

The Milk and Healthy Snack Scheme (Scotland) Regulations 2021

Business and Regulatory Impact Assessment

February 2021



Scottish Government
Riaghaltas na h-Alba
gov.scot

Business and Regulatory Impact Assessment

The Milk and Healthy Snack Scheme (Scotland) Regulations 2021 (also cited as the Scottish Milk and Healthy Snack Scheme)

Purpose and Intended Effect

Background

- A UK Nursery Milk Scheme (UK NMS) is currently administered by the UK Department of Health and Social Care (DHSC) under the terms of the 2019 Welfare Foods Agency Agreement (the Agreement) and the Welfare Food Regulations 1996 (1996 Regulations).

‘The Nursery Milk Scheme allows approved suppliers to claim for reimbursement of milk provision for children aged under five in two hours or more of childcare per day. The functions associated with the continued delivery of the Nursery Milk Scheme are set out in the 1996 Regulations. The Secretary of State will continue to deliver these functions insofar as they relate to Scotland on behalf of the Scottish Ministers for the duration of the Term.’

- Day care providers and childminders (Settings) can claim for providing eligible children with a free 189mls (1/3 of a pint) of whole or semi-skimmed cow’s milk, or infant formula for those children under the age of 1 year. The DHSC arranges repayment of receipted claims to eligible childcare providers, suppliers or agents within the Scheme including Scottish day care providers and childminders via the Nursery Milk Reimbursement Unit (NMRU). The Scottish Government then reimburses the DHSC on a quarterly basis.
- Welfare food powers under section 13 of the Social Security Act 1988 (the 1988 Act) were devolved to Scotland under section 27(2) of the Scotland Act 2016 in February 2019 (devolved welfare powers).
- Despite having competence to establish a new Scheme via regulations under the 1988 Act since 2019, the Scottish Government and the DHSC agreed the UK NMS should be administered under the Agreement, the 1996 Regulations and by DHSC on behalf of the Scottish Government until regulations were drafted and the Scheme became operational.
- By these Regulations, made (in part) under the 1988 Act, Scottish Ministers can establish a new scheme in Scotland, The Scottish Milk and Healthy Snack Scheme (Scheme), to replace the UK NMS in Scotland from 1 August 2021.

Objective

The Milk and Healthy Snack Scheme (Scotland) Regulations 2021 (also cited as the Scottish Milk and Healthy Snack Scheme) seek to replace the current UK regulations with regards to the UK NMS in Scotland and establish a new Scottish

Scheme for the funding of free milk (or non-dairy alternative) and a healthy snack item (a portion of fresh fruit or vegetables) for the children in their care to all registered day care providers and childminders who wish to participate. The aim is to help children incorporate the prescribed food benefit into their diets.

Policy

The new Scheme will:

- Be delivered by local authorities who have been delegated prescribed Ministerial functions in the Regulations;
- Allow local authorities to provide direct and upfront funding for all pre-school day care providers and childminders (also cited as 'settings' in this context) which are registered with the Care Inspectorate; where children spend 2 or more hours per day; and where the settings have registered with their local authority to be part of the Scheme;
- Provide funding for 189mls (1/3 pint) of plain fresh cow's milk (whole milk for children over 1 year or to include semi-skimmed milk for children over 2 years), or first infant formula (for children under 12 months). It will also now permit the provision of 189mls (1/3 pints) of plain fresh goat or sheep milk (whole milk for children over 1 year or to include semi-skimmed milk for children over 2 years), or unsweetened calcium enriched non-dairy alternatives for those children who cannot consume cow's milk because of medical, ethical or religious reasons;
- A healthy snack item (a portion of fresh fruit or vegetables);
- Reduce administrative burdens for day care providers and childminders by moving to an 'upfront' payment approach aligned with funded Early Learning and Childcare (ELC) provision rather than the current claims and reimbursement model.

These proposals build on those described in the Welfare Foods consultation published in 2018. Since funding will be delivered via local authorities, Scottish Government have been working collaboratively with the Convention of Scottish Local Authorities (COSLA) and the relevant governance groups to develop proposals on the design and delivery of the Scheme.

The Scheme will support the Scottish Government's policy intentions around improving children's health and wellbeing. It is an opportunity to improve children's nutrition, tackle health inequalities, and integrate the policy with broader Scottish approaches.

Early intervention and prevention initiatives are fundamental as a healthy start lays the foundation to a healthy future. Establishing good nutrition, healthy diet and positive eating habits in a child's early years is important as these habits can be taken forward into adolescence and throughout adult life. This supports both physical health and mental wellbeing in the long term, including helping to prevent obesity.

Administration

The Scheme will:

- Provide direct and upfront funding for all pre-school, day care and childminder settings which are registered with the Care Inspectorate; where children spend 2 or more hours per day; and where the settings have registered with their local authority to be part of the Scheme;
- Route this funding through local authorities regardless of whether the setting is delivering ELC funded or non-funded provision;
- Allow local authorities in performing its delegated functions some flexibility to establish registration and payment mechanisms to suit local needs;
- Allows for the establishment of systems within the regulatory framework to reduce financial risk and provide oversight on the use of public funds, and to ensure the Scheme meets policy's intentions; and
- Provides a proportionate approach in the development of funding systems between Scottish Ministers, local authorities and childcare providers.

