

Explanatory Memorandum to School Milk (Wales) Regulations 2017

This Explanatory Memorandum has been prepared by Education & Public Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary/Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the School Milk (Wales) Regulations 2017.

KIRSTY WILLIAMS, CABINET SECRETARY FOR EDUCATION

7 July 2017

1. Description

The School Milk (Wales) Regulations 2017, which applies in Wales, revokes and replaces the School Milk (Wales) Regulations 2008 S.I. 2008/2141 (W.190).

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

When making subordinate legislation under section 2(2) of the European Communities Act 1972, the affirmative or negative resolution procedure can 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; or
- impose a mandatory requirement on the Welsh Ministers that will involve substantial government expenditure.

3. 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 Article 3 of the European Communities (Designation) (No. 5) Order 2010. Those matters include measures under the common agricultural policy of the European Community in relation to food (including drink).

4. Purpose & intended effect of the legislation

The purpose of these Regulations is to permit the continuation of the EU school milk scheme in Wales when the new EU school milk scheme under Regulation (EU) No 1308/2013, Commission Implementing Regulation (EU) 2017/39 and Commission Delegated Regulation (EU) 2017/40 comes into effect from 1 August 2017. It is necessary to update references in domestic law to refer to these new EU Regulations.

The Regulations will allow the Rural Payments Agency (on behalf of the Welsh Ministers) to continue to administer the national top up schemes in Wales under

the new framework. The Regulations have equivalent effect to the provisions of the School Milk (Wales) Regulations 2008, which are to be revoked.

The Regulations continue to allow the Welsh Ministers to make national “top up” payments to beneficiaries of an EU subsidy for milk and milk products. They will also allow the Welsh Ministers to determine which beneficiaries or products may benefit from the national top up payments.

The Regulations continue to allow Welsh Ministers to make an additional national top up payment to reimburse the full cost of milk for pupils who are in reception, year 1 or year 2 at qualifying educational establishments.

The Regulations provide for the withholding or recovery of any Union aid or any national payments to which the applicant is not entitled or where the applicant is in breach of any commitments given as a condition of such Union aid or national payment. Provision is also made for the calculation of interest on sums due to be repaid to the Welsh Ministers.

EU Regulations also require Member States to have measures in place to check aid applications, including on-the-spot checks of claimants at their premises. These Regulations confirm that persons authorised by the Welsh Ministers have explicit powers of entry and inspection in relation to the School Milk Scheme in order to facilitate the enforcement of this Scheme.

5. Consultation

A consultation was targeted at the key stakeholders, for a period of four weeks (8 May to 4 June). A copy of the consultation letter is attached at Annex 1. The consultation was issued to 56 stakeholders, of which, 8 responses were received. A summary of consultation responses is attached at Annex 2.

6. Regulatory Impact Assessment (RIA)

Please Note:

I have considered the Welsh Ministers’ Regulatory Impact Assessment code for subordinate legislation, and determined that an RIA is not necessary in this instance as the changes to the Regulations will not alter the delivery of school milk at the point of use. The same cohorts of children will continue to receive free, or subsidised, milk, according to their age or eligibility for free school meals.

Annex 1

Dear Colleague

Re. Consultation on the School Milk Scheme

The purpose of this consultation is to seek the views of those involved in the administration of the School Milk Scheme and other key stakeholders.

The objective is to update current legislation relating to the School Milk Scheme to ensure that it reflects current policy and practice.

The consultation period will run for four weeks from 8 May to 4 June 2017.

Background

The EU School Milk Scheme is being merged with the EU School Fruit and Vegetables Scheme from 1 August 2017. Although the two schemes are being merged, member states will still have the discretion to decide which products are subsidised under the scheme. The Welsh Government propose that in Wales the scheme will continue to focus on the provision of milk, pending more detailed consideration of how the scheme might operate after the exit from the EU.

