

**2017 No. 178**

**AGRICULTURE**

**The Milk and Other Products (Pupils in Educational Establishments) (Scotland) Regulations 2017**

<i>Made</i> - - - -	<i>30th May 2017</i>
<i>Laid before the Scottish Parliament</i>	<i>1st June 2017</i>
<i>Coming into force</i> - -	<i>1st August 2017</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(a) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for references to EU instruments in these Regulations, to be construed as reference to those instruments as amended from time to time.

There has been consultation as required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(b).

**Citation and commencement**

1. These Regulations may be cited as the Milk and Other Products (Pupils in Educational Establishments) (Scotland) Regulations 2017 and come into force on 1st August 2017.

**Interpretation**

2.—(1) In these Regulations—

“applicant” means an applicant for aid as described in Article 5 of the Commission Delegated Regulation that has been approved in accordance with Article 6 of the Commission Delegated Regulation;

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(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), section 3(3) and Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and was amended by the 2008 Act, Schedule, Part 1.

(b) OJ L 31, 1.2.2002, p.1, to which there are no relevant amendments to Article 9.

“Commission Delegated Regulation” means Commission Delegated Regulation (EU) 2017/40 of 3rd November 2016 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to Union aid for the supply of fruit and vegetables, bananas and milk in educational establishments and amending Commission Delegated Regulation (EU) No 907/2014, as amended from time to time(a);

“Commission Implementing Regulation” means Commission Implementing Regulation (EU) 2017/39 of 3rd November 2016 on rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to Union aid for the supply of fruit and vegetables, bananas and milk in educational establishments, as amended from time to time(b);

“Commission Regulations” means the Commission Delegated Regulation and the Commission Implementing Regulation;

“Council Regulation” means Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17th December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) no 234/79, (EC) no 1037/2001 and (EC) No 1234/2007(c), as amended by Regulation (EU) 2016/791 of the European Parliament and of the Council of 11th May 2016 amending Regulations (EU) no 1308/2013 (the Council Regulation) and (EU) No 1306/2013 as regards the aid scheme for the supply of fruit and vegetables, bananas and milk in educational establishments(d), and as amended from time to time;

“Horizontal Implementing Regulation” means Commission Implementing Regulation (EU) No 809/2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance, as amended from time to time(e);

“National aid” means any sum payable or paid by Scottish Ministers in accordance with Regulation 3(1);

“Union aid” means Union aid granted pursuant to Article 23(1) of the Council Regulation and in accordance with the Commission Regulations.

(2) Except where the context otherwise requires, other expressions used in these Regulations have the meaning they bear in the Council Regulation and the Commission Regulations.

### **Additional payment under Article 23a(6) and 217 of the “Council Regulation”**

**3.—**(1) Where an applicant is in receipt of “Union aid”, the Scottish Ministers may, in accordance with the provisions of Articles 23a(6) and 217 of the Council Regulation, as read with the Commission Regulations, pay that applicant an amount in addition to that “Union aid”.

(2) The provisions specified in paragraphs (3) to (5) apply in relation to National aid as they apply to Union aid.

(3) The specified provisions of the Council Regulation are—

- (a) Article 22 (Target Group); and
- (b) Article 23 (Aid for the supply of school fruit and vegetables and of school milk, accompanying educational measures and related cost).

(4) The specified provisions of the Commission Implementing Regulation are—

- (a) Article 4 (Aid applications submitted by aid applicants);
- (b) Article 5 (Payment of the aid);

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(a) OJ L 5, 10.1.2017, p.11.

(b) OJ L 5, 10.1.2017, p.1.

(c) OJ L 347, 20.12.2013, p.671.

(d) OJ L 135, 24.5.2016, p.1.

(e) OJ L 227, 31.7.2014, p.69.

- (c) Article 9 (Administrative checks);
  - (d) Article 10 (On-the-spot checks); and
  - (e) Article 11 (Recovery of undue payments).
- (5) The specified provisions of the Commission Delegated Regulation are—
- (a) Article 6 (Conditions for approval of aid applicants) paragraphs (1) and (2) only;
  - (b) Article 7 (Suspension and withdrawal of approval); and
  - (c) Article 11 (Distribution of products in conjunction with regular school meals) paragraph (b) of the second paragraph only.

### **Withholding or recovery**

**4.**—(1) Where an applicant has received Union aid or National aid to which the applicant was not entitled, or where the applicant is in breach of any commitment given by the applicant as a condition of such Union aid or National aid, the Scottish Ministers may—

- (a) withhold the whole or any part of such Union aid or National aid that they might otherwise have made; or
  - (b) recover on demand the whole or any part of any such Union aid or National aid already made by them.
- (2) Before taking any action under paragraph (1) above, the Scottish Ministers shall—
- (a) give to the applicant written notification of the action proposed to be taken (including the amount proposed to be withheld or recovered) with an explanation of the reasons for the action they propose to take;
  - (b) afford that applicant the opportunity of making written representations within such time as they consider reasonable; and
  - (c) consider any such representations made to them.