In taking this approach, it is intended that the Scheme aligns as much as possible with pre-established funding mechanisms for the delivery of ELC, thus keeping administrative burden of the Scheme as low and efficient as possible. While it is acknowledged that the incorporation of non-funded provision into the same Scheme will require the establishment of new funding relationships between each local authority and these settings, it is considered to be the most proportionate approach rather than procuring a discrete system for non-funded provision.

The move to upfront payments from the current reimbursement system is intended to reduce the administrative burden on settings, which was a key theme in responses to the Welfare Foods Consultation 2018.

Rationale for Government Intervention

This is a Scottish replacement of an existing UK Scheme using devolved powers. As the current Scheme is delivered via legislation in Social Security Act 1988, the devolution of Welfare Foods powers through section 27 of the Scotland Act 2016 enables the Scottish Ministers to create a new Scheme.

The Scheme will contribute to fulfilling the Scottish Government's National Outcomes as per the National Performance Framework:

Children and Young People – We grow up loved, safe and respected so that we realise our full potential;

We are healthy and active;

We tackle poverty by sharing opportunities, wealth and power more equally;

It will also support the Scottish Government's Sustainable Development Goals:

SDG 1 – No Poverty

SDG 2 - Zero Hunger

SDG 3 – Good Health and Wellbeing

SDG 10 – Reduced Inequalities

Consultation and Engagement

Policy officials have engaged with relevant stakeholders and consulted with others as required by statute as indicated, below-

Within Government

Scottish Government officials leading on this policy sit within the Improving Health and Wellbeing Division of the Children and Families Directorate. Officials have engaged across policy directorates within the Scottish Government and more widely to develop the policy for the Scheme. Input from these policy areas helped to inform officials of existing relationships with the childcare and dairy sectors and also the internal processes required in order to deliver the Scheme. In particular officials have engaged substantively with the following areas and bodies:

Scottish Government;

- Children and Families Directorate
- Early Learning and Childcare Directorate
- Population Health Directorate
- Learning Directorate
- Health Finance Directorate
- Agriculture and Rural Development Directorate
- Parliament and Legislation Unit
- Legal Services Directorate

External to Scottish Government;

- Social Care and Social Work Improvement Scotland (Care Inspectorate)
- Department of Health and Social Care, UK Government
- Welsh Assembly - required to comply with statutory requirement under section 13(2) of the 1988 Act even though the Welsh Assembly has no direct material interest in the Scheme. The Welsh Assembly confirmed after verbal consultation, no further consultation was required for the purposes of complying with section 13 (2) of the 1988 Act.
- Information Commissioner's Office (ICO) - to comply with the Data Protection Act 2018 and the Article 36 (4) of the General Data Protection Regulation (GDPR)

Public Consultation

The Scottish Government was not required to undergo further public consultation on this Scheme given there was no statutory obligation to do so given the conclusion of the public consultation on [Welfare Foods](#) which ran from 5 April to 28 June 2018. The consultation included proposals to replace the UK NMS in Scotland with a new Scottish Scheme which would increase the age of eligibility from under 5 years to include 5 year olds; and offer a daily healthy snack item (a portion of fresh fruit or vegetables). It was proposed this be delivered as part of

ELC funded provision, complementing the free meal offer. Provision to unfunded providers was also considered.

147 consultation responses were received where the majority of individual responses (58%) were uncategorised, but there were also individual responses from: medical or healthcare professionals (21%); parents or carers (5%); and childminders (4%). Organisational responses included responses from: third sector or community organisations (28%); NHS Boards (22%); local authorities (18%); representative bodies for professionals (6%); and retailers including retailers' representative bodies (4%).

The consultation and analysis papers are available on the Scottish Government's website: <https://www.gov.scot/publications/welfare-foods-consultation-meeting-needs-children-families-scotland/>

90% of respondents agreed with the proposal to provide free milk to all children in funded ELC provision from 2020, with many respondents pointing out that dairy-free alternatives should also be available.

96% of respondents agreed with the proposal to provide a healthy snack to all children in funded ELC provision from 2020. Clarification was sought by many respondents on what constituted a 'healthy snack', and some thought it should be restricted to a portion of fruit or vegetables.

The consultation did not explicitly ask whether respondents were in favour of the proposal to provide free milk outwith the funded ELC entitlement; rather, it asked how this may be done. However, from the answers to this question it could be inferred that a large majority of respondents (approximately three quarters) were in favour of this proposal. 20% did not express a clear view in favour or against. It was suggested that this could be administered through: a voucher or smartcard, direct payments to childcare providers (similar to the current UK Nursery Milk System), or by embedding milk for non-funded ELC provision in the wider procurement of milk for childcare providers within each local authority.

A large majority of respondents (83%) were also in favour of providing a healthy snack to children outwith funded ELC provision. The same mechanisms for the provision of milk outwith funded ELC provision were suggested.

Consideration of Responses

As a result of the consultation responses, Scottish Ministers decided to progress plans for a Scheme that would:

- Provide milk through funded ELC provision, with funding agreed with local authorities;
- Also include non-funded registered pre-school day care and childminding settings;
- Include the provision of a healthy snack item (a portion of fresh fruit or vegetables);

- Take account of the needs of children who cannot consume cow's milk due medical, ethical or religious reasons.
- expand the eligible cohort of children from children age 4 and under, to include all pre-school age children

Some respondents offered views on the administration of the Scheme for settings providing non-funded provision. An overriding theme was that it should be as non-bureaucratic and administratively simple as possible. Scottish Government considered the various options for delivering the Scheme, and concluded that streamlining with existing systems for the provision of ELC would best achieve these objectives. As such, it has progressed discussions with COSLA to develop proposals that would achieve this objective. The Scottish Government has continued to engage with several public stakeholders and considered stakeholder information and comments in policy development.

