

SL(6)160 – The Milk and Milk Products (Pupils in Educational Establishments) Aid Applications (Wales) Regulations 2022

Background and Purpose

[The Milk and Milk Products \(Pupils in Educational Establishments\) Aid Applications \(Wales\) Regulations 2022](#) (“the Regulations”) are made under the power contained in 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 (“the CMO Regulation”), as read with Article 3(5)(c)(i)(bb) of that Regulation. They apply only in Wales.

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.

The Regulations amend Articles 4 and 9 of Commission Implementing Regulation (EU) 2017/39, and amend provisions relating to documentary evidence supporting applications for aid under the scheme established by Articles 22 to 25 of the CMO Regulation. From inception these documentary evidence requirements were identified as disproportionate to the risk they were designed to address. As such, the pre 2017 control requirements were applied across the UK, and the present changes are to put this scheme on a statutory footing.

As a result of these amendments, applicants must only hold such documentary evidence available for the relevant authority. Previously, they had to submit supporting documentary evidence with the application for aid.

The Regulations 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.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.



Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

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, requires:

There shall be open and transparent public consultation, directly or through representative bodies, during the preparation, evaluation and revision of food law, except where the urgency of the matter does not allow it.

The preamble to the Regulations under consideration states:

“There has been consultation as required by Article 9 of Regulation (EC) No 178/2002...”

Further, this wording is repeated in paragraph 3.2 of the Explanatory Memorandum.

However, it is noted that paragraph 5.1 of the Explanatory Memorandum states:

“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.”

In view of this apparent contradiction, clarification is sought on how the action taken as set out in paragraph 5.1 of the Explanatory Memorandum satisfies the statutory requirement to conduct a “transparent public consultation” as required by Article 9.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Welsh Government response

Technical Scrutiny point:

Article 9 of Regulation (EC) No 178/2002 requires “open and transparent public consultation, directly or through representative bodies, during the preparation, evaluation and revision of food law, except where the urgency of the matter does not allow it.” It does not specify the form such a consultation must take, or define what it means by “public”. It does however, make it clear that public consultation may take place directly or by way of representative



bodies, so a blanket consultation of the general public as a whole is not required in every instance. Our view therefore, is that Article 9 requires a judgment to be made as to the most effective and proportionate means of achieving an open and transparent consultation in each case.

When deciding on the necessary form of consultation, we think it is important to bear in mind the scope of Regulation (EC) No 178/2002, as set out in Article 1, paragraph 2: “...this Regulation lays down the general principles governing food and feed in general, and food and feed safety in particular. It lays down procedures for matters with a direct or indirect impact on food and feed safety.” When this is read with the provisions setting out those general principles, such as Article 9, our view is that measures having a greater impact on food, and particularly food safety, may sometimes require a different form of consultation compared with those which relate indirectly to food but have no effect on food safety. The form of consultation required will always turn on the facts.

These Regulations make a technical change to the administrative arrangements required of persons participating in the School Milk Scheme. Those arrangements have no effect on the milk supplied and no effect on food safety. The purpose of these Regulations is to enable the Scheme to continue to function as it has done for the past several years, and they will not require participants to change the way they currently operate. It is highly unlikely that any person not directly involved in the School Milk Scheme would have any interest in the matter.

Given the highly specialised and technical nature of the amendments made by these Regulations, we take the view that a full consultation of the general public as a whole would not have been an effective or proportionate way of bringing the change to the attention of those members of the public likely to be affected by it, and would arguably have been less open and transparent than direct consultation. Instead we consulted the relevant Wales-based participants in the Scheme and their representative bodies, namely:

- the Welsh Local Government Association;
- the Local Authority Caterers Association;
- all participating schools and local authorities.

The consultation was undertaken in liaison with the Rural Payments Agency, which administers the Scheme on behalf of the Welsh Government. None of the consultees raised any issues. We consider that to have been the most transparent way of ensuring that the matter was brought to the attention of the section of the public to whom it might be relevant.

We note that the UK and Scottish Governments have taken a similar approach to consultation when making the Milk and Milk Products (Pupils in Educational Establishments) Aid Applications (England and Scotland) Regulations 2022, which make exactly the same amendments in respect of England and Scotland.



Committee Consideration

The Committee considered the instrument and Government response at its meeting on 28 February 2022 and reports to the Senedd in line with the reporting point above.



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

—

Welsh Parliament

Legislation, Justice and Constitution Committee