

EXPLANATORY MEMORANDUM TO
THE MILK AND MILK PRODUCTS (PUPILS IN EDUCATIONAL ESTABLISHMENTS) AID APPLICATIONS (ENGLAND AND SCOTLAND) REGULATIONS 2022

2022 No. 160

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Department for the Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 To ensure legal certainty in England and Scotland for the longstanding approach in the operation of the School Milk Scheme in respect of documentation supporting applications for aid.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This SI will break the 21-day rule due to an administrative error. Unanticipated delays in the making and laying processes resulted in the SI not being laid 21 days in advance of the coming into force date cited on the instrument as made.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales, and Scotland.
- 4.2 The territorial application of this instrument is England and Scotland only.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 In 2017 the EU merged, into one legal framework in EU Regulation 1308/2013, the previously separate frameworks for the EU School Milk Scheme and the EU School Fruit and Vegetables Scheme, rationalising provisions across the two EU schemes. In this process, Commission Regulation 657/2008 was consequently repealed and replaced by EU Commission Implementing Regulation 2017/39 and EU Commission Delegated Regulation 2017/40.
- 6.2 The effect of this was to replace, in relation to the School Milk Scheme, the previous requirement for aid applicants simply to hold documentary evidence in relation to applications for aid available for inspection by the relevant authority on request, with a new requirement for applicants proactively to submit supporting documentary evidence with the application for aid.

- 6.3 Only the School Milk provisions under the combined legal framework are relevant here. The School Fruit and Vegetable provisions are not used in any part of the UK.
- 6.4 Both Commission Implementing Regulation 2017/39 and Commission Delegated Regulation 2017/40 are now part of domestic retained EU law. So, too, is Regulation 1308/2013, the Regulation under which both Commission Regulations were made.
- 6.5 This instrument is made by the “appropriate authority” under Article 25(b) of Regulation (EU) No 1308/2013. In relation to England, the “appropriate authority” is the Secretary of State. In relation to Scotland, as consent has been given by the Scottish Ministers, the “appropriate authority” is also the Secretary of State.
- 6.6 This instrument amends Articles 4 and 9 of Commission Implementing Regulation 2017/39. The amendments ensure that aid applicants are, once again, only required to hold supporting documentary evidence available for inspection by the relevant authority on request.
- 6.7 Under the relevant retained EU law (Regulation 1308/2013), there is no provision for the Secretary of State to legislate on behalf of Welsh Ministers. However, Defra and the Rural Payments Agency (RPA) have worked closely with the Welsh Government to support it with similar amendments in Wales. Provision is made in respect of Wales by Welsh Ministers in the regulations available at the following link:
<https://www.legislation.gov.uk/en/wsi/2022/132/made>

7. Policy background

What is being done and why?

- 7.1 The domestic School Milk Scheme (previously EU) provides aid toward the cost of milk in schools. Policy on school milk is devolved, though the Scheme is administered in Great Britain by the RPA under agency agreements with the devolved administrations.
- 7.2 Until 2017, applicants (e.g., schools, local authorities, specialist suppliers) were required to undertake to retain documents which supported any application for aid they submitted, and to make these documents available for inspection by the RPA on request (by spot check). Spot checks were carried out on 5% of applicants/payment value.
- 7.3 The UK Government concluded that the additional requirements within the School Milk Scheme brought in by the 2017 EU legislation (referred to in paragraph 6.1) were disproportionate and would incur considerable additional financial and administrative burden without adding value to controls within the scheme. Estimates suggested implementing new requirements would incur additional annual costs of £307k on a scheme worth £3.6m. A ministerial decision was therefore taken to retain pre-2017 control arrangements only.
- 7.4 Ministers believe that this approach continues to achieve a balance between, on the one hand, regulatory rigour and, on the other hand, reducing the administrative burden both on applicants and on the RPA.
- 7.5 In a 2020 audit, the National Audit Office (NAO) as Certification Body identified that the legislative requirements (introduced in 2017) regarding documentation supporting aid applications were not being met and recommended that processes be corrected to comply with that legislation.

7.6 Given the NAO finding referred to in paragraph 7.5 and to prevent future adverse findings, the Secretary of State and Scottish Ministers have decided to amend the law in England and Scotland to underpin this proportionate approach to documentary evidence. This will ensure that spot checks may continue with legal certainty.

7.7 In practice, applicants and suppliers will see no change to existing practice under the Scheme as a result of the amendments made by this instrument.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 No consolidation of Commission Implementing Regulation 2017/39 is currently planned. This is the first domestic instrument to amend that retained EU Regulation. It makes an important, but textually restricted, amendment to the existing legal framework for the School Milk Scheme in England and Scotland.

10. Consultation outcome

10.1 Defra and the Scottish Government have carried out targeted engagement with key stakeholders to explain the limited purpose of this instrument and to clarify that they will see no change in practice to the current operation of the Scheme as a consequence. This has included engagement with key dairy industry and farming representative bodies with an interest in the Scheme, including the National Farmers Union (NFU), NFU Scotland, Dairy UK and the School and Nursery Milk Alliance. Engagement has also been carried out with relevant Scottish local authorities. No responses were received. Defra and the Scottish Government have also worked closely together on the detail of the instrument and the Scottish Parliament has provided consent for the instrument to be made. Defra has also engaged closely with the Welsh Government to support it with consideration of similar provision in Wales (see paragraphs 6.7).

11. Guidance

11.1 No guidance is required as the amendment made by this instrument will not involve any change to current practice, both of aid applicants and of the RPA, under the School Milk Scheme in relation to England and Scotland.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because it has no impact on longstanding operational practice under the School Milk Scheme in England and Scotland.

13. Regulating small business

13.1 This instrument applies to activities that are undertaken by small businesses - e.g. fee paying schools that may participate in the scheme. However, as described above, there will be no change in current practice as a result of this instrument.

14. Monitoring & review

- 14.1 The RPA reserves the right to increase spot checks on applications where evidence suggests that this is necessary. The amendments made by this instrument will underpin this existing approach, and, therefore, no specific additional monitoring or review of the amendments made by this instrument is currently planned.

15. Contact

- 15.1 Tom Hubberstey at the Department for Environment, Food and Rural Affairs can answer any queries regarding the instrument in relation to England. Tel: 0208 026 4221 or email: tom.hubberstey@defra.gov.uk

Kevin Matheson in the Scottish Government can answer any queries regarding the instrument in relation to Scotland. Tel: 0131 244 9144 or email: kevin.matheson@gov.scot

- 15.2 Balwinder Dhoot, Deputy Director for Food Farming Sectors and Trade, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Victoria Prentis MP, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.