Business

As well as engaging with a range of third sector and public sector organisations, Scottish Government has engaged with the following businesses representatives.

- National Day Nurseries Association (NDNA),
- Scottish Childminding Association (SCMA)
- Cool Milk
- Early Years Scotland (EYS)
- Graham's Family Dairy
- Mill's Milk
- McQueen's Dairies
- Müller Milk & Ingredients
- Dairy UK
- National Farmers Union Scotland (NFUS)
- School and Nursery Milk Alliance (SNMA)

Options

In considering the outcome of the consultation, it was clear that to meet the policy ambitions of Scottish Ministers the Scheme needed to:

- Include the provision of a healthy snack item (a portion of fresh fruit or vegetables)
- Be aligned with ELC provision
- Include all children attending pre-school settings, including those who had turned 5
- Be available universally, and regardless of whether day care was provided via funded ELC provision or unfunded providers

On this premise, two options for delivery of the Scheme were considered.

Option 1: Delivery of funding for milk and snack to registered pre-school day care providers and childminders via a procured third party or prepaid smartcard

This option would ensure that the milk provision continued to be funded for those Scottish pre-school day care providers and childminders currently claiming from the UK NMS via the NMRU but using an independent contractor to deliver funding directly and with an upfront payment model instead of the current claims and reimbursement model. This approach would reduce the associated administrative burdens of the UK NMS placed on childcare settings and create more incentive to participate in the new Scheme.

While procuring an independent contractor similar to that of the UK NMS (Wider Plan) and moving to an upfront funding model would reduce the administrative burdens for settings, this option would have higher administrative costs for the Scottish Government and would create an additional funding line for the majority of childcare settings which already have a financial relationship with their local authority.

Providing funding through a smartcard or voucher was also considered but this approach would incur significant overhead costs including production costs for the actual card itself, administration associated with maintaining a card system in regards to replacing lost or stolen cards and increased governance required for Scottish Government and retailers to ensure that cards are being used to purchase milk. This approach would add a level of responsibility for day care providers and childminders to ensure the smartcard or vouchers are not damaged, lost or stolen. There would also be a risk of payment cards or vouchers not being issued or funded in time due to technical issues which would mean settings would not have access to funding.

It was concluded that this option was not viable as it would potentially re-create administration for the significant number of settings already on local authority financial systems. It was also contrary to the proposal in the consultation that provision would align with ELC funded provision, and delivery would be discussed with local authorities. The associated overhead costs for delivering funding via a prepaid smartcard in addition to the required governance did not seem an effective or accessible approach to promote uptake of the Scheme's provisions. Therefore option 1 was not recommended.

Option 2: Offer of upfront funding to registered pre-school day care providers and childminders directly via local authorities in line with existing funding streams (preferred option)

This option, in line with what was proposed in the 2018 consultation, would see a revised Scheme delivered by local authorities to registered day care providers and childminders who provide pre-school childcare for children 5 years and under in Scotland.

This option would maintain ownership of the purchase of milk with day care and childminder settings as with the current Scheme, with the additional responsibility

of purchasing a healthy snack (although it is recognised that many settings already do this). Such a Scheme would not dictate how purchase or procurement should take place. The key focus of the Scheme would be to route the funding for these purchases directly to the childcare setting, as opposed to requiring them to claim back costs.

In terms of routing funding through local authorities, feedback from stakeholders during and after the consultation indicated that this option would be most welcomed across the childcare sector as it aligns with the consultation proposal that funding could be re-routed via the ELC arrangements (i.e. local authorities) for those day care providers who facilitate funded ELC places (approx. 80% of providers). Reducing the administrative burdens that are in place for the UK NMS were seen as a driver and incentive for settings to participate in the new Scheme which would in turn increase uptake of fresh milk, fruit and vegetables.

Scottish Government did receive feedback however from some members of the milk industry who were concerned that the new Scheme might disrupt existing contracts and allow day care providers and childminders to use funding outwith its intended purpose, and suggested that a robust monitoring procedure be put in place to mitigate against this.

Stakeholders and local authorities also noted that additional work would be required to ensure that appropriate arrangements could be put in place for “unfunded” ELC settings, which would not have existing funding relationships with local government. On present available figures, this constitutes around 28% of day care settings, and 93% of childminders.

Scottish Government took this feedback on board as the proposal was developed.

Option 3: Do nothing

A third option of ‘**Do nothing**’ was also considered. This would mean continuing as part of the UK-wide NMS under its current terms. Under this option, no snack could be provided; there could be no change to scope or eligibility; and milk would continue to be provided under the current arrangements with the existing claims and reimbursement model in place. This option would have no cost implications or impact on businesses, public bodies or Scottish Government as it would be maintaining the status quo.

However, it would not deliver the policy intention and would be contrary to the views of the majority of those who responded to the consultation. It would also be contingent on the UK Government maintaining the status quo for the UK-wide NMS and remaining content for the Scottish Government to continue part of any future UK-wide NMS.

As such it was not considered a suitable alternative to the proposed policy.

Sectors and Groups Affected

Day Care Providers and Childminders

After the Scheme is implemented in August 2021 there will be a transition period whereby day care providers and childminders who are currently on the UK NMS will continue to be able to submit claims to the NMRU for milk purchased on or before 31 July 2021. This period will last for six months until 31 January 2022.

