

Consultation on arrangements for Scotland to continue participating in the EU School Milk scheme

May 2017



Scottish Government
Riaghaltas na h-Alba
gov.scot

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Introduction

1. The [EU school milk scheme](#) allows local authorities in Scotland to claim funding to subsidise their school milk schemes. The scheme is administered by the Rural Payments Agency (RPA).
2. Local authorities who claim under the EU milk scheme are able to receive further subsidy from the UK school milk top up scheme, also administered by the RPA.
3. The Scottish Government do not collect data on how much it costs local authorities to provide a school milk scheme, although we understand that they spend significantly more on school milk provision than they receive in subsidy under the EU and UK schemes.
4. In 2011, the European Court of Auditors evaluated the EU school milk scheme and the EU school fruit and veg scheme (Scotland, and the rest of the UK, has never participated in this scheme due to issues at UK Treasury level) and concluded that the EU school milk scheme was ineffective in its current form. The EU fruit and vegetable scheme was seen as a better model. In 2014, following [public consultation](#), the European Commission published [proposals](#) for reforming and merging the 2 schemes under a common framework.
5. EU Member States were provided with opportunities to contribute to the reform of the scheme, with Defra leading for the UK Member State with input from the Scottish Government.
6. The [new implementing regulation](#) and [delegated regulation](#) were passed at EU level in 2016 and Member States are now moving on to the implementation stage of the common framework.
7. On 1 August the new common framework will come into force and the old EU school milk scheme arrangements will cease. EU member states are required to submit a strategy setting out how they intend to implement their schemes. Scotland's plans will be set out as part of the UK member state strategy which is due to be with the European Commission by 1 August. The UK Strategy will be made available once finalised.
8. We expect funding levels for Scotland under the new framework will remain broadly the same as in previous years and a new Scottish Statutory Instrument (SSI) is being drafted to update references to EU law, permit recovery of payments and to allow appeals under the non-IACS appeal arrangements to continue. A copy of the current draft is attached.
9. We have considered the need for a Business and Regulatory Impact Assessment (BRIA) and have concluded that as there are no significant additional

costs associated with these new arrangements there is no requirement to produce one.

10. We expect the application form (currently being drafted by the RPA) to remain broadly the same with minor amendments to cover specific elements of the scheme (see below). A new guidance document to support the application form is also being drafted. These will not be available until after the UK General Election on 8 June.

11. The detail of the scheme can be found in the implementing and delegated regulations (links above) however, the main points of the new framework, as described on the European Commission Website, are listed below along with a note of 'what this will mean in **Scotland**' below each point.

12. Main points:

Products (to be distributed to schoolchildren):

- Priority shall be given to fresh fruit and vegetables and drinking milk. In addition, Member States may distribute processed fruit and vegetables such as juices or soups, and milk products such as yogurt and cheese, to ensure a varied diet and address particular nutritional needs. Certain other milk products, such as milk-based drinks, may be allowed, but Union aid will only be granted to the milk component

Scotland – We do not participate in the fruit and veg scheme. We expect that milk will remain the focus of this scheme in Scotland. You will wish to be aware that while the scheme will continue to allow flavoured milk to be claimed for, only the plain milk component will be eligible for subsidy (e.g. providing a product which is 95% milk and 5% flavourings would result in a 5% reduction in subsidy for that product.)

- Member States may include in the framework of thematic educational measures other agricultural products, such as olives and olive oil and honey

Scotland – We expect to meet the educational measures requirement through an educational poster.

- Member States' choice of products shall be based on health and environmental considerations, seasonality, variety and availability with priority to EU products. Member States may encourage local or regional purchasing, organic products, short supply chains, environmental benefits, agricultural quality schemes.

Scotland – We expect milk to remain the focus of the scheme in Scotland. Local authorities may find '[Catering for Change - buying food sustainably in the public sector](#)' helpful as you consider how to purchase the milk for distribution under this scheme.

