
STATUTORY INSTRUMENTS

2017 No. 734

AGRICULTURE, ENGLAND
AGRICULTURE, NORTHERN IRELAND

The Milk and Milk Products (Pupils in
Educational Establishments) (England
and Northern Ireland) Regulations 2017

<i>Made</i>	- - - -	<i>11th July 2017</i>
<i>Laid before Parliament</i>		<i>11th July 2017</i>
<i>Coming into force</i>	- -	<i>1st August 2017</i>

The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972⁽¹⁾ in relation to the common agricultural policy of the European Union⁽²⁾ and makes these Regulations in exercise of the powers conferred by that section and by paragraph 1A of Schedule 2 to that Act.

These Regulations make provision for a purpose mentioned in that section and it appears to the Secretary of State that it is expedient for references to EU instruments in these Regulations to be construed as references 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⁽³⁾.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Milk and Milk Products (Pupils in Educational Establishments) (England and Northern Ireland) Regulations 2017, and come into force on 1st August 2017.

(2) Except for regulations 6 and 7, these Regulations—

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- (1) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and was amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 and S.I. 2007/1388.
- (2) S.I. 1972/1811. The power of the Secretary of State to make Regulations that extend to Northern Ireland is exercisable by virtue of article 3(2) of the European Communities (Designation) (No. 3) Order 2000 (S.I. 2000/2812).
- (3) O.J. L31, 1.2.2002, p.1. There are no relevant amendments to Article 9.

- (a) extend to England and Wales and to Northern Ireland, and
 - (b) apply in England and Northern Ireland only.
- (3) An amendment of an instrument by regulation 6, or a revocation of an instrument by regulation 7, has the same extent and application as the instrument being amended or revoked.

Interpretation

2.—(1) In these Regulations—

“applicant” means an applicant for aid as described in Article 5 of the Delegated Regulation;

“the 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⁽⁴⁾;

“the 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⁽⁵⁾;

“the Department” means the Department of Agriculture, Environment and Rural Affairs;

“the 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⁽⁶⁾;

“Union aid” means aid granted pursuant to Article 23(1) of the Council Regulation.

Additional payment under Articles 23a(6) and 217 of the Council Regulation

3.—(1) Where an applicant is in receipt of Union aid—

- (a) the Secretary of State in respect of an applicant situated in England; or
 - (b) the Department in respect of an applicant situated in Northern Ireland
- may, in accordance with Articles 23a(6) and 217 of the Council Regulation, make a payment to that applicant in addition to that Union aid.
- (2) The provisions specified in paragraph (3) apply to additional payments under paragraph (1).
- (3) The specified provisions are—
- (a) Article 22 (target group) and Article 23 (aid for the supply of school fruit and vegetables and of school milk, accompanying educational measures and related costs) of the Council Regulation;
 - (b) paragraphs (1) and (2) of Article 6 (conditions for approval of aid applicants); Article 7 (suspension and withdrawal of approval), and paragraph (2)(b) of Article 11 (distribution of products in conjunction with regular school meals) of the Delegated Regulation ; and
 - (c) Article 4 (aid application submitted by aid applicant); Article 5 (payment of the aid); Article 9 (administrative checks); Article 10 (on-the-spot checks) and Article 11 (recovery of undue payments) of the Implementing Regulation.

⁽⁴⁾ O.J. L347, 20.12.2013, p. 671, as amended by Regulation (EU) 2016/791 (O.J. L135, 24.5.2016, p.1).

⁽⁵⁾ O.J. L5, 10.1.2017, p. 11.

⁽⁶⁾ O.J. L5, 10.1.2017, p. 1.

Withholding or recovery

4.—(1) Where an applicant has received Union aid or a payment under regulation 3 to which the applicant was not entitled, or where the applicant is in breach of any commitment given by that applicant as a condition of receiving such Union aid or payment, the Secretary of State or the Department (as the case may be) may—

- (a) withhold the whole or any part of such Union aid or payment that might otherwise have been made to that applicant; or
- (b) recover on demand the whole or any part of any such Union aid or payment already made to that applicant.

(2) Before taking any action under paragraph (1), the Secretary of State or the Department shall—

- (a) give to the applicant written notification of the proposed action (including the amount to be withheld or recovered, with an explanation of the reasons for the proposed action);
- (b) afford that applicant the opportunity of making written representations within such time as the Secretary of State or the Department considers reasonable; and
- (c) consider any such representations.