Like any new scheme, there is an initial registration process required which the Scottish Government recognises will create a one-off administrative burden for day care providers, childminders and local authorities. Registration will be required for all settings who wish to take part in the Scheme. The registration itself will be a simple platform set up by local authorities seeking information such as financial details in order to set up payment methods, business information and information relating to the number of children enrolled in each setting. This step is required in order for local authorities to calculate accurate level of funding to be delivered to each setting.

Thereafter, any administration required from childcare settings will be to update local authorities on any changes of circumstances, updates on financial information and submitting information for monitoring requirements set by the local authority. This could include keeping receipts or contractual information as a record of expenditure, though as settings need to do this under the current UK NMS, this should not represent a new administrative burden.

The Scottish Government also recognises that where settings are currently in contract with milk suppliers or agents for the provision of milk, that these contracts may need to be reviewed and potentially replaced with new contracts. It would be for the setting to agree a price for the continued provision of milk based on their funding allocation from the local authority. Scottish Government will work with COSLA and local authorities to ensure that settings are supported as much as possible in this process.

Local Authorities

Local authorities will be responsible for setting up the registration and payment processes necessary for the delivery of the Scheme to settings in their areas. Local authorities will have flexibility to tailor these approaches to their local needs, within a framework for delivery that will be set out in Scottish Government guidance.

The Scottish Government will pay an administration fee to local authorities for delivering the funding for the Scheme. Scottish Government acknowledge that the costs associated with developing and implementing a registration process for non-funded day care providers will be higher than where existing administration processes are in place for funded ELC provision.

Funding will be provided to local authorities on an annual basis for the full "academic" year (1 August-31 July), based on the registration information that they provide to Scottish Government. Local authorities will be responsible for

completing monitoring procedures on an annual basis. Further detail on this is provided below under Monitoring, Enforcement and Sanctions.

Contractors and Milk Agents

The Scheme does not dictate how settings should purchase or procure the milk and snack. The key focus of the Scheme is to route the funding for these purchases directly to the childcare setting, as opposed to requiring them to claim back costs. As noted above, indicative costings have used NMRU claims data, which include the administrative costs charged by milk agents or others contracted by settings to provide the milk.

NMRU data suggests that 1,391 childcare settings in Scotland use milk agents. This represents 16% of the 8,754 childcare settings in Scotland, or 38% of non-childminder settings (if we assume that the majority of childminders do not use agents and remove them from the calculation).

Contrary to concerns expressed by some stakeholders, the new Scheme need not preclude a continuing procurement relationship between local authorities/settings and contractors and milk agents. Nor will it prevent new relationships from being established. However, it will change the way in which payment is made to contractors and milk agents. Currently, some contractors and milk agents reclaim their total costs for the provision of milk direct from the NMRU, rather than from the childcare setting. The introduction of the new Scheme would mean that any local authority or childcare setting in contract with an agent for the provision of milk will be responsible for agreeing a total price and paying this direct to the agent from the funding received from their local authority.

The Scottish Government recognises this will have an impact on the how milk agents and other contractors operate with their clients who are day care providers or childminders. Contractors and agents will no longer make claims on behalf of settings, and settings will need to make arrangements to pay contractors.

Dairy Industry

Some stakeholders from the dairy and farming sector indicated that the new Scheme could be a very important asset to the industry and beyond, playing a key role in encouraging consumption of Scottish dairy products. They thought the Scheme was a clear opportunity for children to make a connection with farming and the wider food supply chain, providing children with an understanding of where food comes from and the high standards of domestic production. While the benefits of the Scheme were highlighted, some stakeholders raised the need to ensure funding was secured to allow for increased uptake and that funding is delivered without any interruptions to current supply chains. Scottish Government has factored full uptake of the Scheme from inception into cost estimates to ensure that the desired increase in uptake can be supported with the appropriate funding levels. Scottish Government and COSLA will continue to work with the sector to communicate the changes in advance of transition to mitigate against any disruption to supply chains.

Feedback from stakeholders also suggested that smaller Scottish dairies may be impacted if day care providers or childminders in receipt of funding through the Scheme decide to source milk from larger suppliers. Others believed that those day care providers or childminders who have existing arrangements with suppliers would remain in those arrangements to avoid unnecessary administrative changes. Scottish Government recognises the importance of supporting small and local businesses, and will take this into consideration in the development of the guidance supporting the delivery of the Scheme.

Funding

The Scottish Government's expenditure for Scottish claims under the existing UK NMS was £3.1m for the financial year 2018-19. As set out above, the new Scheme is different in scope and delivery and costs are therefore not directly comparable.

The Scottish Government has agreed to meet the costs of the new burden on local government of the delivery and administration of the new Scheme. This will include: the cost of the provision of milk and the healthy snack item (a portion of fresh fruit or vegetables) and the estimated cost to local authorities of administering the Scheme.

It is estimated that up to 190,000 children in registered pre-school settings may be eligible for the Scheme when it is introduced. It is however, very difficult to estimate the initial level of uptake and clearly the policy intention (aligned to the roll out of 1140) is for uptake to be maximised as soon as possible to ensure that as many as possible of the eligible children will be receiving milk and the healthy snack item (a portion of fresh fruit or vegetables). The Scottish Government will work with local government, ELC and day care network associations and suppliers to raise awareness of the new Scheme and promote uptake.

The overall quantum of funding will therefore be dependent on uptake with local authorities receiving an adequate level of funding each year in line with the overall agreement reached between Scottish Government and COSLA, and the number of registrations achieved.

