitor the protein content of preserved milks. Therefore they are provided the market flexibility to seek to alter protein levels in preserved milks as they commercially see fit.

In addition, as milk production varies from season to season, if UK produced milk does not contain high enough yields of protein due to season / diet / lower milk production – then any potential monies invested in obtaining equipment for protein standardisation may not be recouped.

It is not anticipated that these regulations would affect charities and voluntary organisations.

Familiarisation Costs

There are 469 local authorities in the UK¹⁸, based on allowing 2 people 1 hour to read the new legislation at a rate of £19.90¹⁹, it would cost £18,666.20. There are 6 businesses involved in the production of preserved milks (none of which are based in Wales). Based on allowing 2 people 1 hour to read the new legislation at a rate of £11.19²⁰, it would cost £134.28. Therefore based on these figures the total cost would be £18,800.48. Based on there being 22 local authorities in Wales and no businesses in Wales involved in the production of preserved milks the equivalent figure in Wales would be £875.60.

Costs for a typical business

As noted previously, industry are provided the market flexibility to seek to alter protein levels in preserved milks as they commercially see fit, it is not a mandatory requirement therefore any incremental costs salient to this Impact Assessment are zero.

Option 2 (do nothing)

This option will not generate any incremental costs to consumer or business.

Competition Assessment

By removing a regulatory requirement which prevented the protein levels of preserved milk from being altered, the change to domestic legislation will now allow protein extracted from UK milk to be used more effectively. This change is expected to allow UK companies to be more pro-competitive in world markets and may lead to lowering the price of milk protein for all companies.

Consultation in Wales

The “dairy package” proposals were first issued for consultation by Defra (and Agriculture departments in Scotland, Wales and Northern Ireland) in April 2007. In Wales this consultation was conducted by the National Assembly for Wales²¹.

The proposal for an amendment to Directive 2001/114/EC²² which was issued for consultation by the Welsh Assembly Government (and the other UK departments) is identical to Directive 2007/61/EC, aside from the addition of a reference to Regulation EC 1925/2006 *on the addition of vitamins and minerals and of certain other substances to foods*.

¹⁸ Food Standards Agency, Enforcement Division – November 2007

¹⁹ 2006 Annual Survey of Hours and Earnings (ASHE) Analysis by Government Office Region by Occupation

- UK Business And Public Service Professionals (National Audit Office)

²⁰ 2006 Annual Survey of Hours and Earnings (ASHE) Analysis by Industry - UK Manufacture of food products and beverages (National Audit Office)

²¹ <http://new.wales.gov.uk/consultations/closed/envandcouncloscons/1313310/?lang=en>

²² COM/2007/0058 final-CNS 2007/0025

[http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007PC0058\(01\):EN:HTML](http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007PC0058(01):EN:HTML)

Responses to the consultations were broadly supportive (apart from one objection to the whole package on principle), and the comments received helped to inform the UK's negotiating position during a technical Council Working Group at the EU Special Committee for Agriculture and in the Agriculture Council.

The Food Standards Agency Wales carried out a 6 week consultation on the draft amending regulations between 21 November and 2 January 2008. Parallel consultations were conducted in England, Scotland and Northern Ireland.

Stakeholders, including industry, enforcement and consumer representatives were invited to comment on the draft Regulations, and the draft Regulatory Impact Assessment. The consultation package was also posted on the Agency's website.

Four responses UK wide were received in total (three from Industry and one from Local Government). No objections were raised towards the new Regulations; the main UK wide industry body is highly supportive, one Welsh respondent had no comment, another raised concerns with potential increased costs to their small cheese manufacturing business. However, they did not object to the amendment and stated that in the long run, protein standardisation will lead to the production of a more consistent product. No other concerns were raised by other similar manufacturers. The Local Authorities Coordinators of Regulatory Services (LACORS) take the view that there will be no additional burdens for enforcement authorities resulting from the introduction of the Regulations. The Agency has published a summary of these consultation responses on its website.

Small Firms Impact Test

The Department for Business, Enterprise and Regulatory Reform (DBERR) has been consulted on this issue, as has a leading UK trade body. In the Agency's Regulatory Impact Assessment produced for the Condensed and Dried Milk Regulations 2003, the following was stated:

'The markets affected by this regulation are those for condensed and dried milk products. Milk processing in the UK is characterised by five large companies who together account for 60% of the market; there are a few other smaller producers. Eight companies account for over 99% of UK milk powder production; 92% of condensed milk production is accounted for four companies. All these markets currently appear to be competitive producing good value for UK consumers, and being a mature market is characterised by slow change.'

We consider that the situation for 2007 remains much the same and have not received any information to the contrary to this during the public consultation.

The Welsh Assembly Government consultation (and equivalent consultations conducted in England, Scotland and Northern Ireland) asked whether the dairy package would have a disproportionate impact on small firms. No responses were received.

