

EXPLANATORY MEMORANDUM TO THE SCHOOL MILK (WALES) REGULATIONS 2008

This explanatory memorandum has been prepared by the Department for Children, Education, Lifelong Learning and Skills and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

Description

This Statutory Instrument, which applies in Wales, revokes and replaces the School Milk (Wales) Regulations 2001 S.I. 2001/275 (W.11).

It:

- continues to offer Free School Milk to Key Stage 1 Pupils in Primary Schools at no cost to their parents; and
- continues making national “top up” payments to beneficiaries of an EU subsidy for milk and milk products in Primary Schools (Key Stage 2 pupils).
- allows the Welsh Ministers to determine which beneficiaries or products may benefit from the additional national top up.
- It provides enforcement powers to recover payments made to applicants who are not eligible to the aid or if the commitments have been breached.
- updates references to European legislation.

Matters of special interest to the Subordinate Legislation Committee

None.

Legislative Background

The power enabling subordinate legislation to be made by way of regulations to implement European Community obligations is contained in section 2(2) of the European Communities Act 1972.

The Welsh Ministers have been designated by virtue of section 59(1) of the Government of Wales Act 2006, to exercise the power conferred by section 2(2) of the European Communities Act 1972 in relation to matters specified in Schedule 3 to the European Communities (Designation) (No.3) Order 2005 (SI 2005/2766). Those matters include measures under the common agricultural policy of the European Community in relation to food (including drink).

When making subordinate legislation under Section 2(2) of the European Communities Act 1972, the affirmative or negative resolution procedure may be used.

The negative resolution procedure is considered appropriate in this case as the power to make the proposed regulations under section 2(2) will not

- be combined with any other power;
- amend primary legislation;
- impose a mandatory requirement on the Welsh Ministers that will involve substantial government expenditure; or

- contain unusual criminal provision or civil penalties, confer unusual powers of entry, examination or inspection, or provide for collection of information under powers of compulsion or impose onerous duties on the subject.

Purpose and intended effect of the legislation

Council Regulation (EC) No 1255/1999, which provided for the payment of an EU subsidy for milk and certain milk products in schools, and allowed Member States to pay a national top up to the Community aid, was repealed by Council Regulation (EC) No 1234/2007 (the Single CMO Regulation).

The Single CMO Regulation consolidated a number of Regulations but made no policy changes to the regimes covered. Commission Regulation 2707/2000, which laid out the detailed implementing rules for the EU School Milk Scheme was repealed by Regulation 657/2008.

It is therefore necessary to update the references to Community legislation in domestic legislation. Regulation 657/2008 has increased the scope of the EU subsidy scheme to include secondary schools (nursery and primary schools were previously covered). A wider range of products have also been made eligible for subsidy.

Implementation

Failure to implement Community obligations could lead to infraction proceedings being brought by the European Commission against the Welsh Ministers or challenges by individuals before UK courts.

Consultation

A formal consultation for this Instrument has not been conducted, but a consultation on the implementation of the EU School Milk Scheme and the application of the national top up and the products offered is planned for autumn 2008.

This will allow the Welsh Ministers to decide which beneficiaries will benefit from the national top up, following the formal consultation on the implementation of the Scheme. Until such time as the consultation has been completed, the Welsh Ministers will continue to pay the national top-up to Key Stage 2 pupils in Primary Schools.

The Welsh Assembly Government sees the Free School Milk as an integral part of the healthy schools agenda and remains committed to providing milk to Key Stage 1 pupils at no cost to parents.

Regulatory Impact Assessment

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.