It is estimated that the Scottish Government's expenditure on milk and healthy snack for Financial Year 2021/22 will be of the order of £9-10m across the two Schemes (UK Nursery Milk and Scottish Healthy Milk and Snack Scheme). This takes account of the factors outlined above and that the new Scheme will not be introduced until 1 August 2021. Milk supplied in the first months of the new financial year (until 31 July 2021) will be reclaimed from the NMRU (within a period of six months from the date of purchase) which will recover this cost from the Scottish Government in line with existing procedures; the cost of the healthy snack will only accrue from 1 August 2021.

The overall quantum will be based on costing assumptions to be agreed with COSLA. These are derived from the averages of current claims and characteristics of Scottish settings to the UK NMS and cost projections based on the Scotland Excel framework. The cost estimates incorporate adjustments to

account for the addition of a healthy snack; and an additional uplift to account for a range of variables including an increase in the number of children potentially claiming as a result of the new delivery mechanism and the expansion to 1140 hours of funded provision, fluctuation in market prices and the extension of the provision to include 5-year-olds in pre-school childcare within an eligible setting. NMRU data shows that the following costs have been reclaimed from Scottish settings for 189 mls (1/3 pint) portions of cow's milk:

Milk Agents;

- Kidzmilk Ltd £0.29
- McQueens Dairies Ltd £0.28
- Dairylink UK Ltd £0.19
- Cool Milk Ltd £0.26
- The Nationwide Milk Service Ltd £0.28
- L. Ballantyne £0.15
- Thomson Dairies Ltd £0.23

Local Authority Agent Claims;

- The average cost per 189mls portion reimbursed to local authority settings £0.17
- The average cost per 189mls portion reimbursed to local self-claimers £0.15

Funding Mechanism

To reduce the number of funding streams and align with current practices in Scotland the policy proposes that the initially agreed funding will be ring-fenced for 2 years up to and including 2022-2023 and that thereafter it would be merged as part of the ELC settlement as agreed by COSLA Leaders. There will be an annual review of the costing assumptions including the future population projections to ensure the quantum is adequate and reflects funding required.

Funding Delivery

Local authorities will receive an agreed payment from the Scottish Government based on the number of registrations achieved, the anticipated annual consumption of milk, fruit and vegetables and the weighting to be agreed by the COSLA Settlement and Distribution Group. Early feedback suggested that they would wish to take account of rurality in their considerations. Local authorities will be responsible for delivering upfront a calculated sum directly to the childcare setting based on registration information.

Over 80% of childcare settings have an existing financial relationship with their local authority so it was concluded that the logical approach to reducing administration as much as possible was to use these existing connections. Processing information for these settings should be relatively straightforward, and COSLA has indicated that they do not envisage any major issues with payments.

All pre-school day care providers and childminders who wish to participate in the Scheme are required to register their interest to be part of the Scheme by getting in touch with their local authority via a registration process. They would be required to provide information such as the name of the care setting and the number of pre-school children enrolled in that setting, information relating to attendance and bank account details for payment. This information will be used by the local authority to calculate an accurate sum to be allocated to that childcare setting and register them for payments from the 1 August 2021. Local authorities may already have information for day care providers and some childminders in their area but not all so there is opportunity to streamline processes with existing systems as much as possible. Each local authority may have a different approach on how to obtain this information, and SEEMiS Early Years could be utilised for this process in the future. SEEMiS Early Years is a Management Information System (MIS) being developed by SEEMiS Group (the single Education MIS provider in Scotland) to support Early Learning and Childcare, and help local authorities manage the introduction of 1140 hours.

Costs of the new Scheme

The Scottish Government has estimated the maximum cost of the new Scheme based on the following:

- A milk unit cost per child, per annum derived from claims data informed by the NMRU and cost projections based on the Scotland Excel costings. An uplift is applied to this figure to take account of uncertainties such as the impact of the expansion to 1140 hours of funded provision and inclusion of appropriate alternatives to dairy where required.
- A snack unit cost per child, per annum derived from data from the Scottish Household Survey on the use of childcare and a snack price per portion to be agreed with stakeholders. This will be derived from data on wholesale prices and other sources informed by data provided by ASSIST.
- A number of day care providers and childminders based on claims data provided by the NMRU together with data from the Care Inspectorate on the average age profile of settings. This is adjusted to take account of the extension of provision to five year olds, and an uplift is then applied to this figure to take account of uncertainties, particularly over an increased number of childminders utilising the Scheme.
- Anticipated cost to local government of administration calculated as a proportion of the sum of milk and healthy snack costs.

The variables that factor in this cost estimate may be adjusted further following discussion with key stakeholders such as COSLA, though feedback sought from COSLA and the ELC Finance Working Group in 2020 suggest that the in-principle assumptions above are reasonable.

Local authorities will receive an agreed payment from the Scottish Government based on the number of registrations achieved, the anticipated annual

consumption of milk, fruit and vegetables and the weighting to be agreed by the COSLA Settlement and Distribution Group. Early feedback suggested that they would wish to take account of rurality in their considerations. Local authorities will be responsible for delivering upfront a calculated sum directly to the childcare setting based on the number of pre-school children registered to attend.

In the future, Scottish Government expect that this will be distributed as part of a new ELC formula. This is in line with the recommendation to the Floor Report not to add additional lines to the settlement where possible, and also fits in with the move to rationalise the eight current ELC lines into one. This will however go through the usual process.

