



GUIDANCE ON LEGISLATION ON THE PROTECTION OF DEFINITIONS AND DESIGNATIONS IN RESPECT OF MILK AND MILK PRODUCTS

Revision 1
June 2010

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– please contact us.**

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Summary

Intended audience:	Food industry; including small and medium sized enterprises. 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 definitions and designations used in the marketing of milk and milk products.
Legal status:	<p>This guidance should be read with the accompanying regulations, which are listed.</p> <p>This guidance also addresses best practice information, which is in shaded boxes, with a heading of Best Practice.</p>
Essential actions to comply with regulation(s):	<ul style="list-style-type: none"> ➤ The reserved/protected designations assigned to milk and milk products, 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 terms reserved for milk and milk products. 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”. ➤ Milk and milk products must comply with the requirements of the Food Labelling Regulations 1996 (as amended), from here on these Regulations will be referred to as ‘the FLRs’, in addition to the requirements of the single CMO Regulation. A copy of the FLRs which apply to England, Scotland and Wales can be found at the following web-link: http://www.opsi.gov.uk/si/si1996/Uksi_19961499_en_1.htm

	<p>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"> ➤ The Single CMO Regulation allows the use of terms, usually reserved for milk and milk products, 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 milk and milk product 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.
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REVISION HISTORY

This guidance follows the Government [Code of Practice on Guidance](#). If you believe this guidance breaches the Code for any reason, please contact us using the number on the front sheet. If you have any comments on the guidance, again please contact us on the number on the front sheet.

Revision No.	Revision date	Purpose of revision	Revised by
1	June 2010	Revised following an update to the applicable regulations	Shifra Sheikh (Food Composition and Labelling Division)

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INTRODUCTION

1. These Guidance Notes explain the rules for the use of definitions and designations in respect of milk and milk products 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 Single CMO Regulation”). They also include a protocol for assessing food products that comply with the derogation requirements of the legislation on terms reserved for milk and milk products and a UK national ‘indicative’ list of compliant food products.
2. These Guidance Notes are applicable to all milk and milk 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 Single CMO Regulation. The Regulation imposes restrictions on the use of such protected 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.
5. The terms ‘dairy’ and ‘milk and milk products’ are used synonymously and are used to describe products from a normal mammary secretion obtained from one or more milkings².

REGULATIONS REFERRED TO IN THESE GUIDANCE NOTES

1. 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.

¹ www.lacors.gov.uk

² Annex XII (Article 2.1) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2007R1234:20080701:EN:PDF>

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)

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-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://eurlex.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

2. The guidance is intended for sectors of the food industry involved in the manufacture of milk and milk products, 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

3. These Guidance Notes have been produced to provide informal, non-binding advice on the legal requirements of Council Regulation (EC) 1234/2007 (the Single CMO Regulation) and should be read in conjunction with the legislation³. The guidance also provides advice on best practice in this area. To distinguish between the two types of information, all advice on best practice is in shaded boxes with the heading of Best Practice.
4. 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.
5. 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

6. These Guidance Notes relate principally to the definitions and designations set down in the CMO Regulation in respect of milk and milk products. This Regulation is directly applicable in the UK and is enforced through national legislation (see references for detail on legislation for devolved administrations).

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:299:0001:0149:EN:PDF>

7. A protocol for assessing food products that comply with the derogation requirements⁴ 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/EEC⁵.
8. 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>) .
9. 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.⁶

DEFINITIONS – ACCORDING TO THE CMO⁷ REGULATION UNLESS OTHERWISE SPECIFIED

10. 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.

Best practice

‘Dairy products’ / ‘dairy’ – accepted industry practice

are considered equivalent to “milk products” and mean 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.

‘Marketing’

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

⁴ Section III, Annex XII

⁵ <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1988D0566:19980204:EN:PDF>

⁶ <http://www.food.gov.uk/foodindustry/guidancenotes/labelregsguidance/foodlabelregsguid>

⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2007R1234:20080701:EN:PDF>

‘Designation’

means the name used at all stages of marketing.

‘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 FLRs⁸ 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 these⁹).

‘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%).

‘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.

⁸ For copies of the legislation for the devolved administrations please see: www.opsi.gov.uk

⁹ Council Directive 2000/13/EC, as amended Annex 1

Best practice

‘Buttermilk’ (International definition, CODEX)

is the nearly milk fat-free fluid remaining from the butter-making process (i.e., the churning of fermented or non-fermented milk and cream). Buttermilk is also produced by fermentation of fluid skim milk, either by spontaneous souring by the action of lactic acid-forming or aroma-forming bacteria, or by inoculation of heated milk with pure bacterial cultures (cultured buttermilk).

Buttermilk may be pasteurised or sterilised. (There is no legal definition for buttermilk, it is included in the definition of a milk product according to the CMO Regulation. The above definition is according to International standards¹⁰).

Best practice

‘Yogurt’ (Dairy UK , Provision Trade Federation and LACORS definition)

is the acidified coagulated milk product made from milk or any combination of milk and/or products obtained from milk, in which, after pasteurisation, lactic acid has been produced within the product by the bacterial cultures *Lactobacillus bulgaricus* and/or *Streptococcus thermophilus* with which may be used other suitable bacteria. The appropriate live organisms should be viable and abundant. Yogurt may, however be subject to heat treatment after fermentation if appropriately labelled.