- In-line with the objective of healthy eating habits, products shall contain no sweeteners and artificial flavour enhancers, and should aim to have no added sugar, salt, or fat (even if products with only limited quantities may be allowed after authorisation by the competent national health authorities)

Scotland – Products will be expected to meet the standards set out in the ‘Nutritional requirements for food and drink in schools (Scotland) Regulations 2008’ which apply to all food and drink provided in education authority and grant maintained schools in Scotland.

Implementation:

- A common legal framework will reduce the administrative and organisational burden and simplify obligations: Member States will draw up only one strategy, covering a period of 6 years, and submit only one annual request for aid; synergies will be possible as regards the required monitoring and evaluation reports and, in general, as regards implementation of the scheme (distribution of products, educational measures etc.)
- The educational dimension is reinforced for a more effective achievement of the scheme's objectives. Member States shall accompany the distribution of products with educational measures in order to reconnect children to agriculture. Such measures may also concern related issues such as healthy eating habits, local food chains, organic farming, sustainable production, food waste

Scotland - This is a significant change to the scheme which requires all claimants who apply for subsidy under the EU school milk scheme to demonstrate ‘educational measures’ which will accompany distribution in order to strengthen the impact of the scheme. Curriculum for Excellence can clearly demonstrate that pupils already receive high quality education in relation to food and health, however, the technical details of this new educational measures requirement means that local authorities cannot rely solely on Curriculum for Excellence to claim they are compliant with the new requirement. In order to mitigate the additional administrative burden this will clearly place on local authorities, Scottish Ministers have commissioned the creation of a poster which is designed to meet the educational measures requirements. This poster will be required to be displayed wherever pupils are being provided with milk which is subsidised under the EU school milk scheme. Posters will be sent to all local authorities currently claiming under the scheme and a pdf will be shared to enable schools to print further copies should they require to do so in the future.

Consultation responses

13. Consultees are invited to note the main points of the new common framework (detailed above) and to consider the delivery approach proposed for Scotland.

Consultation Timetable

14. Subject to Scottish Parliamentary approval the SSI has to be in place for the new School Milk Scheme commencing 1 August 2017. To comply with administrative and scrutiny arrangements and to ensure the new EU regulations are reflected in domestic law a short, targeted, consultation is being held with a deadline for responses of **21 May 2017**.

Responding to this Consultation

We are inviting responses to this consultation by [21 May 2017](#)

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at <https://consult.scotland.gov.uk/food-and-drink/eu-milk-scheme>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of [21 May 2017](#)

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to:

milkconsultation@gov.scot

Post: Kevin Matheson
Livestock Policy Manager
B1 Spur
Saughton House
Broomhouse Drive
Edinburgh
EH11 3XD

Handling your response

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with

any other available evidence to help us. Responses will be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them milkconsultation@gov.scot

Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to -consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Please send responses via Citizen Space, by 21 May 2017, or to:

Email: milkconsultation@gov.scot

Post: Kevin Matheson
Livestock Policy Manager
B1 Spur
Saughton House
Broomhouse Drive
Edinburgh
EH11 3XD

SCOTTISH STATUTORY INSTRUMENTS

2017 No.

AGRICULTURE

The Milk and Other Products (Pupils in Educational Establishments) (Scotland) Regulations 2017

Made - - - -

Laid before the Scottish Parliament

Coming into force - -

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(a) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for references to EU instruments in these Regulations, to be construed as reference to those instruments as amended from time to time.

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(b).

Citation and commencement

1. These Regulations may be cited as the Milk and Other Products (Pupils in Educational Establishments) (Scotland) Regulations 2017 and come into force on 1st August 2017.

Interpretation

2.—(1) In these Regulations—

“applicant” means an applicant for aid as described in Article 5 of the Commission Delegated Regulation that has been approved in accordance with Article 6 of the Commission Delegated Regulation;

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), section 3(3) and Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act, Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and was amended by the 2008 Act, Schedule, Part 1.

(b) OJ L 31, 1.2.2002, p.1, to which there are no relevant amendments to Article 9.

