

FOOD STANDARDS AGENCY CONSULTATION

Title: Food Standards Agency Guidance Notes on legislation protecting dairy designations

CONSULTATION SUMMARY PAGE

| | |
|------------------------------------|------------------------------------|
| Date consultation launched: | Closing date for responses: |
| 16 September 2009 | 9 December 2009 |

Who will this consultation be of most interest to?

Food Manufacturers / Industry
Enforcement Authorities: Local Authorities, Trading Standards Officials, Environmental Health Officers, Port Health Authorities

What is the subject of this consultation?

FSA Guidance on the legal requirements on the rules for the use of dairy terms as set out by European Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)

What is the purpose of this consultation?

To formally seek stakeholder's comments and views on the draft updated guidance and to gain comments on the Agency's proposed assessment process for the derogation protocol.

Responses to this consultation should be sent to:

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Division/Branch:
Labelling and Standards Division
Standards, Authenticity and Food Law
Policy Branch
FOOD STANDARDS AGENCY
Tel: 020 7276 8160
Fax: 0207 276 8193

Postal address:
6C – Aviation House
London, WC2B 6NH

Email: Shifra.Sheikh@foodstandards.gsi.gov.uk

Is an Impact Assessment included with this consultation?

Yes

No See Annex A for reason.



Food Standards Agency Consultation on Guidance Notes on legislation protecting dairy designations

DETAIL OF CONSULTATION

The Agency is seeking views on draft Guidance Notes explaining the rules on the use of dairy designations set down in European Council Regulation 1234/2007 (establishing a common organisation of agricultural markets) and on specific provisions for certain agricultural products (this European legislation is referred to as the Single CMO Regulation). The Guidance Notes also include an “Assessment Protocol” to be used when assessing products for inclusion in the UK indicative list of non-dairy products that may use dairy terms.

The Guidance Notes have been drafted to take account of the Anderson Review.

Introduction

The Guidance Notes explain the rules on the use of dairy designations as set down in European Council Regulation 1234/2007. They apply to all industries engaged in the manufacture and trade of dairy produce and dairy produce analogues.

Detail

1. On 1 July 2008, **Council Regulation 1234/2007** (covering rules for the use of dairy terms and marketing standards for spreadable fats) came into force. This Regulation repealed Council Regulation 1898/87 (on the protection of designations used in the marketing of milk and milk products) and Council Regulation 2991/94 (laying down standards for spreadable fats). Council Regulation 1234/2007 is directly applicable in the UK.
2. At the same time in England, the two pieces of legislation which transposed Council Regulations 1898/87 and 2991/94 were revoked (The Spreadable Fats (Marketing Standards) (England) Regulations 1999, and The Milk and Milk Products (Protection of Designations) Regulations 1990). A new piece of legislation – The Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (England) Regulations 2008 was brought into force on 1 July 2008. This new Statutory Instrument combined the legal requirements previously found in the Spreadable Fats (Marketing Standards) (England) Regulations 1999, and the Milk and Milk Products (Protection of Designations) Regulations 1990 and also provided the enforcement provisions for European Council Regulation 1234/2007. Similar legislation applies in Scotland, Wales and Northern Ireland.
3. As the only significant change to legislation was to amend the reference to European Regulations. There were no significant incremental costs to the

private or public sectors and an Impact Assessment (IA) was not produced, neither was a formal consultation held on the new SI¹. The Agency is not including an IA for the Guidance Notes subject to this consultation as the Agency does not believe that they will add any new significant burdens to the private or public sector. However, if as a result of responses received to this consultation, significant additional costs are identified, an IA will be produced and published.

Assessment Protocol

4. The Guidance Notes introduce an Assessment Protocol for updating the UK indicative list of non-dairy products that may use dairy names. Products which have traditionally use dairy terms in their name but are clearly non-dairy may qualify for derogation from the requirement that only dairy produce may use dairy terms. The aim of the Assessment Protocol is to set up a consistent method of assessment
5. Currently assessments for derogation are at the discretion of enforcement authorities in conjunction with the Agency advice. There have been requests for a more consistent mode of assessment. To ensure uniform application of the derogation, the Agency has drafted the “Assessment Protocol” (see Annex 1 of the guidance). The Local Authority Coordinators of Regulatory Services (LACORS) Food Labelling Focus Group² will use the Assessment Protocol to assess such products and this opinion will inform the Agency’s decision on whether the product will be added to the UK list.
6. An IA has not been produced for the assessment protocol as the Agency does not believe it will add any new significant burdens to the private or public sector. However, if as a result of responses to this consultation significant additional costs are identified an IA will be produced and published.

Consultation Process

7. In developing the guidance the Agency has held meetings and discussions with LACORS².
8. This formal consultation will last 12 weeks. Once all responses have been received, they will be addressed by the Agency and shall either be incorporated into the Guidance Note or reasons will be given as to why comments have been rejected. This information will be published as a supplementary document and will appear on the Agency website within 3 months of the close of the consultation

¹ <http://www.food.gov.uk/news/newsarchive/2008/mar/newdairyregs>

² <http://www.lacors.gov.uk/lacors/Home.aspx>

Questions asked in this consultation:

Q1: Are you content with the layout and the subject matter contained in this guidance document;

- a) Do you feel that this guidance will help you understand the requirements of Council Regulations 1234/2007?**
- b) Is there anything that you feel could be more clearly explained?**

Q2: Is there any additional text or information you would like to see included? – Please provide detail and reasoning.

Q3: What are your views on the draft assessment protocol:

- a) do you envisage any problems or issues with this mode of assessment ?**
- b) If you do not agree with this mode of assessment, what would you suggest as an alternative?**

Q4: Will these guidance notes and/or the assessment protocol introduce any significant new costs to the private or public sector on top of reading and understanding? If so would you please provide details?