(3) In any case where an amount falls to be paid to the Scottish Ministers by virtue of (or by virtue of action taken under) these Regulations, the amount so falling to be paid shall be recoverable by them as a debt.

### **Interest**

**5.**—(1) Where regulation 4 applies, interest may be charged in respect of each day of the period referred to in Article 7(2) of the Horizontal Implementing Regulation and the rate of interest applicable on any day is one percentage point above the Bank of England base rate on that day.

- (2) In this regulation “the Bank of England base rate” means—
- (a) except where sub-paragraph (b) applies, the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the markets; or
  - (b) if an order under section 19 (reserve powers) of the Bank of England Act 1998 is in force, an equivalent determined by the Treasury under that section.

### **Amendment of the Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Regulations 2004**

**6.**—(1) The Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Regulations 2004(a) are amended in accordance with paragraph (2).

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(a) S.S.I. 2004/278 as amended by S.S.I. 2011/82, S.I. 2011/1043 and S.S.I. 2015/167.

(2) In the Schedule(a) (The SCMO Regulations in respect of which decisions are amenable to review and appeal), at the end, insert the following entries—

“Commission Delegated Regulation (EU) 2017/40 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to Union aid for the supply of fruit and vegetables, bananas and milk in educational establishments and amending Commission Delegated Regulation (EU) No 907/2014.”; and

“Commission Implementing Regulation (EU) 2017/39 on rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to Union aid for the supply of fruit and vegetables, bananas and milk in educational establishments.”.

### **Revocation and saving provision**

7.—(1) Subject to paragraph (2), the following are revoked—

- (a) the Milk and Milk Products (Pupils in Educational Establishments) (Scotland) Regulations 2001(b);
- (b) the Milk and Milk Products (Pupils in Educational Establishments) (Scotland) Amendment Regulations 2011(c);
- (c) regulation 15 (Amendments to the Milk and Milk Products (Pupils in Educational Establishments) (Scotland) Regulations 2001) of the Single Common Market Organisation (Consequential Amendments) Regulations 2013(d).

(2) The Milk and Milk Products (Pupils in Educational Establishments) (Scotland) Regulations 2001 as in force immediately before 1st August 2017 continue to apply insofar as is necessary to enable Scottish Ministers to recover (on demand or as a debt) or withhold any payment made under those regulations or to which those regulations apply.

*FERGUS EWING*

A member of the Scottish Government

St Andrew's House,  
Edinburgh  
30th May 2017

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(a) The Schedule was substituted by S.S.I. 2015/167.  
(b) S.S.I. 2001/162 as amended by S.S.I. 2011/82 and S.I. 2013/3235.  
(c) S.S.I. 2011/82.  
(d) S.I. 2013/3235.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations repeal and replace the Milk and Milk Products (Pupils in Educational Establishments) (Scotland) Regulations 2001 (the “2001 Regulations”) (as amended) in light of changes in EU law. Regulation 7 of these Regulations provides for the revocation of the 2001 Regulations and the other provisions which have amended the 2001 Regulations.

Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No (234/79), (EC) No 1037/2001 and (EC) No 1234/2007 is being amended by Regulation (EU) 2016/791 of the European Parliament and of the Council of 11th May 2016 amending Regulations (EU) No 1308/2013 and (EU) No 1306/2013 as regards the aid scheme for the supply of fruit and vegetables, bananas and milk in educational establishments.

The new EU instruments which are relevant in supplementing Regulation (EU) 1308/2013 in this context are Commission Implementing Regulation (EU) 2017/39 of 3rd November 2016 on rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to Union aid for the supply of fruit and vegetables, bananas and milk in educational establishments and Commission Delegated Regulation (EU) 2017/40 of 3rd November 2016 supplementing Regulation (EU) 1308/2013 of the European Parliament and of the Council with regard to Union aid for the supply of fruit and vegetables, bananas and milk in educational establishments and amending Commission Delegated Regulation (EU) No 907/2014.

Commission Regulation (EC) No 657/2008 of 10th July 2008 laying down detailed rules for applying Council Regulations (EC) No 1234/2007 as regards Community aid for supplying milk and certain milk products to pupils in educational establishments is repealed by Commission Delegated Regulation (EU) 2017/40.

The new EU law deals with the same subject matter as the EU law which it revokes and replaces i.e. the rules governing the provision of Union aid for milk and other products in educational establishments.

National “top-up” aid payments are permitted by Article 23a(6) of Regulation (EU) No 1308/2013 (as amended). Regulation 3 of these Regulations provides that any National aid payment shall be subject to the same rules, requirements and conditions as apply to Union aid.

These Regulations also provide for the withholding or recovery of any Union aid or any National aid to which an applicant is not entitled or where the applicant is in breach of any commitments given as a condition of such Union aid or National aid (regulation 4). Regulation 5 provides for interest to be charged.

Regulation 6 amends the Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Regulations (SSI 2004/278) in consequence of the changes being made to EU law. This is to allow appeals under this scheme to continue to be made under those regulations.

These Regulations provide that reference to all European instruments are to be construed as references to those instruments as amended from time to time.

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