



Department  
for Environment  
Food & Rural Affairs

[www.defra.gov.uk](http://www.defra.gov.uk)

# **Consultation on the Condensed Milk and Dried Milk (England) Regulations 2013 and the Caseins and Caseinates (England) Regulations 2013**

**December 2012**

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This document/publication is also available on our website at:

[www.defra.gov.uk/consult/](http://www.defra.gov.uk/consult/)

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# Part I - Introduction

## 1. Purpose of this Consultation

The purpose of this consultation is to seek views on the impact of two sets of regulations; the Condensed Milk and Dried Milk (England) Regulations 2013 and the Caseins and Caseinates (England) Regulations 2013, which will streamline existing regulations as part of the Government's Red Tape Challenge.

## 2. Geographical extent

This consultation covers England only. Governments in other parts of the UK will be making any necessary changes within their own jurisdictions.

## 3. Impact assessment

Consultation stage Impact Assessments have been prepared and can be found at [www.defra.gov.uk/consult/open](http://www.defra.gov.uk/consult/open)

## 4. Audience

The Consultation is primarily aimed at:

- those who are involved in the trade of condensed and dried milks
- those who are involved in the trade of caseins and caseinates
- trade representation organisations in the food industry
- enforcement officers

## 5. Responding to this Consultation

Enquiries and responses may be directed to:

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## 6. Duration

Consultation **opens** on 18<sup>th</sup> December 2012

Consultation **closes** 29<sup>th</sup> January 2013

## 7. After the consultation

When this consultation ends we intend to put a copy of the responses in the Defra library at Ergon House, London. This is in line with Defra's policy of openness, so that the public may see them. Members of the public can ask for a copy of responses under freedom of information legislation. Copies of the consultation responses to personal callers or in response to telephone or email requests will be supplied by the Defra Information Resource Centre (020 7238 6575), [defra/library@defra.gsi.gov.uk](mailto:defra/library@defra.gsi.gov.uk). Wherever possible, personal callers should give the centre 24 hours notice of their requirements. An administrative charge will be made to cover any photocopying and postage costs.

A summary of the responses to this consultation will also be published and placed on our website at [www.defra.gov.uk/consult](http://www.defra.gov.uk/consult). This summary will include a list of the names of the organisations that responded but not people's personal names, addresses or other contact details.

If you do not want your response to be publicly available, please say so clearly in writing when you send your response to the consultation. Please note, if your computer automatically includes a confidentiality disclaimer, that won't count as a confidentiality request.

Please explain why you need to keep details confidential. We will take your reasons into account if someone asks for this information under freedom of information legislation. But, because of the law, **we cannot promise that we will always be able to keep those details confidential.**

## 8. Compliance with the Code of Practice on Consultation

This consultation is being conducted in line with the "Code of Practice on Consultations" as set out in the Better Regulation Executive guidance which can be found at [www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance](http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance)

If you have any comments or complaints about the consultation process please address them to:

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## Part II

### 9. Background

There are currently two sets of Condensed Milk and Dried Milk (England) Regulations, plus further amendments have been made by the Food Additives (England) Regulations 2009 and the Official Feed and Food Control (England) Regulations 2005. The aim is to streamline the regulations so that there is one Statutory Instrument (SI) and to replace the criminal sanctions with civil sanctions (an improvement notice regime consistent with the Food Safety Act 1990 and other similar Regulations for food). The regulations which apply to composition, standards and labelling would remain unchanged.

At present there are also two sets of Casein and Caseinates Regulations. The new regulations would replace the two existing Statutory Instruments (SIs), with a single SI and as above, the regulations which apply to composition, standards and labelling would remain unchanged, but the criminal sanctions for breaching all but one of the regulations would be replaced with civil sanctions. The breach of the regulation which requires caseins and caseinates to be subjected to heat treatment will remain a criminal offence given the potentially serious risk to health if this treatment does not take place.

These regulations are being consolidated in line with Government's commitment under the Hospitality Theme of the Red Tape Challenge. The main objective is to reduce the number of regulations industry and others have to navigate through causing unnecessary administrative and regulatory burden. The regulations provide proportionate, effective and risk-based enforcement of EU obligations in our domestic law.

### 10. Options for setting out the requirements in legislation

Additional details on the background to the options can be found in the Impact Assessments. There is a baseline position of not implementing the requirements that is used as a basis for assessing the costs and benefits. The Impact Assessments currently have net costs given that regulatory affairs managers and enforcement officers would need time to familiarise themselves with the new SI and there is a costs attached to this. The benefits are likely to originate from both industry and enforcement bodies using improvement notices instead of criminal sanctions. With further information from consultation, these benefits, although small, are likely to outweigh the costs of familiarising with a single SI over time.