The Agency welcomes all comments and would particularly encourage Industry and enforcement authorities to respond with their views and supporting accompanying detail.

Responses

- 9.** Responses via email, telephone and mail are all welcome. Contact details are provided on page 1.
- 10.** Responses are required by close 9 December 2009. Please state, in your response, whether you are responding as a private individual or on behalf of an organisation/company (including details of any stakeholders your organisation represents).

Thank you on behalf of the Food Standards Agency for participating in this public consultation.

Yours,

Shifra Sheikh

Standards, Authenticity and Food Labelling Branch
Labelling, Standards and Allergy Division

Enclosed

Annex A: Standard Consultation Information

Annex B: List of interested parties

Annex A

Non – Inclusion of an Impact Assessment

1. On 1 July, **The Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (England) Regulations 2008** came into force with similar legislation applying in Scotland, Wales and Northern Ireland.
2. This legislation simply updated any references from Council Regulations 1898/87 and 2991/94 to the new Council Regulation 1234/2007.
3. In our view, there were no substantive changes therefore the Agency did not produce an Impact Assessment (IA); neither did we hold a full formal consultation on the new SI.
4. On 12 March 2007, the Agency issued an Interested Party letter (published on our website at: <http://www.food.gov.uk/multimedia/pdfs/sfmmp2008ip080312.pdf>) detailing the above and asked for any comments on the proposed route of action. No comments were received, and IA was not produced.

Annex A - Standard Consultation Information

If you have any queries relating to this consultation please contact the person named on page 1, who will be able to respond to your questions.

Publication of personal data and confidentiality of responses

1. In accordance with the FSA principle of openness our Information Centre at Aviation House will hold a copy of the completed consultation. Responses will be open to public access upon request. The FSA will also publish a summary of responses, which may include personal data, such as your full name and contact address details. If you do not want this information to be released, please complete and return the Publication of Personal Data form, which is on the website at <http://www.food.gov.uk/multimedia/pdfs/dataprotection.pdf> Return of this form does not mean that we will treat your response to the consultation as confidential, just your personal data.
2. In accordance with the provisions of Freedom of Information Act 2000/Environmental Information Regulations 2004, all information contained in your response may be subject to publication or disclosure. If you consider that some of the information provided in your response should not be disclosed, you should indicate the information concerned, request that it is not disclosed and explain what harm you consider would result from disclosure. The final decision on whether the information should be withheld rests with the FSA. However, we will take into account your views when making this decision.
3. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

Further information

4. A list of interested parties to whom this letter is being sent appears in Annex B. Please feel free to pass this document to any other interested parties, or send us their full contact details and we will arrange for a copy to be sent to them direct.
5. A Welsh version of the consultation package can be found at www.food.gov.uk
6. Please contact us for alternative versions of the consultation documents in Braille, other languages or audiocassette.
7. Please let us know if you need paper copies of the consultation documents or of anything specified under '**Other relevant documents**'.
8. This consultation has been prepared in accordance with HM Government Code of Practice on Consultation, available at: <http://www.berr.gov.uk/files/file47158.pdf>

The Consultation Criteria are available at

<http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44458.html>

9. Criterion 2 of HM Government Code of Practice on Consultation states Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
10. The Code of Practice states that an Impact Assessment should normally be published alongside a formal consultation. We have not produced an Impact Assessment for this proposal and this is detailed at Annex 1.
11. For details about the consultation process (not about the content of this consultation) please contact: Food Standards Agency Consultation Co-ordinator, Room 2C, Aviation House, 125 Kingsway, London, WC2B 6NH. Tel: 0207 276 8630.

Comments on the consultation process itself

12. We are interested in what you thought of this consultation and would therefore welcome your general feedback on both the consultation package and overall consultation process. If you would like to help us improve the quality of future consultations, please feel free to share your thoughts with us by using the Consultation Feedback Questionnaire at <http://www.food.gov.uk/multimedia/worddocs/consultfeedback.doc>
13. If you would like to be included on future Food Standards Agency consultations on other topics, please advise us of those subject areas that you might be specifically interested in by using the Consultation Feedback Questionnaire at <http://www.food.gov.uk/multimedia/worddocs/consultfeedback.doc> The questionnaire can also be used to update us about your existing contact details.

List of interested parties to whom this letter has been emailed:

| | |
|-------------------------------------------------------|---------------------------------------------------|
| 3663 | Caledonian Cheese Company Ltd |
| Aarhus Karlshamn | Campden BRI |
| Actimel | Campbell's Grocery Products Ltd |
| Adams Food Ingredients | Capelin's Of Brora |
| ADAS | Cargills |
| Allied Frozen Storage | Cereal Partners Worldwide |
| Allied Technical Centre | Chartered Institute of Environmental Health |
| Apetito | Chequer Foods Ltd |
| Aramark | Christian Salvesen Distribution.Ltd |
| Arla Foods | CMI plc |
| Arlafoods | Cold Storage and Distribution Federation |
| ASDA | Community Foods Ltd |
| Ashwell Associates | Compass Group Plc |
| Association of Cheese Processors | Contract Foods Ltd |
| Association of Frozen Food Producers | Co-Operative Group |
| Association of Public Analysis | Country Markets Ltd Denison |
| Basildon Dairy Foods | Ingredients UK Ltd |
| Biscuit, Cake, Chocolate and Confectionery Alliance | Cream O'Galloway Dairy Comp |
| BEL UK | Dairy Crest |
| Bevelynn Ltd | Dairy Farm Products |
| Biotechnology and Biological Sciences Research Centre | Dairy Farmers of Britain |
| Birmingham City University | Dairy UK |
| Booker Ltd | Department of Environment, Food and Rural Affairs |
| Borculo Whey Products | Dept for Business, Innovation and Skills |
| Bradbury and Son (Buxton) Ltd | Diliberto |
| Brakes | Dutch Maid Ices |
| Britannia Food | Eden Vale |
| British Brands Group | Elizabeth the Chef Ltd |
| British Cheese Board | EFSIS |
| British Dietetic Assoc. | Ellis & Everard Ltd |
| British Exporters Association | English Lakes Ice Cream |
| British Food Importers& Distributors Association | Eurofins Laboratories Ltd |
| British Goat Society | European Food Law Association UK |
| British Hospitality Association | Eversheds Legal Firm |
| British Nutrition Foundation | Fayrefield Food International |
| British Retail Consortium | Farley Health Products |
| British Soft Drinks Association Ltd | Fayrefield Foodtec Ltd |
| BSI Global | Federation of Fish Fryers |
| Bureau Européen des Unions Consommateurs | Federation of Small Businesses |
| Cadbury Schweppes Plc | |

