

Subsidiary Legislation made under ss. 6, 8 and 58.

## **Condensed Milk and Dried Milk Regulations, 1987**

### **LN.1987/056**

	<i>Commencement</i>	<b>1.8.1987</b>
Amending enactments	Relevant current provisions	Commencement date
LN. 1990/070	rr. 2, 5, 5A, 6, 6A, 9	1.7.1990

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**SCHEDULE 1.**

**SCHEDULE 2.**

**Title and commencement.**

1.(1) These regulations may be cited as the Condensed Milk and Dried Milk Regulations, 1987.

(2) These regulations shall come into operation on the 1st day of August, 1987.

**Interpretation.**

2.(1) In these regulations, unless the context otherwise requires- 'the Community' means the European Economic Community;

'condensed milk' means milk, partly skimmed milk or skimmed milk or any combination thereof, whether with or without the addition of cream, dried milk or sucrose, which has been concentrated by the partial removal of water, but does not include dried milk;

'condensed milk product' means any food specified in column 2 of Part I of Schedule 1 as read with paragraphs 1 and 2 of that Part, of which the characteristics are, where so required by the Schedule, determined according to the methods of analysis therein referred to, but does not include any product which contains such a food as an ingredient and which is sold, consigned or delivered as a compound product;

'container' includes any form of packaging of food for sale as a single item, whether by way of wholly or partly enclosing the food or by way of attaching the food to some other article, and in particular includes a wrapper or confining band;

'dried milk' means milk, partly skimmed milk or skimmed milk or any combination thereof, whether with or without the addition of cream, which has been concentrated to the form of powder, granule or solid by the removal of water;

'dried milk product' means any food specified in column 2 of Part II of Schedule 1 as read with paragraph I of that Part, of which the characteristics are, where so required by that Schedule, determined according to the methods of analysis therein referred to, but does not include any product which contains such a food as an ingredient and which is sold, consigned or delivered as a compound product;

'food' means food intended for sale for human consumption and includes drink, chewing gum and other products of a like nature and use, and articles and substances used as ingredients in the preparation of food or drink or of such products, but does not include-

- (a) water, live animals or birds,
- (b) fodder or feeding stuffs for animals, birds or fish or

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- (c) articles or substances used only as drugs;
- ‘human consumption’ includes use in the preparation of food for human consumption;
- ‘instant preparation’, in relation to any dried milk product, means a product capable of rapid dispersal in water;
- ‘lactate’ means lactic acid and lactate calculated as lactic acid;
- ‘lactose’ has the meaning assigned to it by the Specified Sugar Products Regulations 1987;
- ‘milk’ means cows’ milk;
- ‘the Act’ means the Food and Drugs Act;
- ‘permitted anti-caking agent’ means any anti-caking agent in so far as its use in food is permitted by the Miscellaneous Additives in Food Regulations 1987;
- ‘permitted antioxidant’ means any antioxidant in so far as its use in food is permitted by the Antioxidant in Food Regulations 1987;
- ‘permitted emulsifier’ means any emulsifier in so far as its use in food is permitted by the Emulsifiers and Stabilisers in Food Regulations 1990;
- ‘permitted miscellaneous additive’ means any acid, anti-caking agent, anti-foaming agent, base, buffer, firming agent, glazing agent, humectant, liquid freezant, packing gas, propellant, release agent or sequestrant in so far as its use in food is, in each case, permitted by the Miscellaneous Additives in Food Regulations 1987;
- ‘reserved description’, as respects any condensed milk product or dried milk product, means a description specified in relation to that product in column 1 of Part I or Part II of Schedule 1, and the use of any such description in these regulations shall be construed as meaning the condensed milk product or dried milk product specified in relation to that description in column 2, as read with paragraphs 1 and 2, of Part I of Schedule 1, or column 2, as read with paragraph 1, of Part II of that Schedule;
- ‘sell’ includes offer or expose for sale or have in possession for sale and ‘sale’ and ‘sold’ shall be construed accordingly;
- ‘sell by retail’ means sell to a person buying otherwise than for the purpose of re-sale, but does not include selling to a caterer for the purposes of his catering business or to a

manufacturer for the purposes of his manufacturing business and ‘sale by retail’ and sold by retail’ shall be construed accordingly;

‘sterilised’ means sterilised by any heat treatment including ultra heat treatment;

‘sucrose’ means semi-white sugar, sugar or white sugar or extra white sugar as defined by the Specified Sugar Products Regulations 1987;

‘sweetened condensed milk product’ means sweetened condensed milk, sweetened condensed partly skimmed milk or sweetened condensed skimmed milk;

‘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

‘unsweetened condensed milk product’ means unsweetened condensed high-fat milk, evaporated milk, unsweetened condensed milk, unsweetened condensed partly skimmed milk or unsweetened condensed skimmed milk

AND other expressions have the same meaning as in the Act.