**Option 1** – Do nothing

**Option 2** – Consolidate existing regulations and replace criminal sanctions with civil sanction

**Option 2** is the preferred option in both cases

## 11. Consultation Questions

The consultation questions below are set out in the **Impact Assessments<sup>1</sup>** and **references to page numbers below relate to the corresponding Impact Assessment.**

### **The Condensed Milk and Dried Milk (England) Regulations 2013**

#### **Consultation Question 1 (p.5)**

Is the information above (concerning the number of manufacturers) correct? If available, please provide more information on the size of business operations, annual turnover and annual output for preserved milk production.

#### **Consultation Question 2 (p.6)**

You are invited to comment on whether we have captured all firms in the market, including in the devolved administrations that might be affected by the proposal.

#### **Consultation Question 3/4 (p.8)**

You are invited to comment on whether the assumptions above (concerning familiarisation costs) are reasonable. Are there likely to be any other costs incurred?

#### **Consultation Question 5 (p.9)**

Stakeholders are invited to comment on the scale of the costs saved from this new enforcement procedure.

#### **Consultation Question 6 (p.9)**

In what way would a new improvement notice approach benefit enforcement officers in general? Can you quantify any savings that may be realised?

#### **Consultation Question 7**

Does this assumption that there is no benefit to industry from SI consolidation sound reasonable? Or are there benefits that should be considered?

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<sup>1</sup> [www.defra.gov.uk/consult/open](http://www.defra.gov.uk/consult/open)

## **The Caseins and Caseinates (England) Regulations 2013**

### **Consultation Question 1 (p.6)**

Are there any UK casein/caseinate manufacturers? Please provide names of companies which manufacture, supply or wholesale caseins and caseinates.

### **Consultation Question 2 (p.7)**

Please comment on any businesses in the market, including in the devolved administrations that might be affected by the proposal. Are there any that have been overlooked?

### **Consultation Questions 3 (p.8) and 4 (p.9)**

You are invited to comment on whether the assumptions above (regarding familiarisation costs) are reasonable. Are there likely to be any other costs incurred?

### **Consultation Question 5 (p.10)**

In what way would a new improvement notice approach benefit enforcement officers in general? Can you quantify any savings that may be realised?

### **Consultation Question 6 (p.12)**

Does this assumption that there is no benefit to industry from SI consolidation sound reasonable? Or are there benefits that should be considered?

## **12. Enforcement Regime**

In line with the Government's objective to ensure that sanctions are proportionate to the offence committed, both sets of Regulations will be making use of civil as opposed to criminal sanctions. The only exception is in regard to breach of the regulation which requires caseins and caseinates to be subjected to heat treatment. This will remain a criminal offence given the potentially serious risk to health if this treatment does not take place.

The enforcement regime will consist of enabling enforcement officers to issue an improvement notice for breaches of the Regulations. This change will require the introduction of an appeals mechanism to provide a means of recourse if someone believes they have been issued with an improvement notice in error.

### **How would someone go about making an appeal?**

There will be information contained with the improvement notice that will direct the recipient to the relevant information on the First-tier Tribunal website. The mechanism for appeals will also be clearly set out in guidance.

### **Appeals to the First-tier Tribunal**

Appeals will be made to the General Regulatory Chamber of the First-tier Tribunal. The tribunal is empowered to deal with a wide range of issues which might form the substance of appeals, and to ensure cases are dealt with in the interest of justice and minimising parties' costs. The composition of a tribunal is a matter for the Senior President of Tribunals to decide, and may include non-legal members with suitable expertise or experience in the issues in an appeal in addition to Tribunal Judiciary.

The General Regulatory Chamber operates under the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 which provide flexibility for dealing with individual cases. Rule 2 of the General Regulatory Chamber Rules states its overriding objective as being to deal with a case fairly and justly. This includes dealing with a case in ways which are proportionate to the importance of the case, the complexity of the issues and the anticipated costs and resources of the parties. The Rules give the tribunal judge wide case management powers in order to achieve these objectives.

### **Onward appeal from the tribunal**

Any party to a case has a right to appeal to the Upper Tribunal on points of law arising from a decision of the First-tier Tribunal. The right may only be exercised with the permission of the First-tier Tribunal or the Upper Tribunal. Where permission is given, the further appeal would be made to the Upper Tribunal.

|                              |  |
|------------------------------|--|
| <b>Consultation Question</b> | Are you satisfied with the proposed procedures for appeals? If not, why not? |
|------------------------------|--|

|                              |  |
|------------------------------|--|
| <b>Consultation Question</b> | (Asked on behalf of the Tribunal Procedure Committee) Do you consider that the General Regulatory Chamber Rules will suit the handling of appeals against improvement notices and the associated circumstances? If not, why not? |
|------------------------------|--|