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
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
Leckpatrick Dairies Ltd
LGC
London Chamber of Commerce
London Food Centre
Loughry College, The Food Centre
Lovington's
Kraft Europe
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
Meridian Foods
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
Sommerfield 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
Yakult
Yoplait



**GUIDANCE ON
LEGISLATION ON THE
PROTECTION OF DAIRY
DESIGNATIONS**

Revision 1
September 2009

If you require this information in an alternative format – such as audio, large print, Braille – please contact us.

CONTACT TELEPHONE 020 7276 8162

Summary

| | |
|--------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Intended audience: | Food industry including small and medium size enterprises and enforcement authorities. |
| Regional coverage: | The guidance is applicable for use in the United Kingdom (England, Northern Ireland, Scotland and Wales). |
| Purpose of guidance: | To provide informal, non-binding guidance on compliance with the regulations by industry, and to aid the enforcement of legislation relating to the protection of designations used in the marketing of milk and milk products. |
| Legal status: | This guidance is intended to be read with the accompanying regulations, which are listed. |
| Essential actions to comply with regulation(s): | <ul style="list-style-type: none"> ➤ The reserved/protected dairy designations listed in Annex XII to Council Regulation (EC) No. 1234/2007 of 22 October 2007 (Single CMO Regulation) may only be used for products derived exclusively from milk, i.e. products whose dairy components have not been replaced with non-dairy components. ➤ Dairy analogues or products that are not purely dairy (bar derogations – see later) may not be labelled, advertised or presented using protected dairy terms. In addition, there should be no direct or indirect suggestion of a dairy connection by ‘non-pure’ dairy or imitation products. ➤ Composite products may use the term ‘milk’ and the designations used for ‘milk products’ in association with a word or words, provided that none of the dairy components are replaced with non-dairy components. In addition, the amount of milk or milk product in such a composite product should be substantial enough to give it the characteristic quality of the dairy product, for example “strawberry milk shake”. ➤ Dairy products must comply with the requirements of the Food Labelling Regulations 1996 (as amended), from here on the Regulations will be referred to as ‘the FLRs’, in addition to the requirements of the dairy designation regulations. A copy of the principal Regulations which apply to England, Scotland and Wales can be found at |

| | |
|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <p>the following web-link: http://www.opsi.gov.uk/si/si1996/Uksi_19961499_en_1.htm The Food Labelling Regulations (Northern Ireland) 1996 can be found at the following web-link: http://www.opsi.gov.uk/sr/sr1996/Nisr_19960383_en_1.htm#end. Amendments can be found at the following web-link: www.opsi.gov.uk</p> <ul style="list-style-type: none"> ➤ Regulation 1234/2007 allows the use of dairy terms for products which are 'non - dairy' and do not compete with dairy products, but have traditionally used 'dairy' terms, such as 'peanut butter', and/or products where the dairy designation is clearly used to describe a characteristic quality of the food product, e.g. 'creamed potatoes'. ➤ Information on what steps to take to ensure products comply with the above requirements is provided in Annex 1 of this guidance document. In addition, businesses are recommended to seek advice from their local authority. ➤ Enforcement authorities planning to act on those practices for which more than one interpretation of the legislation is possible should seek the agreement of the relevant Primary Authority, Home Authority or LACORS' Food Labelling Focus Group before taking any definitive action. |
|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

REVISION HISTORY

| Revision No. | Revision date | Purpose of revision | Revised by |
|--------------|----------------|-----------------------------------------------------------|---------------------|
| 1 | September 2009 | Revised following an update to the applicable regulations | Shifra Sheikh (LSA) |

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INTRODUCTION

1. These Guidance Notes explain the rules for the use of dairy designations set down in Council Regulation EC 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (from here on, the legislation will be referred to as the “the CMO Regulation”). They also include a protocol for assessing food products that comply with the derogation requirements of the legislation on dairy terms and a UK national ‘indicative’ list of compliant food products.
2. These Guidance Notes are applicable to all dairy products produced or imported into the UK. The designations used for ‘milk’ and ‘milk products’ are reserved for dairy products, under the provisions set out in Article 114 (1) of the CMO Regulation. The Regulation imposes restrictions on the use of such protected dairy terms by “dairy alternative” products i.e. products where some, or all dairy components have been replaced with non-dairy components, such as “sunflower seed spread X%” “soya desert” and “oat drink” that might otherwise be mislabelled as butter, yogurt and milk respectively.
3. The restrictions cover labelling, presentation and advertising. There is also a general prohibition on direct or indirect suggestion of a dairy connection.
4. In addition, enforcement authorities planning to take action on provisions for which more than one interpretation of the legislation is possible should seek the agreement of the relevant Primary Authority, Home Authority, or the Local Authority Coordinators of Regulatory Services (LACORS’) Food Labelling Focus Group¹ before taking any definitive action.

