

Title: The Condensed Milk and Dried Milk (England) (Regulations) IA No: DEFRA1469 Lead department or agency: DEFRA Other departments or agencies: Food Standards Agency Scotland, Wales and Northern Ireland	Impact Assessment (IA)	
	Date: 12/11/2012	
	Stage: Consultation	
	Source of intervention: EU	
	Type of measure: Secondary Legislation	
Contact for enquiries: Cath Harris 020 7238 2299		
Summary: Intervention and Options		RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
-0.0159m	-0.0003m	0	YES OUT

What is the problem under consideration? Why is government intervention necessary?
As identified by the Red Tape Challenge Hospitality, Food and Drink theme, the regulatory landscape for food labelling and composition is difficult to navigate, putting unnecessary burdens on business. As part of the Government's solution to improve this, we committed to consolidate The Condensed Milk and Dried Milk (England) Regulations 2003 (S.I No 1596)¹ and The Condensed Milk and Dried Milk (England) (Amendment) Regulations 2008 (S.I No 85)² and, as far as possible, to replace the existing criminal sanctions with civil sanctions

What are the policy objectives and the intended effects?
The policy objectives are two-fold:

- (i) To provide in domestic law for proportionate, effective and risk- based enforcement in England of Council Directive 2001/114/EC which applies to partly or wholly dehydrated preserved milk for human consumption, and Council Directive 2007/61/EC amending Council Directive 2001/114/EC.³
- (ii) To simplify Regulations by consolidating two sets of regulations making referencing easier for industry and enforcers.

What policy Options have been considered, including any alternatives to regulation? Please justify preferred Option (further details in Evidence Base)
Option 1 - Do nothing – continue with business as usual (the baseline).

Option 2 – Consolidate current regulations reducing the number of statutory instruments from 4 to 1 (There are current 2 SIs, plus amendments were also made to the 2003 Regulations by the Food Additives (England) Regulations 2009 and the Official Feed and Food Control (England) Regulations 2005). The current regulations which apply to composition, standards and labelling would remain unchanged, but the criminal sanctions for breaching the regulations would be replaced with civil sanctions (an improvement notice approach consistent with other similar regulations for food).

Will the policy be reviewed? N/A if applicable, set review date:	
Does implementation go beyond minimum EU requirements?	No

¹ Statutory Instrument 2003 No. 1596

² Statutory Instrument 2008 No.85

³ 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)

Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro NO	< 20 NO	Small NO	Medium NO	Large YES
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading Options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 2

Description: Implement the new requirements under one statutory instrument.

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: -0.02

COSTS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition)	Annual (Constant Price)	Total (Present Value)	Cost
Low	Optional	1	Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate	0.02		0		0.02	

Description and scale of key monetised costs by 'main affected groups'

Industry

One off costs: familiarisation £305 (PV) (EAC¹ £35);

Government

One off costs: familiarisation £15,597 (PV) (EAC £1,812)

Other key non-monetised costs by 'main affected groups'

There are no non-monetised costs associated with this Option.

BENEFITS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition)	Annual (Constant Price)	Total (Present Value)	Benefit
Low	Optional	n/a	Optional		Optional	
High	Optional		Optional		Optional	
Best Estimate	0		0		0	

Description and scale of key monetised benefits by 'main affected groups'

There are no monetised benefits associated with this Option.

Other key non-monetised benefits by 'main affected groups'

Industry: A more proportionate enforcement procedure for businesses

Government: Simpler enforcement procedures for enforcement officers

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Familiarisation costs

Industry - equivalent of 1 regulatory affairs/production managers per business approximately 1 hour respectively to familiarise; an additional 1 hour each to disseminate the information to other staff in the organisation.

Government - equivalent of 2 trading standards officers per local authority approximately 1 hour respectively to familiarise.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	YES	OUT

¹ EAC = Equivalent Annual Cost

Evidence Base (for summary sheets)

References

- The Condensed Milk and Dried Milk (England) Regulations 2003 (S.I No 1596)¹;
- The Condensed Milk and Dried Milk (England) (Amendment) Regulations 2008 (S.I No 85)².