‘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 fat¹¹.

¹⁰ CODEX Standard 192/1995 http://www.codexalimentarius.net/web/index_en.jsp

¹¹ The Food Labelling Regulations, 1996 (as amended)

‘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 acid, microbial acidification, by using rennet or other milk-coagulating enzymes¹².

‘Dairy terms’ (International Definition, CODEX¹³)

means names, designations, symbols, pictorial or other devices which refer to or are suggestive, directly or indirectly, of milk or milk products.

INTERPRETATION

11. The requirements of the Single 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, alternatives to dairy cream 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.
12. The Regulation imposes restrictions on the use of protected definitions or designations in respect of milk and milk products or names by alternatives / analogues to milk and milk products. 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, milk and cheese (etc) must be described by a more specific but longer description, such as “sunflower seed spread X%”, “fermented soya dessert”, “oat drink” and “pizza topping / food slice” respectively.

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

¹²Council Directive 83/417/EEC on lactoproteins (casein and caseinates) intended for human consumption, as amended

¹³ CODEX General standard for the use of dairy terms (http://www.codexalimentarius.net/web/index_en.jsp)

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

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

15. 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.¹⁴
- 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 addition, the amount of

¹⁴ Article 114 (2) of the CMO Regulation.

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.*

16. The Single CMO Regulation requires the origin of milk to be clearly stated if not bovine¹⁵ (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 FLR¹⁶, 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.
17. 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'. The term 'made with unpasteurised milk' is also acceptable¹⁷. Further detail can be found on the Agency website in relation to the requirements in all four administrations of the UK¹⁸.
18. Other than the dairy terms reserved in this Regulation, the legislation also allows descriptive and customary names to be reserved for dairy products.

¹⁵ Meaning from a hoofed animal such as a cow or a buffalo

¹⁶ Please see reference list for details of the legislation for all four administrations of the UK

¹⁶ <http://www.lacors.com/lacors/ContentDetails.aspx?authCode=367160D&id=18906>

¹⁸ <http://www.food.gov.uk/foodindustry/guidancenotes/hygguid/rawmilkcream>

OTHER RESERVED DESCRIPTIONS FOR DAIRY PRODUCTS

19. 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 foodstuffs¹⁹ (e.g. Cornish clotted cream).
20. 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

21. The use of a trade name, brand name or fancy name would have to be considered against the restrictions set out in the Single CMO Regulation²⁰, where the 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

22. In addition to the requirements of the Single CMO Regulation²¹, milk and milk products sold in the UK must comply with the general requirements of the FLRs²².

¹⁹ Regulation 510/2006 is accessible at:

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:093:0012:0025:EN:PDF>

²⁰ point 2 of Section III of Annex XII

²¹ Annex XII

23. Detailed guidance on these requirements may be found in *The Food Labelling Regulations 1996: Guidance Notes*²³ (see preface). The reader is strongly recommended to refer to this document for additional advice.

PROHIBITIONS

Non-dairy produce

24. The Single CMO Regulation²⁴ 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".
25. 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 product²⁵.

Examples considered as prohibited marketing for non-dairy products

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

26. Whilst the use of definitions and designations in respect of milk and milk products 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

²² Please see list of references for relevant legislation for all 4 administrations of the UK

²³ <http://www.food.gov.uk/multimedia/pdfs/Fguidnot1.pdf>

²⁴ Section III of Annex XII

²⁵ Section III, point 2 of Annex XII

accordance with the general food labelling rules (Please see Agency Guidance Notes on food labelling rules²⁶).

Example

*Garlic Butter (minimum milk fat content is 75%), Alcoholic butters (minimum milk fat content is 20%)*²⁷

*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 products*²⁸.

27. Use of dairy terms to clearly and unambiguously describe a 'non-dairy' product as 'non-dairy' is acceptable.

Example

Describing a soya product as a "non-dairy alternative to cheese"

28. 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 of...soups', and butter beans. Such products appear on the national lists detailed under Commission Decision 88/566²⁹; the requirement for this list is no longer contained in the CMO Regulation.

INDICATIVE LISTS OF 'EXEMPT' FOOD PRODUCTS

29. 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

²⁶ <http://www.food.gov.uk/multimedia/pdfs/Fguidnot1.pdf>

²⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007R0445:en:NOT>

²⁸ point 2 of Section III, Annex XII

²⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1988D0566:19980204:EN:PDF>

derogation requirements³⁰ 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.

30. 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.
31. 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:2007:299:0001:0149: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].
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 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:

³⁰ Annex XII

- 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.
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 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
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Food Safety (NI) Order 1991.
http://www.opsi.gov.uk/si/si1991/ukxi_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>

Review

This guidance will be reviewed in three years time. Should there be any comments on this guidance, please address them using the following:

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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 years³¹. For example, peanut butter is a long standing traditional non-dairy product 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.
4. 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.
5. The current Community list contained in Decision 88/566/EEC should also serve as a reference point in the approval of product categories.

³¹ 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>

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 four-month assessment period is envisaged (including receipt of application and decision-making). This four-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 will the product 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 REQUIREMENTS

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)