REGULATIONS REFERRED TO IN THESE GUIDANCE NOTES

5. These Guidance Notes apply to separate but parallel Regulations in all four administrations of the United Kingdom (England, Northern Ireland, Scotland and Wales).
 - I. The Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (England) Regulations 2008.
http://www.opsi.gov.uk/si/si2008/pdf/uksi_20081287_en.pdf

Parallel but separate regulations exist for Northern Ireland, Wales and Scotland:
The Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (Northern Ireland) Regulations 2008 (SR 2008 No 239)

¹ www.lacors.gov.uk

http://www.opsi.gov.uk/sr/sr2008/nisr_20080239_en_1

The Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (Wales) Regulations 2008 No. 1341 (W.141)

http://www.opsi.gov.uk/legislation/wales/wsi2008/wsi_20081341_en_1

The Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (Scotland) Regulations 2008 (SSI 2008 No. 216)

http://www.opsi.gov.uk/legislation/scotland/ssi2008/ssi_20080216_en_1

- II. The Food Labelling Regulations 1996. Statutory Instrument 1996 No 1499, (as amended) apply directly in England, Scotland and Wales. The principal legislation can be found at the following web-link:

http://www.opsi.gov.uk/si/si1996/Uksi_19961499_en_1.htm

Food Labelling Regulations (Northern Ireland) 1996 Statutory Rule 1996 No. 383

http://www.opsi.gov.uk/sr/sr1996/Nisr_19960383_en_1.htm

The legislation has been amended a number of times and separate legislation exists for the devolved administrations of the UK. For full details of these amendments, please contact the Agency Food Labelling section, details can be found at the end of this document.

- III. The Food Safety Act 1990

http://www.opsi.gov.uk/acts/acts1990/Ukpga_19900016_en_1.htm

The Food Safety Act 1990 (Consequential Modifications) (England and Wales) Order 1990 http://www.opsi.gov.uk/si/si1990/Uksi_19902486_en_1.htm

The Food Safety Act 1990 (Consequential Modifications) (Scotland) Order 1990

http://www.opsi.gov.uk/si/si1990/uksi_19902625_en_1.htm

Food Safety (NI) Order 1991.

http://www.opsi.gov.uk/si/si1991/uksi_19910762_en_1

- IV. Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products. Official Journal (OJ) No L299, 16.11.2007, p1. [http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:299:0001:0149:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:299:0001:0149:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:299:0001:0149:EN:PDF)

- Annex XV – marketing standards applying to spreadable fats referred to in Article 115.
- Annex XII – definitions and designations in respect of milk and milk products referred to in Article 114 [1].

- V. Commission Regulation (EC) No. 445/2007 (codified version) 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. Official Journal (OJ) No L 87.

<http://eur->

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:106:0024:0029:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:106:0024:0029:EN:PDF)

- VI. Regulation 853/2004 on specific rules for food of animal origin (as amended)

<http://eur-lex.europa.eu/LexUriServ/site/en/consleg/2004/R/02004R0853-20070101-en.pdf>

- VII. Council Directive 83/417/EEC on lactoproteins (casein and caseinates) as amended intended for human consumption. OJ No L237. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1983:237:0025:012:EN:HTML>
- VIII. Commission Decision 88/566/EEC listing the products referred to in the second subparagraph of Article 3 (1) of Council Regulation (EEC) No 1898/87. OJ No L310. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1988D0566:19980204:EN:PDF>
- IX. COUNCIL REGULATION (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:093:0012:0025:EN:PDF>
- X. Directive 2000/13 of the European Parliament and of the Council on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs. Official Journal (OJ) No. L109. 6.5.2000, as amended. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:109:0029:0042:EN:PDF>
- XI. The Condensed Milk and Dried Milk (England) Regulations 2003 (S.I. 2003/1596) <http://www.opsi.gov.uk/si/si2003/20031596.htm>
The Condensed Milk and Dried Milk (Wales) Regulations 2003 No. 3053 (W.291) <http://www.opsi.gov.uk/legislation/wales/wsi2003/20033053e.htm>
Condensed Milk and Dried Milk Regulations (Northern Ireland) 2003 SR 2003 No. 300 <http://www.opsi.gov.uk/Sr/sr2003/20030300.htm>
The Condensed Milk and Dried Milk (Scotland) Regulations 2003 SSI No. 311 http://www.oqps.gov.uk/legislation/ssi/ssi2003/ssi_20030311_en_1
- XII. COUNCIL REGULATION (EC) No 509/2006 of 20 March 2006 on agricultural products and foodstuffs as traditional specialities guaranteed <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:093:0001:0011:EN:PDF>
- XIII. COUNCIL DIRECTIVE 83/417 EEC of 25 July 1983 on the approximation of the laws of the Member States relating to certain lactoproteins (caseins and caseinates) intended for human consumption <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1983L0417:19860101:EN:PDF>

INTENDED AUDIENCE

6. The guidance is intended for sectors of the food industry involved in the manufacture of dairy produce, including small and medium sized businesses. The aim of this guidance is to facilitate uniform application of the Regulations by Industry [including Small and Medium Size Enterprises (SMEs)] and to aid enforcement authorities in their enforcement activities in relation to the legislation relating to dairy produce. Ultimately, it should ensure consumers are presented with meaningfully and accurately labelled products.