“Commission Delegated Regulation” means Commission Delegated Regulation (EU) 2017/40 of 3rd November 2016 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to union aid for the supply of fruit and vegetables, bananas and milk in educational establishments and amending Commission Delegated Regulation (EU) No 907/2014, as amended from time to time(a);

“Commission Implementing Regulation” means Commission Implementing Regulation (EU) 2017/39 of 3rd November 2016 on rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to Union aid for the supply of fruit and vegetables, bananas and milk in educational establishments, as amended from time to time(b);

“Commission Regulations” means the Commission Delegated Regulations and the Commission Implementing Regulations;

“Council Regulation” means Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17th December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) no 234/79, (EC) no 1037/2001 and (EC) No 1234/2007(c), as amended by Regulation (EU) 2016/791 of the European Parliament and of the Council of 11th May 2016 amending Regulations (EU) no 1308/2013 (the Council Regulation) and (EU) No 1306/2013 as regards the aid scheme for the supply of fruit and vegetables, bananas and milk in educational establishments(d), and as amended from time to time;

“Horizontal Implementing Regulation” means Commission Implementing Regulation (EU) No 809/2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance, as amended from time to time(e);

“Union aid” means Union aid granted pursuant to Article 23(1) of the Council Regulation and in accordance with the Commission Regulations;

Except where the context otherwise requires, other expressions used in the Regulations have the meaning they bear in the Council Regulations and the Commission Regulations.

Additional payment under Article 23a(6) and 217 of the “Council Regulation”

3.—(1) Subject to paragraph (2) below, where an applicant is in receipt of “Union aid”, the Scottish Ministers may, in accordance with the provisions of Articles 23a(6) and 217 of the Council Regulation, as read with the Commission Regulations, pay that applicant an amount in addition to that “Union aid”.

(2) For the purposes of the provisions specified in paragraph 3 below (which apply to payment of Union aid) an application for aid to be paid under paragraph (1) above shall be treated as if it were an application for Union aid, and any sum payable or paid under paragraph (1) above shall be treated as if it were payable or paid by way of Union aid.

(3) The specified provisions are—

- (a) of the Council Regulation; Article 22 (Target Group) and Article 23 (Aid for the supply of school fruit and vegetables and of school milk, accompanying educational measures and related cost);
- (b) of the Commission Implementing Regulation; Article 4 (Aid applications submitted by aid applicants); Article 5 (Payment of the aid); Article 9 (Administrative checks); Article 10 (On-the-spot checks) and Article 11 (Recovery of undue payments); and

(a) OJ L 5, 10.1.2017, p.11.

(b) OJ L 5, 10.1.2017, p.1.

(c) OJ L 347, 20.12.2013, p.671.

(d) OJ L 135, 24.5.2016, p.1.

(e) OJ L 227, 31.7.2014, p.69.

- (c) of the Commission Delegated Regulation; Article 6 (Conditions for approval of aid applicants) paragraphs (1) and (2) only; Article 7 (Suspension and withdrawal of approval); and Article 11 (Distribution of products in conjunction with regular school meals) paragraph (b) of the second paragraph only.

Withholding or recovery

4.—(1) Where an applicant has received Union aid or a payment under regulation 3 above to which the applicant was not entitled, or where the applicant is in breach of any commitment given by the applicant as a condition of such Union aid or of a payment under that regulation, the Scottish Ministers may—

- (a) withhold the whole or any part of such Union aid or payment under regulation 3 above that they might otherwise have made; or
- (b) recover on demand the whole or any part of any such Union aid or payment under regulation 3 above already made by them.

(2) Before taking any action under paragraph (1) above, the Scottish Ministers shall—

- (a) give to the applicant written notification of the action proposed to be taken (including the amount proposed to be withheld or recovered, with an explanation of the reasons for the action they propose to take;
- (b) afford that applicant the opportunity of making written representations within such time as they consider reasonable; and
- (c) consider any such representations made to them.

(3) In any case where an amount falls to be paid to the Scottish Ministers by virtue of (or by virtue of action taken under) these Regulations, the amount so falling to be paid shall be recoverable by them as a debt.

Interest

5.—(1) Where regulation 4 applies, interest may be charged in respect of each day of the period referred to in Article 7(2) of the Horizontal Implementing Regulation and for this purpose the rate of interest applicable on any day is one percentage point above the Bank of England base rate on that day.