The new burden of the new Scheme will be fully funded by the Scottish Government, including the cost to local authorities of administration. While some stakeholders have raised concern about the additional administrative burden that transition to the Scheme may place on settings in the short term, the Scottish Government is not aware of any additional costs to the sector at this time, and will keep this under review. Local authorities will be funded for administration required to deliver the Scheme; this will be based on an agreed distribution formula, as noted above.

Scottish Firms Impact Test

Views in relation to the impact of the policy were gathered through the consultation and through engagement with a range of stakeholders and public bodies since the consultation closed as described above.

In particular, since the consultation closed, the Scottish Government had further discussions with a range of organisations including COSLA, local authorities, and stakeholders from the childcare and dairy sector along with the governance groups whose membership includes key representatives of the childcare sector and early years education to explore the implications of the policy.

The majority of stakeholders were asked questions on each of relevant area of the Scheme, including;

- How long do you think day care providers should be given to make preparations before the new Scheme comes into full effect?
- From your perspective, do you feel the design of the Scheme seems sensible and creates a more accessible route for financial support?
- Is our approach to costings reasonable and if not can you suggest alternative approaches?
- Does the funding delivery method seem logical and would this create more incentive for settings to be part of the Scheme in an effort to promote uptake of milk and healthy snacks?
- Would you be able to help the Scottish Government to promote and communicate information about the new Scheme to your members?

Stakeholders were mostly supportive of the proposals for the Scheme and have recognised that there is a need for change in order to achieve the policy

objectives. The main theme was all stakeholders welcomed the commitment of financial support to the sector and the addition of fruit and vegetables to promote the health and wellbeing of our children. Other themes which arose out of these discussions were similar to those raised in the consultation itself such as the importance of accessibility and reducing the administrative burdens which deter childcare settings taking part in the UK NMS. Some stakeholders have, since the consultation, asked for consideration of preparation costs to be factored into the snack costings however, it has also been noted that many settings already provide snacks and in normal times it is part of a child's learning experience to prepare food and eat together.

In relation to implementation timescales, some organisations considered 3-4 months would allow sufficient time for the transition to the new Scheme and associated registrations required. Others pointed out the importance of allowing local authorities and settings sufficient time to prepare for the change.

Some organisations from the dairy industry agreed to the principle of the Scheme, but commented that an upfront funding approach would create too much flexibility and that appropriate monitoring procedures were important to ensure settings were spending funding from this Scheme on its intended purposes. Others pointed out a benefit of the Scheme was the Scottish Government is not only accountable for committing funding to the sector but that routing all this funding through local authorities is a more practical and streamlined approach which reduces the needs for multiple funding lines for settings to establish.

On-going engagement since May 2020 with stakeholders and local authorities has been more complex in the context of the COVID-19 pandemic and Ministers took the decision to pause work on the Scottish Milk and Healthy Snack Scheme and delay implementation until August 2021. Impact assessments including further detail on the delivery of the Scheme were shared with stakeholders in December 2020.

Many stakeholders fed back that increasing uptake of free milk presents a real opportunity to reinforce positive dietary behaviour and promote the consumption of nutrients needed during critical stages of growth and development. Many welcomed the addition of the healthy snack element and were supportive of the non-dairy alternative drinks to be included to meet the needs for children who have up until now been unable to benefit from the current UK NMS.

A point that was reinforced by the dairy industry was the importance of encouraging demand for milk through the proposed Scheme, and ensuring no barriers to participation in the Scheme. It was suggested that where possible the Scottish Government should encourage the inclusion of local dairies to support Scottish primary milk producers and reduce food miles. Some stakeholders have suggested that funding for milk and snack need to be kept separate to protect the funding streams to the sector.

Feedback from the dairy industry also queried the impact of the Scheme on milk for children under 5 in schools, raising the issue that some Scottish schools

currently use the UK NMS to claim for milk provided to 4 year olds in primary one. Scottish Government is clear that the scope of the new Scheme has always intended to be children in pre-school settings only, noting that complementary nutritional arrangements apply within schools. Separate regulations and guidance cover children in school settings, ensuring that children and young people are provided with balanced and nutritious food and drink, which can include milk, and funding is provided to support this approach. It is acknowledged that dairy industry contractors who currently provide schools with milk through the UK scheme will no longer be able to through the new Scheme, but this should not preclude the continuation of their wider contracts with schools.

The Scottish Government will be developing guidance to support delivery of the Scheme, and will involve stakeholders in this process, and ensure the points raised through the engagement process to date are considered as this is developed. This guidance will highlight the clear health benefits of regular consumption of dairy produce; and will seek to support local authorities and settings in their implementation of the Scheme. The Scottish Government will also continue this dialogue with stakeholder and local authorities in the development and delivery of a communications plan in support of the Scheme.

Competition Assessment

The Scheme will have no competitive impacts; therefore the Scottish Government does not expect the proposals to have an impact on competition as they will not:

- Limit the number or range of suppliers
- Limit the ability of supplier to compete
- Limit supplier's incentives to compete vigorously
- Limit the choice and information available to consumers

Consumer Assessment

Access

This initiative is available to children regardless of where they are in Scotland; it includes a new offer of a variety of milks and alternatives to dairy where required so those with allergies or dietary preferences are not discriminated against. The funding is offered to, day care and childminders offering pre-school childcare so should not impact on parents/carers choice of child care.