(2) Any references in these regulations to a label borne on a container shall be construed as including a reference to any legible marking on the container however effected.

(3) All proportions mentioned in these regulations are proportions calculated by weight, and, unless the context otherwise requires are calculated on the total weight of the product.

(4) Any reference in these regulations to a specified proportion of a permitted miscellaneous additive, a permitted antioxidant or a permitted emulsifier shall be construed as if the miscellaneous additive, antioxidant or emulsifier were present in its anhydrous form.

(5) Any reference in Schedule 1 to a ‘method’, identified by number, shall be construed as a reference to the method of analysis for testing certain partly or wholly dehydrated preserved milk for human consumption described under that number on Annex 11 to the Commission Directive No 79/1067/EEC as read with the General Provisions of that Annex.

(6) For the purpose of these regulations, the supply of food, otherwise than by sale, at, in or from any place where food is supplied in the course of a business shall be deemed to be a sale of that food, and references to purchasing and purchasers shall be construed accordingly.

(7) Any reference in these regulations to any other regulations shall be construed as a reference to such regulations as amended by subsequent regulations.

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(8) Any reference in these regulations to a numbered regulation or schedule shall, unless the reference is to a regulation of or schedule to specified regulations, be construed as a reference to the regulation or schedule bearing that number in these regulations.

#### **Exemptions.**

3.(1) The following provisions of these regulations shall not apply to any condensed milk or dried milk sold, consigned or delivered for exportation to any place outside Gibraltar.

(2) The following provisions of these regulations, other than the provisions of regulations 4, 10, 11 and 12, shall not apply to any condensed milk or dried milk specially prepared for infant feeding and bearing on a label on its container a clear statement that such food is intended for consumption by infants and no statement to the effect that such food is intended for consumption by any other class of person.

#### **General restrictions on the use of reserved description.**

4. No person shall-

- (a) give with any food sold by him any label, whether attached to or borne on the container or not, or display with any food offered or exposed for sale any ticket or notice, or
- (b) publish, or be a party to the publication of, any advertisement for food, which bears or includes any reserved description or any derivative thereof or any word or description substantially similar thereto unless-
  - (i) such food is a condensed milk product or dried milk product to which the reserved description relates, or
  - (ii) 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 an ingredient of that food, or
  - (iii) such description, derivative or word is used in such a context as to indicate explicitly or by clear implication that such food is not a condensed milk product or dried milk product and does not contain one.

#### **Labelling and description of condensed milk and dried milk products for retail sale.**

5.(1) Without prejudice to the provisions of the Food Labelling Regulations 1987 and subject to paragraph (2) below and regulation (6), no person shall sell by retail, or consign or deliver

pursuant to a sale by retail, any condensed milk product dried milk product in a container unless that container is correctly, marked or labelled with the following particulars;

- (a) a reserved description of the product, which shall be the name prescribed by law for that product for the purpose, of regulation 7(1) of the Food Labelling Regulations 1987.
- (b) in the case of a dried milk product which is an instant preparation containing added lecithins in accordance with paragraph (c) of the proviso to regulation 9, the word “instant” added to the reserved description;
- (c) in the case of any condensed milk product containing not less than .0 per centum milk fat and any dried milk product containing not less than 1.5 per centum milk fat, the milk fat content or minimum milk fat content expressed as a percentage;
- (d) in the case of any condensed milk product, the milk solids not fat content or minimum milk solids not fat expressed as a percentage
- (e) in the case of any condensed milk product, directions for dilution or reconstitution, or relevant information as to usage where the product is intended for use in its unaltered state;
- (f) in the case of any dried milk product containing not less than 1.5 per centum milk fat, directions for dilution or reconstitution and an indication of the fat content of the product after dilution or reconstitution as directed;
- (g) in the case of any unsweetened condensed milk product which has been subjected to ultra heat treatment and aseptically packed, the expression “UHT” or “ultra heat treated”;
- (h) in the case of any condensed milk product containing not more than 1.0 per centum milk fat and any dried milk product containing not more than 1.5 per centum milk fat, the warning not to be used for babies except under medical advice