The Welsh Government plans to make legislation which revokes and replaces the School Milk (Wales) Regulations 2008. The legislation is required to:

- update references to European legislation;
- continue to offer Free School Milk to Key Stage 1 Pupils in Primary Schools at no cost to their parents; and
- continue making national “top up” payments to beneficiaries of an EU subsidy for milk and milk products in Primary Schools (Key Stage 2 pupils).
- allow Welsh Ministers to determine which beneficiaries or products may benefit from the additional national top up.
- amend the Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Wales) Regulations 2004 to update references to European legislation
- continue to provide enforcement powers to Welsh Ministers to withhold or recover community aid or national aid payments made to applicants who are not eligible to the aid or if the commitments have been breached.
- provide Welsh Ministers (via the Rural Inspectorate for Wales), with explicit powers of entry and inspection to facilitate the enforcement of the school milk scheme.

The EU legislation for the revised scheme will be introduced on 1 August 2017, so the Statutory Instrument would need to be in place from the same date.

Enforcement

To ensure that funds provided by the EU are appropriately used, EU Regulations¹ require member States, amongst other things, to have measures in place to check aid applications, including on-the-spot checks of claimants at their premises.

Currently, the Rural Payments Agency (RPA) administers the School Milk Scheme on behalf of the Welsh Government. The Rural Inspectorate for Wales (within the Welsh Government) carries out sample checks ('enforcement checks') on local authorities and schools to verify their claims, under a service level agreement it has with the RPA.

Claimants of EU aid have to agree in writing to make documents available on request and to submit to checks². Reliance has been placed on this provision in EU law to enable Rural Inspectorate Wales to enter and inspect the premises of claimants.

We want to make the legislation on entry and inspection in relation to the school milk scheme more transparent. Therefore, the proposed regulations will confer explicit powers of entry and inspection on the Welsh Ministers. The Welsh Ministers intend to continue to allow the Welsh Government's Rural Inspectorate for Wales ('RIW') to enter claimants' premises and carry out inspections on their behalf.

The power of entry would allow RIW on producing, if so required, a duly authenticated document showing that person's authority, to, at a reasonable hour, enter any land or premises other than premises used wholly or mainly as a private dwelling.

Should entry to the land or premises be refused a signed warrant would be required to permit an officer of RIW to enter any land or premises, if necessary by reasonable force.

The power of inspection would allow RIW to:

- carry out checks;
- take samples;
- inspect the premises;
- inspect documents or records;
- have access to and inspect any computer and any associated apparatus used in relation to the school milk scheme;

¹ Article 58 of Regulation (EU) No. 1306/2013. Regulation (EU) No 1306/2013 of the European Parliament and of the Council and the provisions adopted pursuant to it apply in relation to the School Milk Scheme by virtue of Article 2 of the Regulation (EU) No 1308/2013 of the European Parliament and of the Council.

² As prescribed under Article Article 8(1)(c) and (d) of Regulation (EU) 657/2008. This regulation will be revoked under the new school milk scheme but will be replaced with an equivalent provision (Article 6(1)(e) and (f) of Regulation (EU) 2017/40) on 1 August 2017.

- take a photograph of, or record in digital form, anything on the premises;
- remove evidence of any non-compliance from the premises.

These enforcement powers would help RIW to comply with EU obligations to undertake effective on-the-spot checks to ensure compliance and prevent error and fraud. These enforcement provisions would also provide greater transparency so that it is clear to claimants of the school milk scheme that the RIW (via the Welsh Ministers) have powers of entry and inspection in relation to the school milk scheme. The operation of the scheme on the ground would not be affected but the law itself will look different

The proposed regulations will also continue to include provisions to allow the Rural Payments Agency (via powers conferred on the Welsh Ministers) to withhold or recover community aid or national aid plus interest. This would reflect the current law as prescribed under regulation 7 of the School Milk (Wales) Regulations 2008.

Failure to introduce legislation within Wales which reflects the changes to EU legislation and to facilitate the enforcement of the School Milk Scheme could result in infraction proceedings against the UK. The proposed School Milk (Wales) Regulations 2017 will address the implementation of:

- i. the revised scheme; and
- ii. the enforcement regime of the School Milk Scheme.