(2) In this regulation “the Bank of England base rate” means:—

- (a) except where sub-paragraph (b) applies, the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate being the rate at which the Bank is willing to enter into transactions for providing short - term liquidity in the markets; or
- (b) if an order under section 19 (reserve powers) of the Bank of England Act 1998 is in force, an equivalent determined by the Treasury under that section.

Amendment of the Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Regulations 2004(a)

6.—(1) The Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Regulations 2004 are amended in accordance with paragraph (2).

(a) S.S.I. 2004/278 as amended by S.S.I. 2011/83, S.S.I. 2011/1043 and S.S.I. 2015/167.

(2) In the Schedule (The SCMO Regulations in respect of which decisions are amenable to review and appeal) add the following entries at the end of the existing list—

“Commission Delegated Regulation (EU) 2017/40 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to Union aid for the supply of fruit and vegetables, bananas and milk in educational establishments and amending Commission Delegated Regulation (EU) No 907/2014.”; and

“Commission Implementing Regulation (EU) 2017/39 on rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to Union aid for the supply of fruit and vegetables, bananas and milk in educational establishments.”.

Revocations

7. The following are revoked—

- (a) the Milk and Milk Products (Pupils in Educational Establishments) (Scotland) Regulations 2001;
- (b) the Milk and Milk Products (Pupils in Educational Establishments) (Scotland) Amendment Regulations 2011;
- (c) regulation 15 (Amendments to the Milk and Milk Products (Pupils in Educational Establishments) (Scotland) Regulations 2001) of the Single Common Market Organisation (Consequential Amendments) Regulations 2013.

A member of the Scottish Government

St Andrew's House,
Edinburgh

2017

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations repeal and replace the Milk and Milk Products (Pupils in Educational Establishments) (Scotland) Regulations 2001 (the “2001 Regulations”) (as amended) in light of changes in EU law. Regulation 7 of these regulations provide for the revocation of the 2001 Regulations and the other provisions which have amended the 2001 regulations.

Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No (234/79), (EC) No 1037/2001 and (EC) No 1234/2007 is being amended by Regulation (EU) 2016/791 of the European Parliament and of the Council of 11th May 2016 amending Regulations (EU) No 1308/2013 and (EU) No 1306/2013 as regards the aid scheme for the supply of fruit and vegetables and milk in educational establishments.

The new EU instruments which are relevant in supplementing Regulation (EU) 1308/2013 in this context are Commission Implementing Regulation (EU) 2017/39 of 3 November 2017 on rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to Union aid for the supply of fruit and vegetables, bananas and milk in educational establishments and Commission Delegated Regulation (EU) 2017/40 of 3rd November 2016 supplementing Regulation (EU) 1308/2013 of the European Parliament and of the Council with regard to Union aid for the supply of fruit and vegetables, bananas and milk in educational establishments and amending Commission Delegated Regulation (EU) No 907/2014.

Commission Regulation (EC) No 657/2008 of 10th July 2008 laying down detailed rules for applying Council Regulations (EC) No 1234/2007 as regards Community aid for supplying milk and certain milk products to pupils in educational establishments is repealed.

The new EU law deals with the same subject matter as the EU law which it revokes and replaces i.e. the rules governing the provision of Union aid for milk and other products in educational establishments.

National “top-up” aid payments are permitted by Article 23a(6) of Regulation (EU) No 1308/2013 (as amended). Regulation 3 of these Regulations provides that any national “top-up” aid payment shall be subject to the same rules, requirements and conditions as apply to Union aid.

These Regulations also provide for the withholding or recovery of any Union aid or any national payment, made under regulation 3 of the Regulations, to which an 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 (regulation 4). Regulation 5 provides for interest to be charged.

Regulation 6 amends the Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Regulations (SSI 2004/278) in consequence of the changes being made to EU law. This is to allow appeals under this scheme to continue to be made under those regulations.

These Regulations provide that reference to all European instruments are to be construed as references to those instruments as amended from time to time.



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