PURPOSE AND LEGAL STATUS OF GUIDANCE NOTES

7. These Guidance Notes have been produced to provide informal, non-binding advice on the legal requirements of Council Regulation (EC) 1234/2007 (Single CMO Regulation) and should be read in conjunction with the legislation².
8. The aim of these Guidance Notes is to facilitate uniform application of the regulations by industry, and to aid the enforcement of legislation relating to the protection of designations used in the marketing of milk and milk products. This will ensure that consumers are presented with accurately labelled products, thus promoting fair trade.
9. The text should not be taken as an authoritative statement or interpretation of the law, as only the courts have this power. Every effort has been made to ensure that these Guidance Notes are as helpful as possible. However, it is ultimately the responsibility of individual businesses to ensure their compliance with the law. Businesses with specific queries may wish to seek the advice of their local enforcement authority, which will usually be the trading standards/environmental health department of the local authority / District Council.

SCOPE OF THE GUIDANCE

10. These Guidance Notes relate principally to the definitions and designations set down in the CMO Regulation in respect of milk and milk products. This

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:299:0001:0149:EN:PDF>

Regulation is directly applicable in the UK and is enforced through national legislation (see references for detail on legislation for devolved administrations).

11. A protocol for assessing food products that comply with the derogation requirements³ is included at Annex 1, as well as a national indicative list of such products at Annex 2. The national indicative list of compliant products contributes to the Community list of compliant products contained in Commission Decision 88/566/EEC⁴.
12. The Guidance Notes also refer to the Food Labelling Regulations, 1996 (as amended) – The FLRs, which regulate the labelling of foods generally. These Regulations and its subsequent amendments can be accessed at the Office of Public Sector Information website (see references for detail on legislation for devolved administrations). Copies of legislation for devolved administrations can also be obtained from the following website: (<http://www.opsi.gov.uk>).
13. Greater detail on some of the issues covered can be found in guidance for the FLRs. Copies of these can be obtained by contacting the Food Standards Agency (Contact details on page 21) or they can be downloaded from the Agency's website.⁵

DEFINITIONS – ACCORDING TO THE CMO REGULATION UNLESS OTHERWISE SPECIFIED

14. In these Guidance Notes, the following key terms will be assumed to have the meanings set out below. Where these are legal definitions, the relevant legislation is cited.

‘Marketing’

means holding or display with a view to sale, offering for sale, sale, delivery or any other manner of placing on the market

‘Designation’

means the name used at all stages of marketing.

³ Section III, Annex XII

⁴<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1988D0566:19980204:EN:PDF>

⁵ <http://www.food.gov.uk/foodindustry/guidancenotes/labelregsguidance/foodlabelregsguid>

'Milk'

is the normal mammary secretion obtained from one or more milkings; however, if not bovine (cow or buffalo) the origin must be stated (Section II point 4 of Annex XII). The FLRs⁶ require milk that is not from cows to be clearly labelled (for example milk from a buffalo, even though it is of bovine origin, should be explicitly labelled as “buffalo milk”).

'Milk proteins'

means all types of milk protein (caseins, caseinates or whey proteins or any mixtures of these⁷).

'Milk products'

are products derived exclusively from milk, on the understanding that substances necessary for their manufacture may be added provided that those substances are not used for the purpose of replacing, in whole or in part, any milk constituent.

'Whey'

is a byproduct in the manufacture of cheese. It is the liquid remaining after milk has been curdled and strained and varies in characteristics with the type of cheese from which it originates. (There is no legal definition of whey; it is included in the definition of a milk product).

'Cream'

is the product obtained from milk in the form of an emulsion of the oil-in-water type with a milk fat content of at least 10%.

'Butter'

is the product with a milk fat content of not less than 80% but less than 90%, a maximum water content of 16% and a maximum dry non-fat milk material content (e.g. milk proteins, of 2%).

⁶ For copies of the legislation for the devolved administrations please see: www.opsi.gov.uk

⁷ Council Directive 2000/13/EC, as amended Annex 1

‘Buttermilk’

is the liquid by-product resulting from the production of butter from cream or milk. (There is no legal definition of buttermilk, it is included in the definition of a milk product).

‘Yogurt’

is a product obtained from the fermentation of milk by the micro-organisms, *Lactobacillus bulgaris* and *Streptococcus thermophilus*. The resultant product has a reduced pH and may or may not be coagulated. The starter microorganisms are viable, active and abundant in the product throughout its life (There are no national or European legal definitions for yogurt. However there are internationally non-legally binding standards set by the World Health Organisation: Codex Standard for fermented milks - CODEX STAN 243-2003 http://www.codexalimentarius.net/web/index_en.jsp).

‘Butter oil’ and ‘Anhydrous milk fat’

are fatty products derived exclusively from milk by means of processes which result in almost total removal of water and non-fat solids.

‘Cheese’

is the product obtained from the coagulation of milk, cream, skimmed milk, partly skimmed milk, concentrated skimmed milk, reconstituted dried milk, butter milk, materials obtained from milk, other ingredients necessary for the manufacture of cheese provided that those are not used for replacing, in whole or in part, any milk constituent, with or without partially draining the whey resulting from the coagulation.

Cheese may also be made from whey, where it is made by either concentrating the whey with or without the addition of milk and milk fat and subsequently moulding it or just by coagulating the whey with or without the addition of milk and milk fat⁸.

‘Casein’

is the principal protein constituent of milk, washed and dried, insoluble in water and obtained from skimmed milk by precipitation: by the addition of

⁸ The Food Labelling Regulations, 1996 (as amended)

acid, microbial acidification, by using rennet or other milk-coagulating enzymes⁹.

INTERPRETATION

15. The requirements of the CMO Regulation were introduced largely to meet concerns about the marketing of so called “imitation products”, i.e. products whose dairy components have been partly or wholly replaced with non-dairy components (e.g. fat spreads, dairy cream alternatives and cheese), hence the need to define “milk” and “milk products”. It is recognised that reformulation of products to reduce their fat content is desirable. However, it is considered that such products should not bear dairy designations if they do not meet the relevant compositional criteria.
16. The Regulation imposes restrictions on the use of protected dairy designations or names by dairy product alternatives / analogues. The restrictions cover labelling, presentation and advertising. There is also a general prohibition on direct or indirect suggestion of a dairy association for dairy product alternatives / analogues. Such products compete directly with dairy products and, by trading on the dairy image, may mislead the consumer.

