

2008 No. 2072

AGRICULTURE, ENGLAND

The Milk and Milk Products (Pupils in Educational Establishments) (England) Regulations 2008

Made - - - - - *24th July 2008*

Laid before Parliament *1st August 2008*

Coming into force - - - *1st September 2008*

The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the common agricultural policy of the European Community.

These Regulations make provision for a purpose mentioned in that section and it appears to the Secretary of State that it is expedient for the references in these Regulations to—

- (a) Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)(c), and
- (b) Commission Regulation (EC) No 657/2008 laying down detailed rules for applying Council Regulation (EC) No 1234/2007 as regards Community aid for supplying milk and certain milk products to pupils in educational establishments(d),

to be construed as a reference to that Council Regulation and that Commission Regulation as amended from time to time.

The Secretary of State makes 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(e).

Title, commencement and application

1. These Regulations—

- (a) may be cited as the Milk and Milk Products (Pupils in Educational Establishments) (England) Regulations 2008;
- (b) come into force on 1st September 2008; and
- (c) apply in England.

(a) S.I. 1972/1811.

(b) 1972 c. 68.

(c) OJ No L 299, 16.11.07, p 1; last amended by Council Regulation (EC) No 361/2008 (OJ No L 121, 7.5.08, p 1).

(d) OJ No L 183, 11.7.08, p 17.

(e) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51).

Interpretation

2. In these Regulations—

“applicant” means an applicant for Community aid, as described in Article 6 of the Commission Regulation;

“the Commission Regulation” means Commission Regulation (EC) No 657/2008 laying down detailed rules for applying Council Regulation (EC) No 1234/2007 as regards Community aid for supplying milk and certain milk products to pupils in educational establishments, as amended from time to time;

“Community aid” means Community aid granted pursuant to Article 102(1) of the Council Regulation and in accordance with the Commission Regulation;

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

“national aid” means aid payable or paid by the Secretary of State in accordance with regulation 3(1).

Payment of national aid

3.—(1) The Secretary of State may pay national aid to an applicant in accordance with Article 102(2) of the Council Regulation (grant of national aid for supplying certain processed milk products to pupils in educational establishments) and this regulation.

(2) For the purposes of paragraph (1), the Secretary of State may determine the type or class of educational establishments referred to in Article 2 of the Commission Regulation or eligible products listed in Annex I to the Commission Regulation in relation to which national aid may be paid, framed by reference to any set of circumstances the Secretary of State thinks fit.

(3) Subject to paragraph (2), the following provisions of the Commission Regulation apply in relation to national aid as if it were Community aid—

- (a) Article 2 (beneficiaries);
- (b) Articles 3(1) and 3(4) (eligible products);
- (c) Article 5(4), first sub-paragraph (milk and milk products used in preparation of meals not to benefit from aid);
- (d) Article 8 (general conditions of approval), except for the words in sub-paragraph (b) following the reference to Article 2;
- (e) Article 9 (specific conditions for the approval of certain applicants);
- (f) Article 10 (suspension and withdrawal of approval);
- (g) Article 11 (payment applications);
- (h) Article 12 (payment of aid);
- (i) Article 14 (price monitoring);
- (j) Article 15 (controls and sanctions).

Withholding or recovery of Community aid or national aid

4.—(1) Paragraph (2) applies where the Secretary of State believes that an applicant—

- (a) has received from the Secretary of State Community aid or national aid, payment to which the applicant was not entitled; or
- (b) is in breach of any commitment given by the applicant as a condition of receiving Community aid or national aid.

(2) The Secretary of State may—

- (a) withhold from the applicant the whole or any part of Community aid or national aid which the Secretary of State might otherwise have paid; or

- (b) recover from the applicant on demand the whole or any part of Community aid or national aid already paid by the Secretary of State.
- (3) Before taking any action under paragraph (2), the Secretary of State must—
 - (a) give the applicant in writing the reasons for the action the Secretary of State proposes to take;
 - (b) afford the applicant the opportunity to make written representations within such time as the Secretary of State considers reasonable; and
 - (c) consider any such representations.
- (4) Any money due to the Secretary of State under or by virtue of these Regulations is recoverable as a debt.

Revocations

5. The Milk and Milk Products (Pupils in Educational Establishments) (England) Regulations 2001(a) and the Milk and Milk Products (Pupils in Educational Establishments) (England) (Amendment) Regulations 2007(b) are revoked.

24th July 2008

Jeff Rooker
Minister of State
Department for Environment, Food and Rural Affairs

(a) S.I. 2001/994.
(b) S.I. 2007/3429.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Milk and Milk Products (Pupils in Educational Establishments) (England) Regulations 2001 (S.I. 2001/994) and the Milk and Milk Products (Pupils in Educational Establishments) (England) (Amendment) Regulations 2007 (S.I. 2007/3429).

These Regulations provide that references to Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ No L 299, 16.11.07, p 1) and to Commission Regulation (EC) No 657/2008 laying down detailed rules for applying Council Regulation (EC) No 1234/2007 as regards Community aid for supplying milk and certain milk products to pupils in educational establishments (OJ No L 183, 11.7.08, p 17) are references to those Regulations as amended from time to time.

These Regulations provide that, in the making of any national “top-up” aid payments as permitted by Article 102(2) of Council Regulation (EC) No 1234/2007, such payments shall be subject to the same rules, requirements and conditions as apply to Community aid under Article 102(1) of that Council Regulation, and which are contained in Commission Regulation (EC) No 657/2008 (regulation 3).

The Regulations also provide for the withholding or recovery of any Community aid or national aid payments to which an applicant is reasonably believed not to be entitled or where the applicant is in breach of any commitment given as a condition of such aid or payment (regulation 4).

No impact assessment has been prepared in respect of this instrument as it has no effect on the costs of business or the voluntary sector.

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