Choice

The initiative increases choice offered to children as part of their day care service. The childcare setting is free to choose the specific products offered so competition/choice is not limited by restrictions in the policy.

Safety

There may need to be consideration that safeguards are put in place to ensure the children do not receive food that harms them (e.g. allergies, food being stored unhygienically) and their details are kept safe as part of the policy. However Scottish Government expect this to be minimal as settings are already required to

follow Food Standard Scotland standards, and ensure staff have appropriate food handling training.

Information

A communication plan will be developed to inform and update local authorities, stakeholders, care settings and parents of the changes to the existing UK NMS for Scotland and the introduction of the Scottish Milk and Healthy Snack Scheme.

Fairness

The initiative will be provided at no cost to parents/primary carers and will focus on improving children's health and nutrition and will contribute to tackling health inequalities.

Representation

Children in scope of this Scheme were deemed too young to provide feedback and input to this policy but representatives and stakeholders within the childcare sector have fed back views and suggestions on their behalf.

Redress

Not applicable.

Test Run of Business Forms

Each local authority may have a different approach to a registration process based on their systems but Scottish Government envisage the information required to be the same such as:

- Seeking clarity if the setting would like to take part in the new Scheme;
- Confirming the number of children in their setting to establish how much funding that setting requires;
- Account details to allow for payment;
- A response to be issued by the setting to the local authority either in writing by returning a single form, sending an email to a local authority mailbox or an online platform set up by the local authority;

Stakeholders have indicated that the information required for a registration process seems reasonable and essential in order to calculate payments.

Digital Impact Test

The Scheme will not have any direct digital impact. The Scheme does not make provision related to either off-line or on-line businesses and is not concerned with regulating commercial activity.

Legal Aid Impact Test

The Scottish Government does not anticipate any consequences for the legal aid fund.

Enforcement, Sanctions and Monitoring

Monitoring

With any public spending, the Scottish Government has a responsibility to develop and maintain records of expenditure which may be required by Audit Scotland, Ministers and also be available for any public interest. However, in order to keep this reporting process as streamlined and proportionate as possible Scottish Government have explored using existing platforms where appropriate. Monitoring and reporting platforms will be designed in collaboration with COSLA and the wider sector to ensure the necessary information is asked in order to evaluate expenditure and delivery in practice. The below highlights how and why monitoring and reporting of funds received could take place.

Local authorities will be responsible for completing monitoring procedures on an annual basis. To reduce risk of financial exposure of upfront payments, the maximum length of any “payment period” (which may be determined as a prescribed Ministerial function delegated to a local authority) in the Regulations is one year (or less).

Additionally, the Regulations provide local authorities the power to require childcare providers to provide information for monitoring purposes. Information may include including its status as a childcare provider, the number of eligible children enrolled with the childcare provider during any specified period, records of attendance in relation to any eligible child during any specified period, the eligibility of a child; the entitlement of a child; the benefit provided or expected to be provided to a child (proof of purchases upon request by way of receipts, invoices, contracts etc. to correlate with the amount they are receiving through the Scheme) and any other relevant information which the Scottish Ministers reasonably require in order to administer the Scheme. Local authorities will have control over an appropriate selection process and not every setting will be subject to a monitoring procedure on an annual basis.

Information Sharing

The Regulations provide for information obtained by local authorities (in their delegated capacity) in connection with the Scheme between local authorities and Social Work Improvement Scotland.

Social Work Improvement Scotland can provide to a local authority on request limited recorded information in its possession such as the name and address of a childcare provider; the age groups to which a childcare provider provides services

and the types of day care a childcare provider provides which may be used by local authorities to target its monitoring functions.

Enforcement and Sanctions

The Regulations create two offences under the following provisions of the Social Security Act 1992 under –

- section 12 (for making a false representation for obtaining payment); and
- section 13 (failing to comply with Regulation 14, by failing to notify the local authority of its change circumstances affecting its eligibility under the Scheme.

These Offences were mirrored on those established under The Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 which were also considered appropriate and proportionate.

Additionally, the Regulations provide for the following actions to be taken by a local authority in its delegated capacity where a childcare provider has failed to provide a benefit under the Scheme –

- reduce the amount payable in forthcoming payment period; or
- take any other action it considers reasonable in all the circumstances

Evaluation in Practice

The Care Inspectorate are willing to provide information to help evaluate the Scheme in practice by utilising the existing ELC Annual Returns platform which each childcare setting is required to submit in December of each year. These returns will incorporate questions on the new Scheme but will be light touch and will seek information if the setting is part of the Scheme; type of day care provider they are; if they offer milk and a snack; how milk and a snack is received; and any other feedback on the new Scheme's performance. This will help identify any underlying issues that may need to be addressed, as well as assessing the uptake. Including this evaluation process provides the opportunity for direct feedback from each setting.

Implementation and Delivery Plan

The Policy Objective (as set out above) will be implemented as follows -

Once the Regulations come into force on 21 March 2021, local authorities will be delegated those prescribed Ministerial functions, including the ability to register childcare providers for the Scheme.

From 1 August 2021 (the first date, childcare providers can receive an upfront payment from local authorities, if registered under the Scheme) the Scheme will replace the functionality with respect to the provision of milk, of the UK NMS.

Policy Aim

This policy aims to ensure eligible children are given the best opportunity in their early years and by providing financial support for all registered day care providers and childminders to provide the milk and healthy snack provision. By providing a universal approach which encompasses both funded and non-funded provision, it is anticipated it will reach the greatest number of pre-school children quickly.