Problem under consideration

1. One of the current Government priorities is to remove burdensome or outdated regulations where they are no longer needed. As part of the Red Tape Challenge Exercise covering the Hospitality theme a review of all existing rules covering food labelling and compositional standards was carried out. It was concluded that the landscape was difficult for businesses to navigate. As a result, the Government committed to merging and repealing a number of food labelling and composition regulations to reduce the regulatory burden on businesses by simplifying the regulatory landscape. 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 in line with the government's objectives to reduce the burdens on the industry and others such as enforcers.
2. This impact assessment analyses the Options on an England only basis. Where data is sometimes limited, we have used England and Wales as a proxy for England.

Rationale for intervention

3. The aim is to streamline the Regulations and to reduce unnecessary bureaucracy and burdens on business. Merging the SIs requires Government Intervention as it is a change in secondary legislation.

Options Considered

4. The following Options for England have been considered:
 - Option 1** – Do nothing – continue with business as usual (the baseline).
 - 5. **Option 2** – Consolidate the current regulations. The regulations which apply to composition, standards and labelling would remain unchanged, but the criminal sanctions for breaching the regulations would be replaced with civil sanctions (an improvement notice approach consistent with other similar regulations for food). For this Option it will be the responsibility of Local Government Trading Standards officers to familiarise themselves with the new single SI, and understand the move to an improvement notice system for non-compliance of the Regulations.
6. **Option 2** is our preferred Option.

¹ Statutory Instrument 2003 No. 1596

² Statutory Instrument 2008 No.85

Background

7. In England, The Condensed Milk and Dried Milk (England) Regulations 2003 as amended define “partly dehydrated” and “totally dehydrated” milk and implement the requirements of Directive 2001/114/EC, *relating to certain partly or wholly dehydrated preserved milk for human consumption*³. The Regulations 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. The Regulations cover England only as food is a devolved matter.
8. 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.

Current situation

9. Currently, there are 3 UK condensed milk processors producing approximately 108,000 tonnes of condensed milk and 112,000 tonnes of milk powders annually. Approximately 10% of raw milk produced in the UK is used for milk powder and condensed milk.
10. Market data is limited; currently, it is not possible to identify the size of the firms involved in this sector. We anticipate that these businesses are large.

Consultation Question 1

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

Legislative framework and description of the new requirements

11. The Condensed Milk and Dried Milk (England) Regulations 2013 (“the Regulations”) will revoke and replace the following two SIs:
 - The Condensed Milk and Dried Milk (England) Regulations 2003 (S.I No 1596);
 - The Condensed Milk and Dried Milk (England) (Amendment) Regulations 2008 (S.I No 85.)

³ 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)

Affected Groups

12. **Preserved milk manufacturers** – Under Option 1, industry will not be affected. However, under Option 2, preserved milk manufacturers are likely to incur a one-off familiarisation cost but will also benefit from reduced enforcement burden from the consolidation of 2 SIs to 1 SI.
13. **Government** – Under Option 1, Government will not be affected. However, under Option 2, local authorities will also incur a one-off familiarisation cost whilst also benefitting from reduced enforcement burden.
14. **Consumers** – Under both Option 1 and Option 2, there is likely to be no impact on consumers. This is because there is no change to processes or products produced.

Consultation Question 2

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.

Costs and Benefits

Assessment of One in One Out (OIOO)

15. Applying the OIOO methodology to the policy requirements means that the proposed consolidation of the Condensed Milk and Dried Milk (England) Regulations 2003 (S.I No 1596) and the Condensed Milk and Dried Milk (England) (Amendment) Regulations 2008 (S.I No 85) **is subject to OIOO**.
16. It can be classified as '**OUT**' as the cost to both Government and industry are anticipated to be outweighed by the savings and benefits. At this stage, additional information is required to accurately assess the monetised costs and benefits and this will be sought as part of the consultation (we only have the cost side of the information at present). The business assessment figures on the summary pages are shown as zero at this time, until the additional information has been gathered in consultation.

Policy Option 1 – Do Nothing (Baseline)

17. This Option would mean continuing with the current rules and would not deliver the RTC commitments.

Costs

18. There are no incremental costs associated with this Option. This is the baseline to which all other Options are compared.

Benefits

19. There are no incremental benefits associated with this Option. This is the baseline against which all other Options are appraised.

Policy Option 2 – Consolidation of 2 SIs to 1 SI

20. This Option makes for a clearer legislative environment and reduces the burden to industry and local authorities. The standardised approach to enforcement - serving an improvement notice on a trader where an authorised officer has reasonable grounds for believing that the trader has not complied with, or is unlikely to comply with, will be taken in the case of the Condensed Milk and Dried Milk (England) Regulations 2013 and will be consistent with other similar regulations for food composition, standards and labelling
21. Enforcement bodies already use the improvement notice approach for a number of other Regulations. Therefore introducing this approach to the new Regulations should not create burdens. In this case it should be seen as a benefit as the sanctions in these Regulations are being brought into line with other existing Regulations. It is anticipated that there will be no additional costs on an ongoing basis.

