

To: Interested Parties

Reference: LSB 413

12 March 2008

Dear Sir or Madam,

Changes to domestic legislation in light of Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)

Council Regulation (EC) No 1234/2007 revises a number of specific commodity regulations and its creation forms part of a wider simplification and streamlining exercise of the Common Agricultural Policy (CAP)¹.

The new Regulation applies to all agricultural products that are covered by Common Market Organisations (CMOs)², and so includes rules on Dairy Designations and Spreadable Fats.

From 1 July 2008, Council Regulations 1898/87 (on the protection of designations used in the marketing of milk and milk products) and 2991/94 (laying down standards for spreadable fats) will be repealed and Regulation 1234/2007 will apply from that date. As a result, it is necessary for national legislation to be updated and amended accordingly.

The Agency intends to revoke the following two pieces of legislation:

- SI 1990/607 – The Milk and Milk Products (Protection of Designations) Regulations 1990; and
- SI 1999/2457 – The Spreadable Fats (Marketing Standards) (England) Regulations 1999;

with a view to consolidating them both into a single piece of legislation that will be called: **The Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (England) Regulations 2008**. Similar legislation will apply in Scotland, Wales and Northern Ireland. It is intended that the new legislation will be in place by 1 July 2008.

¹ Legislation and practices adopted by the European Union to provide a common, unified policy on agriculture
http://ec.europa.eu/agriculture/glossary/index_en.htm#cap

² A set of measures that, when operated together, enable the EU to manage a market for a specific agricultural product. Ultimate goal being to protect the European Food Producer and Consumer
http://ec.europa.eu/agriculture/glossary/index_en.htm#cmo

The amending legislation will simply update any references from Council Regulations 1898/87 and 2991/94 to the new Council Regulation 1234/2007, and in our view will not result in any substantive changes. Therefore the Agency does not intend to hold a full formal consultation on the new SI or to produce an Impact Assessment (IA).

If, however, you believe that this new SI will result in a significant change, requiring a full consultation or IA, or if you consider that the draft SI does not accurately or effectively enforce the requirements of the new Council Regulation, we would welcome your comments and supporting evidence by 9 April 2008.

Please pass this information onto anyone whom you may feel would benefit from receipt.

Yours sincerely,

Shifra Sheikh
Food Law Policy
Food Standards Agency

Enc. Draft Version of The Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (England) Regulations 2008



INVESTOR IN PEOPLE

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List of Interested Parties to whom this letter has been sent

