

POLICY NOTE

THE MILK AND OTHER PRODUCTS (PUPILS IN EDUCATIONAL ESTABLISHMENTS) (SCOTLAND) REGULATIONS 2017

SSI 2017/178

1. The above instrument is made by the Scottish Ministers in exercise of powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Policy Objective

2. The purpose of these regulations is to permit the continuation of the EU school milk scheme in Scotland when the new EU school milk scheme under Regulation (EU) 1308/2013, Commission Implementing Regulation (EU) 2017/39 and Commission Delegated Regulation (EU) 2017/40 comes into effect from 1 August 2017. It is necessary to update references in domestic law to refer to these new EU regulations.

3. The scheme allows local authorities in Scotland to claim funding to subsidise their own school milk schemes. Currently, approximately two-thirds of our local authorities claim under the EU scheme administered by the Rural Payments Agency (RPA). Local authorities who claim under the EU milk scheme are also able to receive further subsidy from the UK school milk “top-up” scheme. This combined amount is paid directly to the local authorities by the RPA which, in turn, is reimbursed by Scottish Government for the “top-up” element of the subsidy.

4. The Scottish Government does not collect data on how much it costs local authorities to provide a school milk scheme, however given the relatively small subsidy rates available to local authorities under the EU and UK schemes (approximately 5p in total per child per day based on RPA May 2017 figures) it is not likely that this would cover the full cost of providing a school milk scheme with the potentially significant deficit being made up using local authority funds.

5. The EU school milk scheme under the new framework requires all member states who claim under the EU school milk scheme to demonstrate ‘educational measures’ which will accompany distribution in order to strengthen the impact of the scheme. In addition, all material used to support these educational measures must be badged with a European Union flag.

6. In Scottish education authorities, pupils are taught about food and health through Scotland’s national Curriculum for Excellence as part of the health and wellbeing experiences and outcomes. Although it would be difficult to teach about food and health without covering the role of dairy, it would be hard to demonstrate that each pupil benefitting from milk under this scheme has been taught specifically about dairy as part of that experience. In addition, as much of the material used to deliver this learning comes from external sources, it would not be possible to ensure all material is badged with an EU flag.

7. In order to complement the teaching already being provided under Curriculum for Excellence and to further demonstrate Scotland's compliance with the educational measures requirement, a poster will be provided to local authorities to be displayed, wherever pupils are receiving milk subsidised under the EU school milk scheme. The poster will provide key messages about the role of dairy products in our diets and the dairy industry as a career path. The poster will also incorporate the EU flag in order to comply with the badging requirement.

8. We have confirmed our intention to the Department for Food, Environment and Rural Affairs (lead for the UK member state) to ensure that Scotland is included in the strategy which was submitted to the European Commission in January 2017.

Purpose of the Regulations

9. The Regulations will allow the Rural Payments Agency (on behalf of the Scottish Ministers) to continue to administer the national top up schemes in Scotland under the new framework. The Regulations have equivalent effect to the provisions of the Milk and Other Products (Pupils in Educational Establishments) (Scotland) Regulations 2001, which are to be revoked.

10. Regulation 3(1) permits the Scottish Ministers to pay national "top-ups" in addition to Union aid. The EU Regulations provide that any national "top-up" aid payments are to be subject to the same rules as apply to Union aid, and regulation 3(2) to (5) achieves this by applying specified provisions of the EU Regulations to the national "top-up".

11. The Regulations also provide for the withholding or recovery of any Union aid or any national payments to which the applicant is not entitled or where the applicant is in breach of any commitments given as a condition of such Union aid or national payment. Provision is also made for the calculation of interest on sums due to be repaid to the Scottish Ministers. Provision is also made for appeals against decisions taken under the EU Regulations.

Consultation

12. A short public consultation took place from 5 May to 21 May 2017 with, additionally, key stakeholders contacted directly. While the purpose of the proposed Regulations is to provide legal powers to permit the continuation of the school milk scheme in Scotland when the new EU scheme comes into effect on 1 August 2017, we took the opportunity in the consultation paper to set out the proposed Scottish approach that will form part of a UK Strategy document that will be published after the UK general election. The consultation exercise generated eight responses and these are currently being considered. The Government's response will be published as soon as possible.

Impact Assessments and Financial Effects

13. We considered the requirement for an impact assessment and concluded that there are no significant additional burdens as a result of this legislation.

Directorate for Economic Development
25 May 2017