Costs

Industry

Familiarisation costs (one-off) – This cost has been monetised.

22. There will be a one-off cost to industry for reading and familiarising themselves with the new Regulations. Time will be spent acquiring, reading and understanding the legislation, seeking external advice where necessary. Preserved milk processors will need to become familiar with the new requirements of the Condensed Milk and Dried Milk (England) Regulations 2013.
23. Familiarisation costs are measured in terms of time costs and are therefore quantified by multiplying the time it takes for a member of staff to read and familiarise him/herself with the Regulation by their wage rate. The wages outlined in this impact assessment represent median gross hourly pay including overtime from the Annual Survey of Household Earnings, 2011, for all employees. The relevant average hourly rate⁴ is uprated by 30% to take account of non-wage labour costs and overheads, which is in line with standard cost model methodology⁵.
24. Informal consultation from industry estimate that **1 hour of 2 regulatory affairs/production managers' time** will be spent per business. Given these assumptions, the total one off familiarisation costs for industry in England are estimated at around £305 (Table 1).
25. In order for one-off costs to be compared to annual costs on an equivalent basis across the time span of the policy, one-off costs are converted into Equivalent Annual Costs (EACs) by dividing the one-off cost by an annuity factor⁶. The total one-off familiarisation cost to businesses in England translates to an equivalent annual cost of £35 over a ten year period.

⁴ Wage rates are obtained from ASHE 2011

⁵ <http://www.berr.gov.uk/files/file44503.pdf>

⁶ The annuity factor is essentially the sum of the discount factors across the time period over which the policy is appraised. The equivalent annual cost formula is as follows:

$$a_{t,r} = \sum_{j=0}^{t-1} \prod_{i=0}^j \left(\frac{1}{1+r_i} \right)$$

Consultation Question 3

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

Table 1: Total familiarisation costs and Equivalent Annual Cost to Industry by Country

	Number of preserved milk processors	Total Familiarisation Cost	Equivalent Annual Cost
England and Wales	6	£305	£35
Scotland	0	£0	£0
Northern Ireland	3	£152	£18
UK	9	£457	£53

Government

Familiarisation costs (one-off) – This cost has been monetised.

26. Local authorities will also need to become familiar with the updated Regulations. It is estimated that it would take **1 Trading Standards officer, 1 hour** to read and become familiar with the Regulations and disseminate them to key staff. The average hourly pay rate for *Inspectors of standards and regulations*⁷ is shown in the table below. This has been up-rated by 30% to account for non-wage labour costs and overheads, in accordance with the standard cost model⁸.

27. Given these assumptions, the total one-off familiarisation cost to businesses in England translates to around £16,000 an equivalent annual cost of around £1,800 over a ten year period (Table 2).

Consultation Question 4

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

Table 2: Familiarisation costs for trading standards officers, by Country

	Number of Local Authorities	Median average hourly wage (uprated by 30%)	Total Familiarisation Cost	Equivalent Annual Cost
England	433	£18.01	£15,597	£1,812
Wales	22		£792	£92
Scotland	32		£1,153	£134
Northern Ireland	26		£937	£109
UK	513		£18,478	£2,147

Benefits

Industry

A more proportionate enforcement procedure for businesses - This is currently a non-monetised benefit.

⁷ 2011 Annual survey of Hours and Earnings

⁸ <http://www.berr.gov.uk/files/file44503.pdf> http://www.statistics.gov.uk/downloads/theme_labour/ASHE-2009/2009_occ4.pdf

28. There would be a benefit to industry in terms of moving from the current criminal sanctions regime to a new regime providing for enforcement by way of an improvement notice, followed up by a criminal offence in those cases where an improvement notice is not complied with. It is anticipated that the gains will originate from reduced costs and the time saved to businesses in resolving the issues more quickly. This will materialise in the fact that, the vast majority of contraventions will be resolved through the issuing of improvement notices.
29. Information provided in the food standards enforcement actions report for 2010/11 shows that there were 69 food standards prosecutions concluded in England⁹. Although it is not possible to give precise figures, the likelihood is that prosecutions resulting from the contravention of The Condensed Milk and Dried Milk (England) Regulations 2013 are extremely low or possibly none at all. We would expect the number of cases referred to criminal courts to be reduced. Therefore, this benefit is likely to be small given the number of cases associated with preserved milk is anticipated to be small.