(2) Where the condensed milk product or dried milk product is packed in units each weighing less than 20 grammes within an outer packaging, the particulars required by paragraphs (1)(b) to (h) above may appear on the outer packaging only

**labelling and description of condensed milk and dried milk products for non-retail sale.**

5A. Subject to regulation 6A, no person shall sell otherwise than by retail, or consign or deliver pursuant to a sale otherwise than by retail, any condensed milk product or dried milk product

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in a container unless that container is correctly marked or labelled with the following particulars:-

- (a) a reserved description of the product;
- (b) the name or business name and the address of the manufacturer or packer or of a seller established within the Community;
- (c) in the case of a product imported from a country outside the Community, the name of the country of origin;
- (d) the date of manufacture or some marking by which the batch can be identified;
- (e) in the case of any dried milk product containing any added permitted anti-caking agent in accordance with paragraph (d) of the proviso to regulation 9, the declaration "for use in vending machines only."

**Manner of marking or labelling for retail sale.**

6.(1) Regulations 32(1) and 34(1) and (2) of the Food Labelling Regulations 1987 (which relate to the manner of marking or labelling of food) shall apply to the particulars with which a condensed milk product or dried milk product is required to be marked or labelled by regulation 5 as if they were particular with which food is required to be marked or labelled by the Food Labelling Regulations 1987.

(2) Any indication of minimum durability required by regulation 21 of the Food Labelling Regulations 1987 shall appear in the labelling of the condensed milk product or dried milk product sold by retail or consigned or delivered pursuant to a sale by retail in the same field of vision as the particulars required by regulation 5(1)(a), (b), (c) and (d).

**Manner of marking or labelling for non-retail sale.**

6A. The particulars with which any condensed milk product or dried milk product is required to be marked or labelled by:-

- (a) regulation 5A, shall be clearly visible, easily legible and in indelible characters;
- (b) subparagraphs (a), (c) and (d) of paragraph 1 of regulation 5A, shall be in English, either exclusively or in addition to any other language, or otherwise in a form easily understood by the purchaser;
- (c) subparagraph (c) of paragraph 1 of regulation 5A, may appear in an accompanying document.



**Restriction on retail sales of condensed milk and dried milk.**

7. No person shall sell by retail, or consign or deliver pursuant to a sale by retail any condensed milk other than a condensed milk product or any dried milk other than a dried milk product.

**Preparation of condensed milk and dried milk products.**

8. No person shall use as an ingredient in the preparation of any condensed milk product or dried milk product any milk, partly skimmed milk, skimmed milk, cream or dried milk or any combination thereof, which has not been subjected to heat treatment at least equivalent to pasteurisation unless that condensed milk product or dried milk product is itself subjected to such heat treatment during its preparation.

The test for verifying whether or not this requirement has been satisfied shall be one or other of the two methods of determining phosphatase activity provided and described respectively as method 7 and method 8 in Annex II to the Commission Directive No 79/1067/FEC, as read with the General Provisions of that Annex, and the test report shall state which of these methods has been employed.

**Permitted additional ingredients in condensed milk and dried milk products.**

9. No person shall sell, or consign or deliver pursuant to a sale, any condensed milk product or dried milk product which contains any added ingredient:

Provided that—

- (a) any condensed milk product or dried milk product specified Part I of Schedule 2 may contain any added permitted miscellaneous additive of the description specified in relation thereto in column 2 of that Part in the proportion and subject to any restriction specified in relation thereto in columns 3 and 4 respectively thereof;
- (b) any dried milk product specified in column 1 of Part 11 of Schedule 2 may contain any added permitted antioxidant of the description and in the proportions specified in relation thereto in columns 2 and 3 respectively of that Part;
- (c) any dried milk product which contains not less than 1.5 per centum milk fat and which is an instant preparation may contain not more than 0.5 per centum of the added permitted emulsifier lecithins E322;
- (d) any dried milk product intended for use in vending machines may contain not more than 1.5% of any added permitted anti-caking agent;

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- (e) any sweetened condensed milk product may contain not more than 0.02% added lactose;
- (f) any condensed milk product or dried milk product may contain any added vitamin

**Penalties.**

10. If any person contravenes or fails to comply with any of the foregoing provisions of these regulations he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000

**Defences.**

11.(1) In any proceedings for an offence against these regulations in relation to the publication of an advertisement, it shall be a defence for the defendant to prove that, being a person whose business it is to publish or arrange for the publication of advertisements, he received the advertisement for publication in the ordinary course of business.