3663
Aarhus Karlshamn
Actimel
Adams Food Ingredients
ADAS
Allied Frozen Storage
Allied Technical Centre
Apetito
Aramark
Arla Foods
Arlafoods
ASDA
Ashwell Associates
Association of Cheese Processors
Association of Frozen Food Producers
Association of Public Analysis
Basildon Dairy Foods
Biscuit, Cake, Chocolate and Confectionery Alliance
BEL UK
Bevelynn Ltd
Biotechnology and Biological Sciences Research Centre
Birmingham City University
Booker Ltd
Borculo Whey Products
Bradbury and Son (Buxton) Ltd
Brakes
Britannia Food
British Brands Group
British Cheese Board
British Dietetic Assoc.
British Exporters Association
British Food Importers & Distributors Association
British Goat Society
British Hospitality Association
British Nutrition Foundation
British Retail Consortium
British Soft Drinks Association Ltd
BSI Global
Bureau Européen des Unions Consommateurs
Cadbury Schweppes Plc
Caledonian Cheese Company Ltd
Camden & Chorleywood Food RA
Campbell's Grocery Products Ltd
Capelin's Of Brora
Cargills
Cereal Partners Worldwide
Chartered Institute of Environmental Health
Chequer Foods Ltd
Christian Salvesen Distribution.Ltd
CMI plc
Cold Storage and Distribution Federation
Community Foods Ltd
Compass Group Plc
Contract Foods Ltd
Co-Operative Group
Country Markets Ltd Denison Ingredients UK Ltd
Cream O'Galloway Dairy Comp
Dairy Crest
Dairy Farm Products
Dairy Farmers of Britain
Dairy UK
Defra
Dept of Trade & Industry
Diliberto
Dutch Maid Ices
Eden Vale
Elizabeth the Chef Ltd
EFSIS
Ellis & Everard Ltd
English Lakes Ice Cream
Eurofins Laboratories Ltd
European Food Law Association UK
Eversheds Legal Firm
Fayrefield Food International
Farley Health Products
Fayrefield Foodtec Ltd
Federation of Fish Fryers
Federation of Small Businesses
Food Additives & Ingredients Association
Food and Drink Federation
Food Commission
Food from Britain
Food Ingredient Services
Foodaware
Foodtrak LTD
Ford Farm Cheese
Forum of Private Business
Frederick's Dairies Ltd
Friends of the Earth
G C Hahn + Co Ltd
G Porrelli & Co Ltd
Geest Foods Ltd
Glanbia Cheese Ltd
Geo Adams
GlaxoSmithKline
Glebe Farm
Goat Nutrition
Good Food Distributors
Graig Farm Organics
Graveley Packing Ltd
Gunstones Bakery
H J Heinz Company Ltd
Hannah Research Institute
Health Food Manufacturers Association
Heinz UK & Ireland
Helsett Farm Ice Cream
HL Foods
Holland & Barrett
Home-Grown Cereals Authority
Ice Cream Alliance Ltd
Ice Cream Federation IFF (Great Britain) Ltd
Ilchester Cheese Co Ltd
Infant and Dietetic Food Association
Innocent Ltd
Institute
Institute of Food Science and Technology
Institute of Grocery Distribution
J Sainsbury Plc
Jacobs Bakery Limited
James Rizza & Sons
Jersey Milk Marketing Board

Joseph Heler Cheese
 Kellogg Company (GB) Ltd
 Kelly's Of Bodmin Ltd
 Kerry Food Service
 Kerry Food UK Ltd
 Kerry Ingredients (UK)
 Kraft Foods UK Ltd
 La Maison Des Sorbets
 LACORS
 Leatherhead Food RA
 Leckpatrick Dairies Ltd
 LGC
 London Chamber of Commerce
 London Food Centre
 Loughry College, The Food Centre
 Lovington's
 Kraft Europe
 Laboratory of the Government Chemist
 Leatherhead Food International
 Lefktro UK LTD
 Lovells
 LSW LTD
 Marks & Spencer Plc
 Markus Products
 Master Foods
 Maud's Ice Cream
 Mayer Brown Rowe
 Meadow Foods
 Meat & Livestock Commission (MLC)
 Meridian Foods
 Milk Development Council
 Milk Link Ltd (formerly Milk Marque)
 Minoli's of Machen
 MRC Human Nutrition Unit
 Napier Brown & Co Ltd
 National Association of Master Bakers,
 Confectioners and Caterers
 National Consumer Council
 National Consumer Federation
 National Dairymen's Association
 National Edible Oil Distributors Association.
 National Family & Parenting Institute
 National Farmers Union (England)
 National Federation of Women's Institutes
 National Food Alliance
 Nestlé UK
 Nestle Rowntree HQ
 Neya Taste
 Nichols Foods Ltd
 Northern Foods
 Nutrisport
 Onken
 PHLS
 Pilgrims Choice Cheese
 Piquant House
 Pizza Hut (UK)
 Premier International Foods
 Princes
 Pritchitts Dairy
 Proprietary Association of Great Britain
 Prospero
 Provision Trade Federation
 Pura
 Quality Milk Producers
 Rainbow Ices
 Ronaldo Ices
 Rossi's Ice Cream
 Schwans
 Snack, Nut & Crisps Manufacturers Association
 Society of Dairy Technology
 Somerfield Stores Ltd
 St Ivel Ltd
 Staple Dairy Products
 Sustain
 Tesco
 The Fat Consultant
 The Federation of Oils, Seeds and Fats
 Associations Ltd
 The Grain and Feed Trade Association
 The Kerrygold Company Ltd
 The Oil Merchant
 The Organic Milk Cooperative
 The University of Edinburgh
 Thornton's Plc
 Tiana Ltd
 Trading Standards Institute
 Turner's Dairies
 UK Association of Frozen Food Producers
 Unilever
 United Biscuits
 Venture Foods (UK) Limited
 Waitrose
 Wensleydale Dairy Products Ltd
 Western Research Laboratories
 Westmill Foods
 Which?
 Whitehouse Consultancy Ltd
 William Morrison Supermarkets Plc
 Women's Food and Farming Union
 Yeo Valley Organic Company Ltd
 Yoplait

