

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

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

22 February 2022



Senedd Cymru
Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
—
Welsh Parliament
Legislation, Justice and Constitution Committee