(2) In any proceedings against the manufacturer or importer of any condensed milk product, dried milk product or other food for an offence against these regulations in relation to the publication of an advertisement, it shall rest on the defendant to prove that he did not publish, and was not party to the publication of, the advertisement.

**Application of various sections of the Act.**

12. Sections 46(2) and (3) (which relate to prosecutions), 47(1) and (2) (which relate to evidence of analysis), 49 (which relates to the power of a court to require analysis by the Government Chemist in the United Kingdom), 50 (which relates to a contravention due to some person other than the person charged), 51(2) (which relates to the conditions under which a warranty may be pleaded as a defence) and 52 (which relates to offences in relation to warranties and certificates of analysis) of the Act shall apply for the purposes of these regulations as if references therein to proceedings, or a prosecution, under or taken or brought under the Act included references to proceedings, or a prosecution, as the case may be, taken or brought for an offence under these regulations and as if the reference in the said Section 49 to subsection (3) of Section 46 included a reference to that subsection as applied by these regulations.

**Revocation.**

13. The Condensed Milk and Dried Milk Regulations are revoked as from the date of coming into operation of these Regulations.

SCHEDULE 1.

*Part I: Condensed milk products and their reserved descriptions*

Reserved descriptions

Column 1	Column 2
Reserved descriptions	Condensed milk products
Unsweetened condensed milk	Condensed milk, which has been sterilised, containing more than 15.0% milk fat, determined by method 3, and not less than 26.5% total milk solids, determined by method 1
Evaporated milk	Condensed milk, which has been sterilised, containing not less than 9.0% but not more than 15.0% milk fat, determined by method 3, and not less than 31.0% total milk solids, determined by method 1.
Unsweetened condensed milk	Condensed milk, which has been sterilised, containing not less than 7.5% but not more than 15.0% milk fat, determined by method 3, and not less than 25.0% total milk solids, determined by method 1.
Unsweetened condensed partly skimmed milk	<p>Condensed milk, which has been sterilised, containing:</p> <p>(i) in the case of a sale by retail, not less than 4.0% but not more than 4.5% milk fat, determined by method 3, and not less than 24.0% total milk solids, determined by method 1</p> <p>(ii) in the case of a sale otherwise than by retail, more than 1.0% but not more than 7.5% milk fat, determined by method 3, and not less than 20.0% total milk solids, determined by method 1</p>
Unsweetened condensed skimmed milk	Condensed milk, which has been sterilised, containing not more than 1.0% milk fat, determined by method 3, and not less than 20.0% total milk solids, determined by method 1.
Sweetened condensed milk	<p>Condensed milk with added sucrose, containing:</p> <p>(i) in the case of a sale by retail, not less than 9.0% milk fat, determined by method 3, and not less than 31.0% total milk solids, determined by method 1;</p> <p>(ii) in the case of a sale otherwise than by retail more than 8.0% milk fat, determined by method 3, and not less than 28.0% total milk solids, determined by method 1.</p>
Sweetened condensed partly skimmed milk	Condensed milk with added sucrose, containing:

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	(i) in the case of a sale by retail, not less than 4.0% but not more than 4.5% milk fat, determined by method 3, and not less than 28.0% total milk solids, determined by method 1;
	(ii) in the case of a sale otherwise than by retail, more than 1.0% but not more than 8.0% milk fat, determined by method 3, and not less than 24.0% total milk solids, determined by method 1.
Sweetened condensed skimmed milk	Condensed milk with added sucrose, containing not more than 1.0% milk fat, determined by method 3, and not less than 24.0% total milk solids, determined by method 1.
Dried high-fat milk High fat milk powder	Dried milk containing more than 42.0% but not more than 65.0% milk fat, determined by method 4, and not more than 5.0% moisture, determined by method 2
Dried whole milk Whole milk powder	Dried milk containing more than 26.0% but not more than 42.0% milk fat, determined by method 4, and not more than 5.0% moisture, determined by method 2
Dried partly skimmed milk Partly skimmed milk powder	Dried milk containing more than 1.5% but not more than 26.0% milk fat, determined by method 4, and not more than 5.0% moisture, determined by method 2
Dried skimmed milk Skimmed milk powder	Dried milk containing not more than 1.5% milk fat, determined by method 4, and not more than 5.0% moisture, determined by method 2

1. Not more than 0.3% of the milk solids not fat content of any product specified in column 2 of this Schedule shall consist of lactate, determined by method 6.