STATUTORY INSTRUMENTS

2008 No.0000

FOOD, ENGLAND

The Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (England) Regulations 2008

<i>Made</i> - - - -	2008
<i>Laid before Parliament</i>	2008
<i>Coming into force</i> - -	1st July 2008

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 16(1), 17(2), 26(1) and (3) and 48(1) of the Food Safety Act 1990(a), and now vested in him(b).

In accordance with section 48(4A) of that Act he has had regard to relevant advice given by the Food Standards Agency.

As required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(c), there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

Title, application and commencement

1. These Regulations may be cited as the Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (England) Regulations 2008, apply in relation to England only and come into force on [1st July 2008].

(a) 1990 c. 16. Section 1(1) and (2) (definition of "food") was substituted by S.I. 2004/2990. Sections 17 and 48 were amended by paragraphs 12 and 21 respectively of Schedule 5 to the Food Standards Act 1999 (1999 c.28), "the 1999Act". Section 48 was also amended by S.I. 2004/2990. Section 26(3) was amended by Schedule 6 to the 1999 Act. Section 53(2) was amended by paragraph 19 of Schedule 16 to the Deregulation and Contracting Out Act 1994 (1994 c.40), Schedule 6 to the 1999 Act and S.I. 2004/2990.

(b) Functions formerly exercisable by "the Ministers" (being, in relation to England and Wales and acting jointly, the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales and, in relation to Scotland, the Secretary of State) are now exercisable in relation to England by the Secretary of State pursuant to paragraph 8 of Schedule 5 to the 1999 Act. Those functions, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act and thereafter transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32). Those functions, so far as exercisable in relation to Scotland, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (1998 c. 46) as read with section 40(2) of the 1999 Act.

(c) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Commission Regulation (EC) No. 575/2006 (OJ No. L100, 8.4.2006, p.3).

Interpretation

2.—(1) In these Regulations —

“the Act” means the Food Safety Act;

“the Council Regulation” means Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)(a);

“the Commission Regulation” means Commission Regulation (EC) No.445/2007 laying down certain detailed rules for the application of Council Regulation (EC) No. 2991/94 laying down standards for spreadable fats and of Council Regulation (EEC) No. 1898/87 on the protection of designations used in the marketing of milk and milk products(b);

“Community provision” means a provision referred to in column 1 of the Schedule as read with any relevant supplementary provision in column 2 of that Schedule;

“food authority” has the meaning it bears by virtue of section 5(1) of the Act, except that it does not include the appropriate Treasurer referred to in section 5(1)(c) of the Act (which deals with the Inner Temple and Middle Temple);

“sell” includes possess for sale, and offer, expose or advertise for sale;

“sell by retail” means to sell to a person who is not buying for the purpose of re-sale;

“vitamin A” means vitamin A present as such or as its esters and includes beta-carotene on the basis that 6 micrograms of beta-carotene or 12 micrograms of other biologically active carotenoids equal one microgram of retinol equivalent;

“vitamin D” means the anti-rachitic vitamins.

(2) Other expressions used in these Regulations and in the Council Regulation or the Commission Regulation have the same meaning in these Regulations as they have in the Council Regulation or the Commission Regulation.

