

**EXPLANATORY MEMORANDUM TO**

**THE MILK AND MILK PRODUCTS (PUPILS IN EDUCATIONAL ESTABLISHMENTS) (ENGLAND AND NORTHERN IRELAND) REGULATIONS 2017**

**2017 No. 734**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for the Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument enables the Secretary of State in respect of England, and the Department of Agriculture, Environment and Rural Affairs ('the Department') in respect of Northern Ireland, to make national "top up" payments for school milk under the new combined EU School Milk and Fruit and Vegetable scheme, when it comes into force on 1 August 2017. It provides enforcement powers in England and Northern Ireland so that payments of both national and EU aid for school milk can be withheld or recovered when they are not due. It provides an appeal system for those participating in the scheme.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 The EU school milk scheme currently provided for in Commission Regulation (EC) No 657/2008<sup>1</sup> and Regulation (EU) No 1308/2013<sup>2</sup> of the European Parliament and of the Council makes available EU aid toward the cost of eligible milk and milk products for eligible schoolchildren. It also allows national aid to be paid by way of "top up" to the EU aid. This scheme is being replaced by a new combined EU School Milk and Fruit and Vegetable Scheme. The new EU scheme is provided for in Regulation (EU) 2016/791<sup>3</sup>, of The European Parliament and of The Council, Council Regulation (EU) 2016/795<sup>4</sup>, Commission Implementing Regulation (EU) 2017/39<sup>5</sup>, and Commission Delegated Regulation (EU) 2017/40<sup>6</sup>. Defra commitments to continued participation

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<sup>1</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1499163336162&uri=CELEX:32008R0657>

<sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0671:0854:EN:PDF>

<sup>3</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0791&qid=1471347623571&from=EN>

<sup>4</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0795&qid=1471347748910&from=EN>

<sup>5</sup> [http://eur-lex.europa.eu/eli/reg\\_impl/2017/39/oj](http://eur-lex.europa.eu/eli/reg_impl/2017/39/oj)

<sup>6</sup> [http://eur-lex.europa.eu/eli/reg\\_del/2017/40/oj](http://eur-lex.europa.eu/eli/reg_del/2017/40/oj)

in the milk elements of this new scheme from 1 August 2017 were made in response to written parliamentary questions notably on 24 January 2017(UIN 60847)<sup>7</sup> and 27 February 2017 (UINs 64260 and 64261)<sup>8</sup>.

- 4.2 This new scheme provides for consistency in the approach across the current separate EU Milk and EU Fruit and Vegetable Schemes, moving from the current demand-led arrangements in the milk scheme, to a fixed budget approach across both schemes. The UK's EU budget for the scheme must be agreed with the Commission in advance of each school year. The new scheme also increases the scope to target specific groups (e.g. on the basis of age, geography or income) and provides for educational measures. Participation in the new scheme is optional for member states, and the option to top up EU aid with national aid to increase the level of subsidy is retained.
- 4.3 Under the existing scheme, payment of national aid and withholding or recovery of both national and EU aid in the relevant circumstances is provided for in England and in Northern Ireland in domestic secondary legislation. The relevant regulations are respectively the Milk and Milk Products (Pupils in Educational Establishments) (England) Regulations 2008 (S.I. 2008/2072), and the Milk and Milk Products (Pupils in Educational Establishments) Regulations (Northern Ireland) 2008 (S.R. 2008 No. 323). Powers of entry and inspection are contained in Part 2 of the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 (2014/3263), and an appeal process is contained in Part 5 of S.I. 2014/3263 and in the Common Agricultural Policy (Review of SCMO Decisions) Regulations (Northern Ireland) 2015 (S.R. 2015 No 408).
- 4.4 For the new EU scheme to be implemented and enforced effectively from 1 August 2017, it is necessary to revoke and replace S.I. 2008/2072 and S.R. 2008 No 323 with new regulations which make equivalent provision for the new EU scheme. The new instrument also updates references in Part 2 of S.I. 2014/3263, rolling over powers of entry and inspection in England for the Secretary of State when the new EU scheme comes into force. The Common Agricultural Policy (Control and Enforcement) Regulations (Northern Ireland) 2015 (S.R. 2015 No 192) are also updated to provide similar powers to the Department of Agriculture, Environment and Rural Affairs in Northern Ireland. Amendments to S.I. 2014/3263 and S.R. 2015 No 408 provide for an appeals process in relation to the new scheme. Similar legislation is being taken forward by the Scottish and Welsh Governments.
- 4.5 This instrument provides that its references to EU legislation are ambulatory references. Subsequent amendments, if any, are likely to be of a technical nature.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is England and Wales, and Northern Ireland.
- 5.2 The instrument applies in England and Northern Ireland only

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

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<sup>7</sup> <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-01-19/60847/>