(3) In any case where an amount falls to be paid to the Secretary of State or the Department by virtue of these Regulations, that amount, and any interest charged under regulation 5, 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 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(7).

(2) For the purpose of paragraph (1), the rate of interest applicable in respect of any day is one percentage point above the Bank of England base rate on that day.

(3) 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(8) 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 secondary legislation

6.—(1) The Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014(9) are amended in accordance with paragraph (2).

(2) In Schedule 1 (the SCMO Regulations) at the appropriate place insert—

(7) O.J. L227, 31.7.2014, p.69.

(8) The Monetary Policy Committee was established under section 13 of the Bank of England Act 1998 (c. 11).

(9) S.I. 2014/3263 as amended by S.I. 2015/1325, S.I. 2015/1997, S.I. 2017/599 and S.I. 2017/655.

“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”(10); and

“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”(11).

(3) The Common Agricultural Policy (Control and Enforcement) Regulations (Northern Ireland) 2015(12) are amended in accordance with paragraph (4).

(4) In the Schedule (the European Regulations) at the appropriate place insert—

“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”; and

“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”.

(5) The Common Agricultural Policy (Review of SCMO Decisions) Regulations (Northern Ireland) 2015(13) are amended in accordance with paragraph (6).

(6) In the Schedule (Community Instruments to which these Regulations apply) at the appropriate place insert—

“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”; and

“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”.

Revocation of secondary legislation

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

- (a) the Milk and Milk Products (Pupils in Educational Establishments) (England) Regulations 2008(14);
- (b) regulation 9 of the Single Common Market Organisational (Consequential Amendments) Regulations 2013(15);
- (c) the Milk and Milk Products (Pupils in Educational Establishments) Regulations (Northern Ireland) 2008(16); and
- (d) regulation 8 of the Single Common Market Organisation (Consequential Amendments) Regulations (Northern Ireland) 2014(17).

(10) O.J. L5, 10.1.2017, p.1.

(11) O.J. L5, 10.1.2017, p. 11.

(12) S.R. 2015 No. 192 as amended by S.I. 2017/599.

(13) S.R. 2015 No. 408 as amended by S.I. 2017/599.

(14) S.I. 2008/2072 as amended by S.I. 2013/3235.

(15) S.I. 2013/3235.

(16) S.R. 2008 No. 323 as amended by S.R. 2014 No. 92.

(17) S.R. 2014 No. 92.

(2) The instruments revoked by paragraph (1) continue to apply in accordance with Article 14 of the Delegated Regulation to the school milk scheme referred to in that Article until that scheme comes to an end.

11th July 2017

George Eustice
Minister of State
Department for Environment, Food and Rural
Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, in England and Northern Ireland, a new European Union aid scheme for the supply of milk and milk products to pupils in educational establishments. This aid scheme will apply from 1 August 2017.

Regulation (EU) No 1308/2013 (OJ No L 347, 20.12.2013, p. 671) was amended by Regulation (EU) No 2016/791 of the European Parliament and of the Council (OJ No L 315, 24.5.2016, p. 1). Articles 23a(6) and 217 of amended Regulation (EU) No 1308/2013 permit national funding to be paid in addition to Union aid. Regulation 3 of these Regulations provides that any such additional aid payments shall be subject to the same rules, requirements and conditions as apply to Union aid under Articles 22 and 23 of amended Regulation (EU) No 1308/2013; Articles 4, 5, 9, 10 and 11 of Commission Implementing Regulation (EU) 2017/39 (OJ No L 5, 10.1.2017, p. 1), and Articles 6, 7 and 11 of Commission Delegated Regulation (EU) 2017/40 (OJ No L 5, 10.1.2017, p.11).

Regulation 4 allows Union aid and national aid payments to be withheld or recovered from applicants who are not entitled or are in breach of a commitment.

Regulation 5 provides for interest to be payable, at a specified rate, on recoverable amounts.

Regulation 6 amends specified secondary legislation so as to bring the matters covered by these Regulations within the control and enforcement and appeals regimes contained in each of the specified instruments.

Regulation 7 revokes, with savings, instruments implementing the existing school milk scheme established under Regulation (EU) 1308/2013 (as originally enacted) and Commission Regulation 657/2008 (OJ No L 183, 11.7.2008, p.17).

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.