Example of dairy alternatives / analogues

Dairy alternative products that might otherwise be considered by consumers to be butter, yogurt and milk (etc) must be described by a more specific but longer description, such as “sunflower seed spread X%”, “fermented soya dessert” and “oat drink” respectively.

Analogues are products, which may look similar to a dairy product, but they are manufactured wholly or in part from vegetable matter. Some Cheese analogues contain casein (this is a dairy product).

17. Whilst the CMO Regulation aims to prevent the mis-description of ‘imitation products’, for example, so-called ‘cheese analogues’/ dairy cream alternatives, it also prevents the name ‘dietary cheese’ from being used for non-dairy

⁹Council Directive 83/417/EEC on lactoproteins (casein and caseinates) intended for human consumption, as amended

cheese i.e. cheese in which vegetable fat has replaced the milk or dairy fat for dietary purposes, even if accompanied by additional, clarifying descriptions. .

USE OF DAIRY NAMES/DESIGNATIONS – ACCORDING TO THE CMO REGULATION UNLESS OTHERWISE SPECIFIED

18. The CMO Regulation defines milk and milk products and sets out the legal names or designations that are reserved for these products.

19. The term ‘milk’ may be used as follows:

- For milk that has been treated without altering its composition, e.g. pasteurised milk, UHT milk.
- For milk where the fat content has been standardised.¹⁰
- In association with a word or words to reflect the type, grade, origin and/or intended use of such milk or to describe the physical treatment or the modification in composition to which it has been subjected, provided that the modification is restricted to an addition and/or withdrawal of natural milk constituents.

Examples of descriptions of milk

‘cows’ milk’
‘ whole milk’
‘drinking milk’
‘skimmed milk’
‘semi-skimmed milk’
‘raw milk’
‘standardised / non-standardised whole milk’
‘heat-treated milk’

- The term ‘milk’ and the designations used for ‘milk products’ may also be used in association with a word or words for composite products provided none of the dairy components are replaced with a non-dairy components. In

¹⁰ Article 114 (2) of the CMO Regulation.

addition, the amount of milk or milk product in such composite products should be substantial enough to give them the characteristic quality of the dairy product.

Examples of composite milk products –

For example only , these are not defined in the CMO Regulation

- Strawberry yogurt should be similar to ‘yogurt’ in consistency / appearance.
- Herb butter should have a characteristic consistency and qualities of ‘butter’ in its taste / texture / appearance.
- Strawberry and chocolate flavoured milk should both be of a milk like characteristic consistency / appearance / quality.

20. The CMO Regulation requires the origin of milk to be clearly stated if not bovine¹¹ (e.g., it is a requirement for the label to state ‘goat’s milk’ and ‘sheep’s milk’). There is also a similar requirement in Schedule 8 of the FLR¹², whereby the word ‘milk’ shall not be used as the name of an ingredient where the ingredient is the milk of an animal other than a cow unless it is accompanied by the name of the animal.

21. It is a legal requirement that raw milk intended for human consumption is labelled and that products made with raw milk which do not undergo heat-treatment are labelled ‘made with raw milk’¹³. Further detail can be found on

¹¹ Meaning from a hoofed animal such as a cow or a buffalo

^{12, 13} Please see reference list for details of the legislation for all four administrations of the UK

¹³ Regulation (EC) No 853/2004, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004R0853:20060101:EN:PDF>
The Food Hygiene (England) Regulations 1996, <http://www.opsi.gov.uk/si/si2006/20060014.htm>
The Food Hygiene Regulations (Northern Ireland) 2006, <http://www.opsi.gov.uk/sr/sr2006/20060003.htm>
The Food Hygiene (Scotland) Regulations 2006, <http://www.opsi.gov.uk/legislation/scotland/ssi2006/20060003.htm>
The Food Hygiene (Wales) Regulations 2006, <http://www.opsi.gov.uk/legislation/wales/wsi2006/20060031e.htm>

the Agency website in relation to the requirements in all four administrations of the UK¹⁴.

22. Other than the dairy terms reserved in this Regulation, the legislation also allows descriptive and customary names to be reserved for dairy products.

OTHER RESERVED DESCRIPTIONS FOR DAIRY PRODUCTS

23. Dairy produce may also use indications of geographical origin subject to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs¹⁵ (e.g. Cornish clotted cream).
24. The FLRs also reserve descriptions for specific types of cream (and prohibit their use in the labelling or advertising of creams which do not meet the requirements of column 2 of Part III, Schedule 8 (relating to milk fat content) of the FLRs.

Reserved descriptions for specific types of cream in the Food Labelling Regulations

'Clotted cream',
'Double cream',
'Whipping cream',
'Whipped cream',
'Sterilised cream',
'Single cream',
'Sterilised half cream',
'Half cream'

BRAND NAME OR FANCY NAME

25. The use of a trade name, brand name or fancy name would have to be considered against the restrictions set out in the CMO Regulation¹⁶, where the

¹⁴ <http://www.food.gov.uk/foodindustry/guidancenotes/hygguid/rawmilkcream>

¹⁵ Regulation 510/2006 is accessible at:
<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:093:0012:0025:EN:PDF>

¹⁶ point 2 of Section III of Annex XII

Regulation bans labels, commercial documents, publicity material or any form of advertising or any form of presentation which claim, imply or suggest that a non-dairy product is a dairy product.

LABELLING

26. In addition to the requirements of the CMO Regulation¹⁷, milk and milk products sold in the UK must comply with the general requirements of the FLRs¹⁸.

