

Explanatory Memorandum to The Milk and Milk Products (Pupils in Educational Establishments) Aid Applications (Wales) Regulations 2022

This Explanatory Memorandum has been prepared by the Support for Learners Division and is laid before the Senedd in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Milk and Milk Products (Pupils in Educational Establishments) Aid Applications (Wales) Regulations 2022.

Jeremy Miles
Minister for Education and Welsh Language
15 February 2022

1 PART 1

1. Description

1.1 These regulations amend provisions relating to documentary evidence supporting applications for aid under the School Milk Scheme. As a result of these amendments, applicants to the School Milk Scheme must only hold such documentary evidence available for the relevant authority. Previously, they had to submit supporting documentary evidence with the application for aid.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

2.1 None.

3 Legislative background

3.1 The Welsh Ministers make these Regulations in exercise of the power conferred by Article 25(b) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products⁽¹⁾, as read with Article 3(5)(c)(i)(bb) of that Regulation⁽²⁾.

3.2 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⁾.

3.3 These Regulations are being made under the negative resolution procedure.

4 Purpose and intended effect of the legislation

4.1 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 and is administered on behalf of the Welsh Government by the Rural Payments Agency (RPA) under an agency agreements with the Welsh Government.

(1) EUR 2013/1308. Article 25 was amended by S.I. 2019/831. “Appropriate authority” is defined in Article 3(5)(c). The definition of “appropriate authority” was inserted by S.I. 2019/821, and was subsequently amended by S.I. 2019/1422.

(2) Article 3(5)(c)(i)(bb) defines the Welsh Ministers as the “appropriate authority” in relation to Wales.

(3) EUR 2002/178. There are no relevant amendments.

- 4.2 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. Requirements within the School Milk Scheme brought in by the 2017 EU legislation undertook that participants in the Scheme present all their paperwork to the Rural Payments Agency on submission of their claim.
- 4.3 The UK Government concluded that the additional requirements within the School Milk Scheme brought in by the 2017 EU legislation 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 joint decision was therefore taken by the UK, Scottish and Welsh Governments to retain pre-2017 control arrangements only.
- 4.4 UK and Scottish 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 and they have agreed that the Secretary of State will make regulations to amend the law applying to England and Scotland to remove the additional requirements.
- 4.5 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.
- 4.6 Given the NAO finding referred to in paragraph 4.5 and to prevent future adverse findings, the Welsh Ministers have decided to amend the law in Wales to align it with England and Scotland and underpin this proportionate approach to documentary evidence. This will ensure that spot checks may continue with legal certainty. However, the Secretary of State does not hold the relevant powers in respect of Wales because of an exception requested by the Welsh Government during the EU withdrawal process. For the changes to apply in Wales the Welsh Ministers will have to make an equivalent set of regulations using their own powers.
- 4.7 This statutory instrument will ensure a proportionate approach to document retention for participants in the School Milk Scheme in Wales. It will ask them to undertake to retain documents which support any application for aid they submit, and to make these documents available for inspection. This technical change will ensure that spot checks may continue with legal certainty.

5 Consultation

5.1 As there is no policy change, no public consultation was undertaken. The purpose of the instrument is solely to put the current audit arrangements on a legal footing. A limited stakeholder engagement exercise was held with current participants in the School Milk Scheme in Wales between 28 January 2022 and 7 February 2022. No responses or comments were received from participants during the consultation process.

6 Regulatory Impact Assessment (RIA)

6.1 An RIA has not been prepared for this instrument as it is only making a minor technical change to the way in which the School Milk Scheme is administered. This is consistent with the policy set out in the Welsh Ministers code of practice for carrying out regulatory impact assessments for subordinate legislation. A competition filter test was carried out and found that laying and implementing this statutory instrument would have no detrimental effects on competition in this field.