Educational Measures

In revising the scheme, the EU Commission is requiring participating countries to introduce educational measures, linked to the scheme's aim of improving the distribution of agricultural products and promoting healthy eating habits in children. The Welsh Government will develop materials promoting the school milk scheme, with educational content and with EU branding, and make this available to schools via *Hwb*, the digital learning platform for schools. Then materials would be promoted to schools via the Welsh Government's *Dysg* e-zine.

Detail of the consultation

A draft of the Statutory Instrument is still in preparation. This consultation is on the policy that will be reflected in that S.I.

Local authorities may wish to consult with their schools, and may forward this letter if they wish to do so.

Taking the background information into account, we would like your feedback on the following matters:

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| 1. | Do you agree that the powers of entry and inspection outlined on pages 2 to 3 of this letter are appropriate powers for helping RIW to undertake effective on-the-spot checks? |
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| 2. | <p>The Welsh Government is developing educational materials to help raise awareness of milk products and promote healthy eating habits in children, in the form of a poster and/or a leaflet which would cover the following points:</p> <ul style="list-style-type: none"> • the nutritional benefits of milk and milk products • milk/milk products as part of a healthy balanced diet • using milk/milk products in cooking • where milk comes from • the dairy industry <p>Stakeholders are invited to comment on the proposed content of the educational materials.</p> |
| | |

Responses to this consultation should be posted or e-mailed to the address below by 4 June 2017.

Pupil Wellbeing Branch
Support for Learners Division
The Education Directorate
Welsh Government
Cathays Park
Cardiff, CF10 3NQ
e-mail: WELLBEINGshare@wales.gsi.gov.uk

Please state, in your response, whether you are responding as a private individual or on behalf of an organisation/company (including details of any stakeholders your organisation represents).

Thank you on the behalf of the Welsh Government for participating in this consultation.

Yours faithfully

Lowri Reed
Pupil Wellbeing Branch

Annex 2

Consultation on the School Milk Scheme: summary of responses

Purpose

The Welsh Government has carried out a consultation on changes to current legislation relating to the School Milk Scheme to ensure that it reflects current policy and practice. The purpose of the consultation was to seek the views of those involved in the administration of the School Milk Scheme and other key stakeholders.

The Welsh Government consulted with local authorities, farming unions, representative bodies, school milk suppliers and the Rural Payments Agency (RPA).

This document reports on the responses that were received from the consultation, which was carried out over a 4 week period from 8 May to 4 June 2017,

Questions asked in the consultation

1. Do you agree that the powers of entry and inspection are appropriate powers for helping RIW [the Rural Inspectorate for Wales] to undertake effective on-the-spot checks?
2. The Welsh Government is developing educational materials to help raise awareness of milk products and promote healthy eating habits in children, in the form of a poster and/ or leaflet which would cover the following points:
 - The nutritional benefits of milk and milk products
 - Milk/ milk products as part of a healthy balanced diet
 - Using milk/ milk products in cooking
 - Where milk comes from
 - The dairy industry

Stakeholders were invited to comment on the proposed content of the educational materials.

Responses to the consultation

The consultation was sent out to 56 stakeholders, and 8 responded to the consultation, Respondents included:

- 5 local authorities
- 1 farming union
- 1 representative organisation
- the RPA.

Of the 8 responses received, 6 agreed to question 1 of the consultation. Two neither agreed nor disagreed.

7 responders were broadly supportive of what was put forward in question 2 and contributed suggestions on the proposed content of the educational materials. One did not comment on this.

Comments received

The following section of this document contains the additional comments that were made.

Comments made to question 1

By a local authority:

“Monitoring of the milk scheme is appropriate and in line with expectations. That this enhances transparency of process and all round accountability is helpful in ensuring value for money. Clarity on the criteria of the basis for initiating spot checks, would they be a random sample based on a percentage of participating sites, or would it be based on some perception of risk?”

It was felt that a standard template of reporting documents that RIW would audit on any visits would be a benefit to authorities. Currently authority designed documents are used but a standardised set used from start to end of process would ensure clarity of information across agencies and ensure RIW has easy access to all the information it requires.”