Consultation Question 5

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

Government

Simpler enforcement procedures for enforcement officers – *This benefit is currently non-monetised.*

30. There is a potential benefit to Government in terms of moving from the current criminal sanctions regime to the new civil sanctions regime. It is anticipated that the gains will originate from reduced court costs as the number of hearings will be reduced as issues will be resolved through issuing improvement notices, and the time saved to enforcement officers in resolving the issues more quickly instead of preparing for a court case. However, this benefit is likely to be relatively small given the number of cases associated with condensed and dried milk dealt with by enforcers are anticipated to be small.

Consultation Question 6

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

Summary of monetised costs and benefits

31. Table 3 below provides a summary of the monetised costs and benefits for policy Option 2. This Option is exceptionally low cost. The Net Present Value is around -£16,000 and the Business Net Present Value is -£305, over the ten year period. We anticipate that monetising the benefits in this option through consultation is likely to make this option an OUT.

⁹ <http://www.food.gov.uk/multimedia/pdfs/board/fsa111108.pdf>

Table 3: Summary of Costs and benefits:

	Year 0	Year 1	Year 2	Year 3	Year 4
COSTS					
Industry					
Familiarisation (transition)	£305	£0	£0	£0	£0
Total Industry Costs	£305	£0	£0	£0	£0
Government					
Familiarisation (transition)	£15,597	£0	£0	£0	£0
Total Government Costs	£15,597	£0	£0	£0	£0
TOTAL COSTS	£15,901	£0	£0	£0	£0
BENEFITS					
TOTAL BENEFITS	£0	£0	£0	£0	£0
NET BENEFIT					
Total Net (Benefit)	-£15,901	£0	£0	£0	£0
Total Net Business (Benefit)	-£305	£0	£0	£0	£0

Year 5	Year 6	Year 7	Year 8	Year 9	Total cost/benefit	Annual Cost or Benefits/EA	PV
£0	£0	£0	£0	£0	£305	£35	£305
£0	£0	£0	£0	£0	£305	£35	£305
£0	£0	£0	£0	£0	£15,597	£1,812	£15,597
£0	£0	£0	£0	£0	£15,597	£1,812	£15,597
£0	£0	£0	£0	£0	£15,901	£1,847	£15,901
£0	£0	£0	£0	£0	£0	£0	£0
£0	£0	£0	£0	£0	-£15,901	-£1,847	-£15,901
£0	£0	£0	£0	£0	-£305	-£35	-£305

SI Consolidation

32. It is anticipated that there will be no gains to industry from SI consolidation. Gains will only be realised if existing businesses refer to the SI over the 10 year time period, or, if new businesses enter the market and save time from reading just one SI rather than two.
33. Informal consultation with industry suggest that established businesses are unlikely to refer to the SI after familiarising themselves with it unless there is a change to the legislation. Also, there were no new firms in this market from the latest Defra data.
34. Given that the costs in option 2 arise from familiarisation costs associated with the SI consolidation, whilst the (non-monetised) benefits arise from a change in enforcement regime, a theoretical third option would be to keep two SIs, and just to change the enforcement regime. However, a change to only the sanctions regime would necessitate a change to the two SIs also, which would bring even larger familiarisation costs. Therefore, option 2 is the preferred approach in lessening regulatory burden.
35. Given that a straight forward consolidation of SIs would have minimal impact, no specific group identified in the Statutory Equality Duties Impact Test would be disadvantaged.
36. A Post Implementation Review (PIR) would be disproportionate given that there would be no change in policy beyond the enforcement regime.

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?

Conclusion

37. **Option 2 is the preferred Option** because it is deregulatory for business. This Option allows for a straightforward consolidation of 2 SIs into 1 SI as well as changes to enforcement procedures. The preferred Option is currently exceptionally low cost. The Net Present Value is around -£16,000 and the Business Net Present Value is -£305, over the ten year period. However the benefits of the consolidation and change in enforcement regime are not monetised.
38. The costs associated with this Option are attributed to familiarisation costs to both for industry and to local trading standards officers (one-off transition costs). The benefits are likely to originate from both industry and enforcement bodies of 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.