For implementation to fit within existing initiatives, this Scheme aims also to reduce the number of funding streams and align with current practices in Scotland. It is proposed that the initially agreed funding will be ring-fenced for 2 years up to and including 2022-2023 and that thereafter it would be merged as part of the ELC settlement as agreed by COSLA Leaders. There will be an annual review of the costing assumptions including the future population projections to ensure the quantum is adequate and reflects funding required.

Legislation

The Regulations establishing for this Scheme have been drafted by the Scottish Government's Legal Services in collaboration with policy officials and COSLA with regard to the following legislative powers.

Laying Power

The Regulations will be introduced to the Scottish Parliament as a Scottish Statutory Instrument (SSI) through a negative procedure. This is because these Regulations are not the first set of regulations made under section 13 (1) of the 1988 Act. Section 15A(2)(b) of the 1988 Act, when read with section 118 of the Scotland 1998, section 36 and paragraph 2 of schedule 4 of the Interpretation and Legislative Reform (Scotland) Act 2010, provides this subordinate legislation is subject to the negative procedure in the Scottish Parliament.

The Regulations are to be made on 17 February 2021 and laid before Parliament on 19 February 2021 and are to come into force on 21 March 2021.

Competence/Enabling Powers (devolved powers)

The Scottish Parliament has competence to make these Regulations which are on the subject-matter of section 13 of the Social Security Act 1988 (benefits under schemes for improving nutrition: pregnant women, mothers and children).

The Regulations which established the Scheme were made under section 13 (1) of the 1988 Act and 175 (4) and (5) of the Social Security Contributions and Benefits Act 1992 (which includes powers to enable incidental, supplementary and discretionary provisions), necessary to perform various functions under the Regulations.

Ownership

Local authorities will be delegated specified functions, prescribed in the Regulations as Scottish Ministerial functions. They will have responsibility for implementation and decide on appropriate payment periods and effective monitoring procedures which will be reported back to Scottish Government. The Scottish Government will be responsible for funding the Scheme and ensuring that information provided by the local authorities is used to review costing assumptions on a regular basis to ensure funding levels are representative and adequate.

Communications Plan

Scottish Government will work in partnership with the UK DHSC, COSLA, local authorities, and sector representatives to ensure comprehensive and co-ordinated communications about the changes, and to allow for an effective transition from the UK scheme. This will include letters from UK DHSC and from local authorities to settings, use of existing communications platforms like stakeholder newsletters and websites, contact information for queries and information shared on the Scottish Government website.

Stakeholder Platforms – all members

To make sure we communicate as widely as possible, Scottish Government will utilise available communication platforms offered from the stakeholders listed previously. Scottish Governments intentions will be for the letter, as drafted above, for local authorities to be issued using the communication platforms available to each representative group. Due to the variety of communication platforms Scottish Government will work closely with COSLA and relevant groups making sure that all communication is tailored to all types of communication platforms.

Post Implementation Review

All Scottish Government legislation that impacts upon businesses is subject to review against the final BRIA within 10 years, although Directorates are free to review regulations at any earlier point if this coincides with a pre-programmed review. The Scottish Government will ensure a review is completed within 10 years from when the regulations are commenced.

Summary and Recommendation

The Scheme intentions are required to be delivered via local authorities by the introduction of secondary legislation. The recommended delivery option is as described above, that the Scheme should be universal and fund delivery of plain fresh cow's milk and agreed alternatives; and a healthy snack item (a portion of fresh fruit or vegetables). It should extend provision to an additional cohort of children (to cover all pre-school ages) and deliver of upfront funding to all pre-

school day care providers and childminders registered with the Care Inspectorate and the Scheme, directly via local authorities in line with existing funding streams.

The Scheme will achieve the Scottish Government's aims to:

- Promote the health of children and their families;
- Ensure these children are given the best opportunity in their early years;
- Offer all pre-school children who receive care for two hours or more per day from a day care provider or childminder registered with the Care Inspectorate and the new Scheme with a free daily portion of fresh fruit or vegetables and 189mls (1/3 pint) of plain fresh whole (children over 1 year) or semi-skimmed (children over 2 years) cow's milk; or infant formula, plain fresh goat or sheep milk, or an unsweetened calcium enriched non-dairy alternative for those children who cannot consume cow's milk because of medical, ethical or religious reasons.
- To ensure a consistent and secure line of financial support is available to all registered day care providers and childminders to provide the milk and healthy snack provision;
- Reduce the administrative burdens for childcare settings as a driver and incentive for settings to participate in the new Scheme which would in turn increase uptake of fresh milk, fruit and vegetables;
- Further improve outcomes for children and young people and help make Scotland the best place in the world to grow up.

Summary Costs

The anticipated cost to the Scottish Government in 2021/2022 is estimated to be of the order of £9-£10m, including the transitional costs from the UK Nursery Milk Scheme which will remain in force up to and including 31 July 2021. This represent a substantial increase on previous expenditure on the Scottish component of the UK Nursery Milk Scheme, accounted for by:

- an anticipated increase in uptake (albeit difficult to quantify exactly at the outset),
- extension of the Scheme to include children aged 5, and
- the addition of the healthy snack item (a portion of fresh fruit or vegetables).

Declaration and Publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Maree Todd MSP

Minister's Title: Minister for Children and Young People

Date: 17 February 2021



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2021

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80004-674-0 (web only)

Published by The Scottish Government, February 2021

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS710586 (02/21)

W W W . g o v . s c o t