

ANNEX

NOTIFICATION TO THE SCOTTISH PARLIAMENT

UK SI AGS/010 - [The Milk and Milk Products (Pupils in Educational Establishments) Aid Applications (England and Scotland) Regulations 2022), (the SI)]

Is the notification Type 1 or Type 2?

This is a **Type 1** notification.

The UK Government intends to lay a Statutory Instrument AGS/010 before Parliament on 16 February 2022, to come into force on 9 March 2022. The SI will amend the School Milk Scheme in England and Scotland, to remove an administrative burden in legislation.

[The amendment in the SI also applies to retained EU law on aid for school fruit and vegetables i.e. aid for the supply and distribution of fruit and vegetables, processed fruit and vegetable products and fresh products of the banana sector. However, the school fruit and vegetable scheme does not operate in the UK.]

Details of the provisions that Scottish Ministers are being asked to consent to:

Summary of the proposals

The School Milk Scheme rules are now contained in retained EU law, in particular Regulation (EU) No 1308/2013, Commission Implementing Regulation (EU) 2017/39 and Commission Delegated Regulation 2017/40. The School Milk Scheme part-subsidises the cost of milk in participating schools for children aged 5-11. Claimants (schools/specialist suppliers) purchase milk, claiming aid from the Rural Payments Authority (RPA) to cover part of the cost. School milk policy is devolved. The RPA has administered the school milk scheme in Scotland on behalf of Scottish Ministers for a number of years.

Current retained EU law requires RPA to ensure that all school milk claims are submitted with supporting evidence, whereas, prior to 2017, evidence was only required to be held for inspection on request or during spot checks. The administrative cost of assessing supporting evidence when submitted, as opposed to spot checking information, was estimated at c£300,000 per annum for a £3.6 million UK-wide scheme in 2017. There was no evidence of widespread fraud or of the inadequacy of controls when operating on a spot check basis. However, there was a risk that the increased administrative burden of submitting supporting evidence would lead to claimants withdrawing from the scheme, hindering access to the subsidy. Hence, RPA currently operates and has operated on a spot check basis, as this works in practice and is cost-effective.

The SI is a short, simple amendment to retained EU law, Commission Implementing Regulation (EU) 2017/39. The amendment achieved by the SI removes the requirement to submit supporting evidence and instead requires applicants to hold evidence for inspection and provide evidence during spot checks. This amendment is being made by SI now, as the underlying EU regulation has become retained EU law, amendable by statutory instrument. The removal of this administrative burden from legislation allows the current practice operated by RPA to continue in line with retained EU law.

The SI removes the legislative provisions which create an undue administrative burden. The SI respects current agreed transfers of functions from the EU in relation to school milk i.e. functions which are devolved remain with the “relevant authority” who are the Scottish Ministers. The SI does not contain any new transfers of function. Hence, the SI appropriately and fully respects devolution.

It is considered appropriate to make this amendment by SI, rather than Scottish SI, as it is a straightforward technical amendment to retained EU law which reflects the GB wide nature of the School Milk Scheme and the GB wide role of RPA to whom the Scottish Ministers’ scheme functions have been delegated. Defra and the Scottish Government have worked collaboratively on this SI as policy interests are aligned.

Does the SI relate to a common framework or other scheme?

The School Milk Scheme is part of retained EU law. The Scheme forms part of 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.

The Common Organisation of the Markets in Agricultural Products Framework (Miscellaneous Amendments, etc.) (EU Exit) Regulations 2019, which contains deficiency fixes to the school milk scheme, was previously notified to the Parliament.

Summary of stakeholder engagement/consultation

A short, targeted consultation was carried out jointly with Defra, in England and Scotland. The purpose of this consultation was to advise stakeholders that the amendment will bring law in line with longstanding current practice. Scottish local authorities who claim under the school milk scheme have been consulted, as well as key stakeholders from the dairy industry. [stakeholders have raised no concerns with the aim of the SI, recognising the benefits of avoiding unwelcome bureaucracy]

A note of other impact assessments, (if available)

No impact assessment is required in this instance.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

The proposed SI will remove the requirement for documentary checks on all claims and enable spot checks to continue, going forward. This will remove the risk of disproportionate costs and administrative burdens and allow longstanding RPA practice to continue. Previous similar amendments relating to the school milk scheme and this EU regulation have been made by SI.

Intended laying date (if known) of instruments likely to arise

[16 February 2022]

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?

The Scottish Parliament will have 28 days to scrutinise Scottish Minister's proposal to consent.

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

No broader governance issues are foreseen in relation to this proposal.

Any significant financial implications?

There are no significant financial implications.

STATUTORY INSTRUMENT NOTIFICATION: SUMMARY

Title of Instrument

UK SI AGS/010 - THE MILK AND MILK PRODUCTS (PUPILS IN EDUCATIONAL ESTABLISHMENTS) Aid Applications (England and Scotland) Regulations 2022)

Proposed laying date at Westminster

16 February 2022

Date by which Committee has been asked to respond

28 days from receipt of Parliament Notification

Power(s) under which SI is to be made

The SI is made under the power conferred by Article 25(b) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products(a), as read with Article 3(5)(c)(i)(aa) and (c)(ii)(bb) of that Regulation (re. Scottish Minister's consent).

Categorisation under SI Protocol

Type 1 notification.

Purpose

This new Statutory Instrument removes the requirement to submit supporting evidence and instead requires applicants to hold evidence for inspection and provide evidence during spot checks. This amendment is being made by SI now, as the underlying EU regulation has become retained EU law, amendable by statutory instrument. The removal of this administrative burden from legislation allows the current practice operated by RPA to continue in line with retained EU law.

Other information

The proposed SI will remove the requirement for documentary checks on all claims, and enable spot checks to continue going forward. This will remove the risk of disproportionate costs and administrative burdens and allow longstanding RPA practice to continue. Previous similar amendments relating to the school milk scheme and this EU regulation have been made by SI.

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