<sup>8</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-02-17/64261/>

## **7. Policy background**

### *What is being done and why*

- 7.1 Defra and the devolved administrations will continue to participate in the milk elements of the new combined EU scheme when it commences on 1 August 2017. Because of the short period of participation in the EU scheme, and in line with commitments to stakeholders, Defra is taking a pragmatic approach to implementation in England with minimal disruption to current arrangements up to EU exit. A similar approach is being taken in Northern Ireland. In particular, the existing range of products, the same target population, the same EU subsidy rate and national top-up rate, the same maximum selling price rules, and the same maximum daily portion size are being maintained. Reflecting this and taking account of UK demand under the scheme to date, earlier this year a budget across the UK for the 2017-18 school year reflecting recent demand under the scheme was agreed with the Commission.
- 7.2 In line with the commitments to minimal short term disruption, nutrition and diet content in the existing National Curriculum in England will be relied on to meet the requirement for educational measures under the scheme. Schools will continue to have discretion in how they teach about diet and nutrition and what resources they use to support their teaching. Northern Ireland will similarly rely on its National Curriculum, but will provide additional materials, for example posters at milk distribution points in schools.
- 7.3 Despite the limited change to current arrangements some legislative changes are unavoidable. For national aid to continue to be paid and for national and EU aid to be withheld or recovered in the relevant circumstances, it is necessary to replace the existing national regulations (which refer to EU law as it stood before the introduction of the new scheme provisions) with this new instrument. Similarly, updated references need to be inserted in S.I. 2014/3263, S.R. 2015 No 192 and S.R. 2015 No 408.

## **8. Consultation outcome**

- 8.1 Given the small scale of change, a full public consultation has not been carried out on this statutory instrument. However, last autumn Defra held constructive discussions on the short term plans with key stakeholders including: the National Farmers Union, Dairy UK and the School and Nursery Milk Alliance.
- 8.2 More recently, stakeholders were provided with a short opportunity to comment on the content of new online scheme guidance and application forms (available at the link below), as well as the content of the draft national strategy for the scheme which confirms that arrangements will largely remain as now. Overall there were very few responses received on these documents, though minor changes were made to the application forms reflecting these.
- 8.3 Notwithstanding the short term approach, there was some stakeholder support for changes to current arrangements for the short period of UK participation in the EU scheme, and suggestions for further changes in this area after EU exit. Defra has noted these views and will consult closely on any plans following EU exit.
- 8.4 The Department of Agriculture, Environment and Rural Affairs has consulted with the Dairy Council Northern Ireland and the Ulster Farmers Union on the plans. Both organisations were supportive of the approach being adopted.

## **9. Guidance**

- 9.1 The Rural Payments Agency (RPA) administers the scheme in Great Britain. RPA has produced new guidance for the scheme which applies to Great Britain. This is available at the link.

<https://www.gov.uk/government/collections/the-school-milk-subsidy-scheme-guidance>

- 9.2 The scheme is administered in Northern Ireland by the Department of Agriculture, Environment and Rural Affairs. The Department will also make minor changes to its existing guidance available at the link.

<https://www.daera-ni.gov.uk/publications/guide-eu-school-milk-subsidy-scheme-northern-ireland>

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is very limited. This statutory instrument will have no direct impact on them. However, educational institutions and businesses which administer the scheme on their behalf have been advised about minor unavoidable changes required directly by the new EU regulations. These are reflected in the scheme guidance. These relate to: reductions in the subsidy for late claims; administrative penalties in cases of non-compliance; and, changes around the calculation of the subsidy rate in the case of flavoured milk products to isolate payment of aid to the milk component only. In practice this last change is expected to impact very few applicants in England and Northern Ireland. The provision of additional educational material in Northern Ireland schools is expected to have a minimal impact on affected establishments.

- 10.2 The impact on the public sector is therefore minimal.

- 10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses – e.g. fee paying schools that may participate in the scheme. However as described above changes to existing arrangements are being kept to a minimum.

## **12. Monitoring & review**

- 12.1 The EU scheme requires annual submission of an evaluation report containing detail about e.g. the operation of the scheme. This includes information on funds used for supply and distribution, and numbers of participating establishments and children.

- 12.2 Data collected annually by the RPA will support assessment of the operation of the EU scheme in England, and will inform the report to the EU Commission. Data can be used to inform whether any changes are needed while the UK continues to participate in the EU scheme as well as informing consideration of possible post EU options.

- 12.3 Data is also collected by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland on participation in the scheme by schools in Northern Ireland.

### **13. Contact**

- 13.1 Tom Hubberstey at the Department for Environment, Food and Rural Affairs  
Telephone: 0208 026 4221 or email: [tom.hubberstey@defra.gsi.gov.uk](mailto:tom.hubberstey@defra.gsi.gov.uk) can answer any queries regarding the instrument in relation to England.
- 13.2 John Murphy at the Department of Agriculture, Environment and Rural Affairs in Northern Ireland Telephone: 028 9052 5079 or email: [john.murphy@daera-ni.gsi.gov.uk](mailto:john.murphy@daera-ni.gsi.gov.uk) can answer any queries regarding the instrument in relation to Northern Ireland.