27. Detailed guidance on these requirements may be found in *The Food Labelling Regulations 1996: Guidance Notes*¹⁹ (see preface). The reader is strongly recommended to refer to this document for additional advice.

PROHIBITIONS

Non-dairy produce

28. The CMO Regulation²⁰ prohibits 'non-dairy' products (products whose dairy component has been replaced in whole, or in part, with non-dairy components) from using dairy terms such as "yogurt" and "milk".

29. In addition, the Regulation bans labels, commercial documents, publicity material or any form of advertising or presentation which claim, imply or suggest, that a non-dairy product is a milk product²¹.

Examples considered as prohibited marketing for non-dairy products

The use of comparisons or claims such as 'real buttery taste', 'tastes like real cream', 'use as for cream' or terms like 'whipping', 'double' etc. normally associated with dairy products should be considered against the provision, in the context of a particular

¹⁷ Annex XII

¹⁸ Please see list of references for relevant legislation for all 4 administrations of the UK

¹⁹ <http://www.food.gov.uk/multimedia/pdfs/Fguidnot1.pdf>

²⁰ Section III of Annex XII

²¹ Section III, point 2 of Annex XII

label or advert etc, as they may be in breach of the Regulations.

The terms 'soya / rice / oat milk' are also not permitted under the CMO legislation.

EXEMPTIONS

30. Whilst the use of dairy designations is restricted on labels, compound foods containing milk or milk products can use the designation 'milk' or other dairy designations such as 'butter' to describe the basic raw material and can also list these designations in the ingredients list in accordance with the general food labelling rules (Please see Agency Guidance Notes on food labelling rules²²).

Example

Garlic Butter (minimum milk fat content is 75%), Alcoholic butters (minimum milk fat content is 20%)²³

A product described as 'a blend of vegetable oils and buttermilk' can continue to be described as such on the label, provided it does not contravene the rules on the use of dairy designations in respect of competing products²⁴.

31. Derogation exists for non-dairy products to use dairy terms. These are products which are clearly 'non-dairy' but have traditionally used 'dairy' terms e.g. peanut butter, and/or for products where the dairy designation is clearly used to describe a characteristic quality of the food product e.g. creamed potatoes, cream sherry, and butter beans. Such products appear on the national lists detailed under Commission Decision 88/566²⁵; the requirement for this list is no longer contained in the CMO Regulation.

²² <http://www.food.gov.uk/multimedia/pdfs/Fguidnot1.pdf>

²³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007R0445:en:NOT>

²⁴ point 2 of Section III, Annex XII

²⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1988D0566:19980204:EN:PDF>

INDICATIVE LISTS OF 'EXEMPT' FOOD PRODUCTS

32. The CMO Regulation requires Member States to submit to the European Commission additions to the indicative national list of products that they deem to meet the derogation requirements²⁶ and to update and inform the Commission as necessary. This list represents products that are clearly 'non-dairy' but have traditionally used 'dairy' terms (such as peanut butter) and/or products where the dairy term is clearly used to describe a characteristic quality of the food product (such as creamed potatoes). The Regulation does not provide the Commission with any specific powers to review or approve these national lists.
33. New products may be added to the list if they are deemed to meet the derogation requirements. The list is not definitive and is intended to be an indicative guide to products considered compliant.
34. The Agency has developed, and will maintain a method of assessment (an assessment protocol) for updating the UK national indicative list of products, which qualify for the derogation on dairy terms (**See [Annex 1 for protocol and Annex 2 for UK national indicative list of products](#)**). The protocol includes the criteria to be applied during product assessments and the mechanism for carrying them out.

REFERENCES

1. Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products. OJ No L299, 16.11.2007, p1.
<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:299:001:0149:EN:PDF>
 - Annex XV - marketing standards applying to spreadable fats referred to in article 115.
 - Annex XII - definitions and designations in respect of milk and milk products referred to in article 114 [1].
2. Commission Regulation (EC) No. 445/2007 (codified version) 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

²⁶ Annex XII

milk and milk products. OJ No L 87.

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:106:0024:0029:EN:PDF>

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

http://www.opsi.gov.uk/si/si2008/pdf/uksi_20081287_en.pdf

Parallel but separate regulations exist for Northern Ireland, Wales and Scotland:

- The Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (Northern Ireland) Regulations 2008 (SR 2008 No 239)
- The Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (Wales) Regulations 2008 No. 1341 (W.141)
- The Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (Scotland) Regulations 2008 (SSI 2008 No. 216)

4. Council Directive 83/417/EEC on lactoproteins (casein and caseinates) intended for human consumption. OJ No L237.

http://www.fsai.ie/legislation/food/eu_docs/food_products/Caseins_Caseinates/Dir%201983.417%20EC.pdf

5. Commission Decision 88/566/EEC listing the products referred to in the second subparagraph of Article 3 (1) of Council Regulation (EEC) No 1898/87. OJ No L310.

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1988D0566:19980204:EN:PDF>

6. Directive 2000/13 of the European Parliament and of the Council on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs. Official Journal (OJ) No. L109. 6.5.2000. Amended by Commission Directives 2001/101/EC and 2003/89/EC.