Post- Implementation Review

The Agency will review the effect of the amended legislation in August 2011, however it is expected that the EU will review the CAP in 2009.

Summary

In summary, these Regulations will allow producers who choose to modify the protein content of their milk to benefit from being able to utilise any extracted protein for use in the productions of other fresh dairy produce or by selling the extracted milk protein. They will also enable the UK to fulfil Community obligations.

Annex A

Mini Dairy Impact Assessment – Modelling Results

1. This work has been undertaken by The Department for Environment Food and Rural Affairs (DEFRA) for the mini dairy impact assessment, examining the protein standardisation element of the mini dairy package.

Background

2. The merged Dairy model is the amalgamation of the DEFRA dairy model and the OECD Aglink model. The resulting model is a partial equilibrium model which models the dairy sector in the EU25 on a country by country basis, and models the world markets in dairy products, cereals and livestock products, disaggregated into over 25 countries and regions. Within the dairy sector, there is an interdependent relationship between milk and four key milk products – butter, cheese, SMP and WMP, based upon the availability and price of protein and fat for factory use.
3. The baseline results which are used for the purpose of comparison are based on a continuation of the current policy situation. It is assumed within the baseline that the proportion of fat in milk consumed will continue on a downward trend, reflecting the continued switch from whole fat milk to semi-skimmed and skimmed milk and thus a fall in the average fat content in milk consumed.
4. The dairy model also includes the welfare effects of the scenarios. In economic terms, welfare attempts to capture the fact that at the equilibrium, there are consumers who would have been willing to pay more for the good than the market price, and there are producers who would have been willing to sell the good at a lower price than the market price. For producers, the producer surplus is the total extra revenue that producers receive compared to a situation where each unit was sold at the price at which producers would have been willing to supply. Similarly, the consumer surplus is the total difference between the market price and the amount that consumers would have been willing to pay for each individual unit. We are able to capture the welfare effects for milk, by looking at the change in welfare relative to the baseline.

Scenario

5. Protein Standardisation policy has been modelled as a shift to a 34% protein content in SMP (previously 36%). This brings the EU into line with international standards which will benefit exporters who were previously selling higher protein content SMP at the world price, not realising the full value of the protein.

Results

6. Most of the effects of the measure are contained within the SMP market. As a result of the protein standardisation, we assume that the average protein content of SMP falls from 36% to 34%. This fall of around 6% results in a 5% fall in price and a 7% increase in the production of SMP.
7. This has some knock-on effects on the butter, cheese, WMP and milk markets which are detailed below, although the largest of these changes is still less than 0.5%. The main reason for this is that the extra protein which is available as a result of the policy change leads to SMP becoming more competitive, increasing levels of exports and domestic consumption.

Skimmed Milk Powder	% Diff	Abs. Diff
Production (QP)	5.97	7.10%
Consumption (QC)	2.31	2.45%
Price (PP)	-8.24	-5.37%
Exports (EX)	3.14	7.94%
Imports (IM)	-0.52	-1.04%

Butter (BT)	Abs. Diff	% Diff
Production (QP)	0.43	0.30%
Consumption (QC)	-0.01	-0.01%
Price (PP)	0.12	0.07%
Exports (EX)	0.00	0.00%
Imports (IM)	-0.45	-0.38%

Cheese (CH)	Abs. Diff	% Diff
Production (QP)	-0.30	-0.07%
Consumption (QC)	-0.19	-0.03%
Price (PP)	0.09	0.04%
Exports (EX)	0.00	0.00%
Imports (IM)	0.11	0.03%

WMP	Abs. Diff	% Diff
Production (QP)	-0.22	-0.56%
Consumption (QC)	0.03	0.03%
Price (PP)	-0.26	-0.17%
Exports (EX)	0.00	0.00%
Imports (IM)	0.01	0.03%

Milk (MK)	Abs. Diff	% Diff
Production (QP)	3.49	0.02%
Consumption (QC)	-3.94	-0.06%
Price (PP)	0.03	0.15%
Exports (EX)	0.00	0.00%
Imports (IM)	0.00	0.00%

Welfare effects

The net welfare benefit is generated mainly from SMP consumers and producers, benefiting from the increased quantities (for producers, the fall in price is more than offset by the increase in quantity). There is also an impact from the small increase in the milk price, beneficial to producers but detrimental to consumers. The overall benefit is roughly equivalent to 17p per person in the UK.

	Welfare Effects
Milk consumption	-£1.7m
Butter Consumption	-£0.2m
Cheese consumption	-£0.6m
SMP consumption	£7.5m
WMP consumption	£0.2m
Milk production	£3.8m
Butter production	£0.5m
WMP production	-£0.1m
SMP production	£1.1m
Cheese production	-£0.2m
Total Welfare Effects	£10.2m