SCHEDULE 2

*PART I: Permitted Miscellaneous Additives Content of Condensed Milk Products and Dried Milk Products*

Column 1	Column 2	Column 3	Column 4
Condensed milk products and dried milk products	Permitted miscellaneous additive	Except where otherwise stated parts per centum not exceeding	Restriction
1. Any unsweetened condensed milk product which has a total milk solids content not exceeding 28/0% other than one mentioned in item 3 of this Part	Sodium hydrogen carbonate or Potassium hydrogen carbonate or Sodium dihydrogen citrate E331 or triSodium citrate E331 or Potassium dihydrogen citrate E332 or triPotassium citrate E332 or Sodium dihydrogen orthophosphate E339(a) or diSodium hydrogen orthophosphate E339(b) or tri Sodium orthophosphate E339(c) or Potassium dihydrogen orthophosphate E340(a) or diPotassium hydrogen orthophosphate E340(b) or triPotassium orthophosphate E340(c) or Calcium chloride or Calcium	0.2	The total added phosphate content calculated as P205 shall not exceed 0.1%

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<p>2. Any unsweetened condensed milk product which has a total milk solid content exceeding 28.0% other than one mentioned in item 4 of this Part</p>	<p>chloride anhydrous or diSodium dihydrogen diphosphate E450(a) or tetraSodium diphosphate E450 (a) or tetraPtassium diphosphate E450 (a) or any combination of two or more of these permitted miscellaneous additives Any permitted miscellaneous additive specified in column 2 of item 1 of this Part</p>	<p>0.3</p>	<p>The total added phosphate content calculated as P205 shall not exceed 0.15%</p>
<p>3. Any unsweetened condensed milk product which has a total milk solids content not exceeding 28.0% and which has been subjected to ultra heat treatment and is aseptically packaged</p>	<p>Any permitted miscellaneous additive specified in column 2 of item of this Part or pentaSodium triphosphate E450(b) or penta Potassium triphosphate E450(b) or Sodium polyphosphate E450 (c) or Potassium polyphosphate E450 (c) or any combination of two or more of these permitted miscellaneous additives</p>	<p>0.2</p>	<p>The total added phosphate content calculated as P205 shall not exceed 0.1%</p>

<p>4. Any unsweetened condensed milk product which has a total milk solids content exceeding 28.0% and which has been subjected to ultra heat treatment and is aseptically packaged</p>	<p>Any permitted miscellaneous additive specified in column 2 of item 1 of this Part or pentaSodium triphosphate E450(b) or pentaPotassium triphosphate E450(b) or Sodium polyphosphate E450(c) or Potassium polyphosphate E450(c) or any combination of two or more of these permitted additives</p>	<p>0.3</p>	<p>The total added phosphate content as P205 shall not exceed 0.15% and the added phosphate content derived from pentaSodium triphosphate, pentaPotassium triphosphate, sodium polyphosphate or potassium polyphosphate or any combination of two or more thereof shall not exceed 0.1%</p>
<p>5. Any sweetened condensed milk product</p>	<p>Any permitted miscellaneous additive specified in column 2 of item 1 of this Part</p>	<p>0.2</p>	<p>The total added phosphate calculated as P205 shall not exceed 0.1%</p>
<p>6. Any sweetened condensed milk product which contains added lactose in accordance with regulation 9</p>	<p>triCalcium diorthophosphate E341(c)</p>	<p>In such proportion that the amount of permitted miscellaneous additive does not exceed 10.0% of the added lactose</p>	
<p>7. Any dried milk product</p>	<p>Any permitted miscellaneous additive specified in column 2 of item 1 of this Part</p>	<p>0.5</p>	<p>The total added phosphate content calculated as P205 shall not exceed 0.25% and the total quantity of added sodium hydrogen carbonate or potassium hydrogen carbonate or potassium hydrogen carbonate or any</p>

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		combination thereof shall not exceed 0.2% or in the case of a product manufactured by the Hatmaker or Roller process and in the manufacture of which no other permitted miscellaneous additive specified in column 2 of item 1 of this Part has been used 0.3%
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*Part II: Permitted Antioxidant Content of Dried Milk Products*

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
Dried milk products	Permitted antioxidant	Parts per centum not exceeding
Dried high-fat milk	L-ascorbic acid E300 or sodium L-ascorbate E301 or ascorbyl palmitate E304 or any combination of two or more of these permitted antioxidants	0.05 (calculated as ascorbic acid)