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2000L0013:20000526:EN:PDF>

7. The Food Labelling Regulations, 1996 (as amended). SI 1996 No 1499.

http://www.opsi.gov.uk/si/si1996/Uksi_19961499_en_1.htm Food Labelling Regulations (Northern Ireland) 1996 Statutory Rule 1996 No. 383
http://www.opsi.gov.uk/sr/sr1996/Nisr_19960383_en_1.htm

8. Food Safety Act 1990. [1990] Ch.16. The Food Safety Act 1990

http://www.opsi.gov.uk/acts/acts1990/Ukpga_19900016_en_1.htm

(Consequential Modifications) (England and Wales) Order 1990

http://www.opsi.gov.uk/si/si1990/Uksi_19902486_en_1.htm

The Food Safety Act 1990 (Consequential Modifications) (Scotland) Order 1990

http://www.opsi.gov.uk/si/si1990/uksi_19902625_en_1.htm

Food Safety (NI) Order 1991.

http://www.opsi.gov.uk/si/si1991/uksi_19910762_en_1

9. The Food Labelling Regulations, 1996 (as amended) – Guidance Notes.
<http://www.food.gov.uk/multimedia/pdfs/Fguidnot1.pdf>
10. Codex Standard for Fermented Milks, *CODEX STAN 243-2003*.
http://www.codexalimentarius.net/download/standards/400/CXS_243e.pdf
11. The Condensed Milk and Dried Milk Regulations 2003 Guidance Notes,
Version 2
<http://www.food.gov.uk/multimedia/pdfs/condensedguid03.pdf>
12. Guidance Notes and Best Practice on Allergen and Miscellaneous Labelling
Provisions
<http://www.food.gov.uk/multimedia/pdfs/allergenlabelguide08.pdf>

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ANNEX 1 – ASSESSMENT PROTOCOL

Assessment Principles

1. For a non-dairy product to use a dairy designation it must be clear to the average consumer that the product is not a dairy product and cannot be confused with a dairy product, e.g. soya milk does not qualify because it may be mistaken for a dairy product and therefore competes directly with cows' milk. Similarly, fat spreads made from seed oils cannot use dairy terms as they compete directly with dairy spreads.
2. The dairy term used must relate to a traditional product, which may have a dairy character. The derogation is limited to those products for which the designation has been used so that such traditional character is not lost. Such traditional character may be considered proven where the designation has been used for the product in question for a period preceding 9 April 1997, for at least a period of time usually attributed to a human generation i.e. 25 years²⁷. For example, peanut butter has been traditionally used and lemon cheese is both traditional and has the characteristic quality of cheese.
3. The dairy term used must describe the characteristic property of the product. For example, creamed potatoes have a creamy appearance and texture.
 - These assessment criteria will be used to add a product to the UK national indicative list.
'Product' meaning individual types of product rather than a specific branded product. A specified product bearing a particular non-dairy designation does not have to be on the UK national indicative list before it can benefit from this derogation; it simply has to meet the criteria above. .
 - The current Community list contained in Decision 88/566/EEC should also serve as a reference point in the approval of product categories.

²⁷ Council Regulation No. 509/2006 on agricultural products and foodstuffs as traditional specialties guaranteed <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:093:0001:0011:EN:PDF>

Draft Guide to Assessment Process

1. Manufacturers seeking to include product categories on the UK national indicative list would have to submit all relevant information to the Agency:

- a description of the product including a photo,
- recipe/product specification,
- production flow chart,
- labelling information,
- production history/history of use.

2a. The Agency will then forward the submitted information to LACORS Food Labelling Focus Group for their expert opinion on whether the product category complies with the derogation requirements.

2b. The Agency will then formulate a considered opinion taking into account the views of the LACORS Food Labelling Focus Group, as to whether the evidence supplied supports / justifies inclusion of the product category in the UK indicative list.

2c. If the application is rejected the Agency will write to the applicant laying out reasons for rejection.

3. All approved product categories will then be provisionally placed on the UK national indicative list and notified to the Commission who have a month to either accept or object to their inclusion on the UK national indicative list.

4. Provided the Commission does not object, the product would be permanently included in the UK national indicative list. Thereafter applicants will be informed that the product in question has been added to the UK list and relevant products can now be marketed. The updated UK list will be published on the Agency website.

5. Depending on the frequency of LACORS Food Labelling Focus Group meetings and the complexity of the application, a three-month assessment period is envisaged (including receipt of application and decision-making). This three-month period excludes the European Commission's notification/input.

Points to consider

The following is an indication of how the products may be assessed

1. Does the product aim to compete directly with a dairy product?

- Is it located in the same place as dairy produce
- Is it packaged as a dairy product
- Is it intended to replace a dairy product

2. How is the product going to be marketed?

- Do the advertisements / posters make any dairy connotations
- Would the average consumer be persuaded to purchase the produce as an alternative

3. Who is the target consumer?

- Consider the nutritional requirements of the target consumer
- Are health benefits being promoted

4. What is the cost of the product?

- Is the cost comparable to a dairy product
- Is the product a premium product

ANNEX 2 - UK CURRENT NATIONAL INDICATIVE LIST OF PRODUCTS THAT MEET DEROGATION REQUIRMENTS

This is a general statement of products, which are considered to comply with the derogation. Enforcement officials must still consider the compliance of an individual company's product even if it appears on this list (i.e. does the pack use dairy imagery or is it marketed in a similar manner to a dairy product, is it likely to mislead the consumer as to the true nature of the product etc.)

- Coconut milk
- “Cream ...” or “Milk...” used in the description of a spirituous beverage not containing milk or other milk products or milk or milk product imitations (e.g. cream sherry)
- Cream soda
- Cream filled biscuits (e.g. custard cream, bourbon cream, raspberry cream, crème egg)
- Cream crackers
- Salad Cream
- Creamed coconut and other similar fruit, nut and vegetable products where the term 'creamed' describes the characteristic texture of the product
- Cream of tartar
- Cream or creamed soups (e.g. cream of tomato soup, cream of celery, cream of chicken, etc.)
- Horseradish cream
- Ice-cream
- Jelly cream
- Table cream
- Cocoa butter
- Shea butter
- Nut butters (e.g. peanut butter)
- Butter beans
- Butter puffs
- Fruit cheese (e.g. lemon cheese, damson cheese)