The School Milk Scheme is run by RPA and the RIW undertakes inspections on their behalf, so the RIW wouldn't be in a position to require standard reporting. However, the RIW will investigate sharing 'best practice' templates that beneficiaries could choose to use.

Comments made to question 2:

By local authorities:

“Promotional materials are always welcomed in our schools and they have expressed an interest in both hard copy materials as well as higher level targeted training to heads to ensure the message is being delivered.

Point of entry materials should be eye catching, snappy and provide details for further information points. Leaflets or printable resource could be used as part of the starter packs for new intakes.

It was also mentioned that due to teaching and learning pressures in schools that milk time was often rushed. A targeted joint campaign on how to make milk

time productive and educational would be beneficial. Production of learning aids to be used or activities that pupils could create in this time would drive home the benefits as outlined above while teaching the life cycle of milk and how the industry works.”

“Whilst not having any specific comment on the proposed content of educational materials to help raise awareness of milk products and promoting healthy eating habits in children the Council will of course support the sharing of such information in any way possible.”

“Benefits of children drink milk are imperative. Promotional materials are welcomed.” – Local authority

“We would encourage this and be happy to help distribute information, i.e. literature/ posters etc to the schools.”

“We agree with the proposed content of the educational materials.”

“We support the creation of a poster and/or leaflet for educational purposes. We would like to suggest the following as options for content:

- **A picture of a cow:** *This will draw the attention of children, and help to emphasise both the natural origin of milk and its link to the wider food chain.*
- **Text highlighting the nutritional value of milk:** *The nutritional benefits of milk to children’s health and development are scientifically well established. Milk contains the vitamins and minerals vital for good dental health and bone development, and it also plays a key role in a healthy diet, helping efforts against childhood obesity. However, there are many misconceptions about milk and dairy held by the wider public. Educating children about its benefits can both encourage consumption and help dispel popular myths.*
- **Text highlighting that milk is ideal for consuming at mid-morning break:** *Milk has a high satiety value, helping to suppress hunger. This makes consumption at mid-morning break ideal, as it can both boost the concentration of a child who would otherwise be distracted by hunger, and act as an alternative to the type of sugary snack a child might consume at break to alleviate their appetite.*
- **Comment from a respected medical figure:** *Dr Hilary Jones is the spokesperson for the SNMA³, and we would be very happy to offer a quote from him endorsing school milk consumption to feature in the material.*

³ School and Nursery Milk Alliance

- ***The signature of the First Minister:*** *The approval of a high profile political figure would help to emphasise the importance the Welsh Government places on school milk consumption.*

However, we do have some concerns that a poster and/or leaflet alone will struggle to convey all of the information that would be useful, and may be too passive for children to fully engage with. We believe that a supporting DVD or downloadable video that provides a ‘story of milk’ from the farm to the classroom, as well as further outlining the health benefits of milk, could be desirable.

Additionally, we would like to take this opportunity to highlight that there will likely only be an 18-month gap between the new school milk system being implemented and the UK’s departure from the EU. It is therefore vital that consideration begins now about the shape of both a replacement scheme, and any transitional arrangements between the end of the UK’s involvement in the EU School Milk Scheme and the establishment of a national programme. “

By a farming union:

“[organisation name] warmly welcomes this initiative by Welsh Government. We would point you in the direction of the websites of NFU Cymru, NFU, Dairy Co, Dairy Research Council and AHDB Dairy.

Here there is a wealth of information that could be used in developing posters and leaflets that are attractive and interesting as well as educational to pupils in all key stages.

In fact there would be a case of slight adjustments to posters for each key stage to ensure the message is clear and pitched to the age of pupils.”

The Welsh Government will take these comments into consideration in the development of educational materials. We will also look at what existing materials are available, including videos, which would reinforce key messages, and consider whether they might also be made available on Hwb, our digital learning platform for schools.

As regards the impact of the UK’s departure from the EU on the School Milk Scheme, this matter is outside the scope of the consultation. However, in leaving the EU, the Welsh Government is keen to ensure that benefits which ensure the well-being of our children are not diluted or lost.