Exemptions from these Regulations

3.—(1) Except where paragraph (2) applies, unless and until there is a decision by the EEA Joint Committee to amend the EEA Agreement under Article 98 so as to refer to the Council Regulation and the Commission Regulation, these Regulations shall not apply in respect of any spreadable fat to which the EEA Agreement applies and which —

(a) is brought into England —

(i) from an EEA state (other than a member State) in which it was lawfully produced and sold, or

(ii) from another part of the United Kingdom if that spreadable fat was brought there from such an EEA state; and

(b) is suitably labelled to indicate the nature of the spreadable fat.

(2) Regulation 4 does not apply in respect of any margarine which —

(a) is brought into England —

(i) from an EEA State (other than the United Kingdom) in which it was lawfully produced and sold,

(ii) from a member State (other than the United Kingdom) in which it was in free circulation and lawfully sold, or

(iii) from another part of the United Kingdom in which it was lawfully produced and sold or in free circulation and lawfully sold; and

(b) is suitably labelled to indicate the nature of the margarine.

(a) OJ No. L299, 16.11.2007, p.1.

(b) OJ No. L106, 24.4.2007, p.24.

(3) For the purposes of paragraph (2), “free circulation” has the meaning it bears in Article 23(2) of the Treaty establishing the European Community.

Vitamin content of margarine

4. No person may sell by retail any margarine unless it contains in every 100 grams —

- (a) not less than 800 micrograms and not more than 1,000 micrograms of vitamin A, and
- (b) not less than 7.05 micrograms and not more than 8.82 micrograms of vitamin D,

and a proportionate amount in any part of 100 grams.

Enforcement

5. Each food authority in its area shall execute and enforce the Community provisions and these Regulations.

Offences and penalty

6. Any person who contravenes or fails to comply with —

- (a) regulation 4; or
- (b) any Community provision,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Application of various provisions of the Act

7.—(1) The following provisions of the Act shall apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part thereof is to be construed as a reference to these Regulations —

- (a) section 2 (extended meaning of “sale” etc);
- (b) section 3 (presumptions that food intended for human consumption);
- (c) section 20 (offences due to fault of another person);
- (d) section 21 (defence of due diligence), as it applies for the purposes of section 14 or 15;
- (e) section 22 (defence of publication in the course of a business);
- (f) section 30(8) (which relates to documentary evidence);
- (g) section 33 (obstruction of officers);
- (h) section 35(1) to (3) (punishment of offences) in so far as it relates to offences under section 33(1) and (2);
- (i) section 36 (offences by bodies corporate); and
- (j) section 36A (offences by Scottish partnerships).

(2) Section 44 (protection of officers acting in good faith) of the Act shall apply for the purposes of these Regulations and, unless the context otherwise requires, any reference to the Act in that section shall be construed for the purposes of these Regulations as including a reference to the Community provisions.

Revocations

8. The following instruments are revoked —

- (a) The Milk and Milk Products (Protection of Designations) Regulations 1990(a), in so far as they apply in relation to England;
- (b) The Spreadable Fats (Marketing Standards) (England) Regulations 1999(b);
- (c) The Spreadable Fats (Marketing Standards) (England) (Amendment) Regulations 2007(c).

Signed by Authority of the Secretary of State for Health

Dawn Primarolo
Minister of State
Department of Health

Date

DRAFT

(a) S.I. 1990/607, as amended by S.I. 1990/2486.
(b) S.I. 1999/2457.
(c) S.I. 2007/1615.

SCHEDULE

Regulations 5 and 6

Community provisions

<i>Community provision</i>	<i>Supplementary provisions</i>	<i>Subject matter</i>
<p>1. The Council Regulation Article 114(1)</p> <p>Article 115</p>	<p>Annex XII to the Council Regulation</p> <p>Annex XV to the Council Regulation;</p> <p>Article 1 of and Annex I to the Commission Regulation; and Article 2 of and Annex II to the Commission Regulation</p>	<p>Prescribed designations for milk and milk products</p> <p>Marketing standards applying to spreadable fats (compositional criteria for reserved descriptions)</p>
<p>2. The Commission Regulation Article 3</p>	<p>Annex III to the Commission Regulation</p>	<p>Requirements relating to the use of the designation “butter” for composite products</p>