

EXECUTIVE NOTE

THE DRINKING MILK (SCOTLAND) REGULATIONS 2011

SSI 2011/84

Introduction

1. The Drinking Milk (Scotland) Regulations 2011 (“the Regulations”) are made in exercise of powers conferred upon Scottish Ministers by paragraph 1A of Schedule 2 to, the European Communities Act 1972 and sections 6(4), 16(1), 17, 26(1) and (3) and 48 (1) of the Food Safety Act 1990 and all other powers enabling them to do so. It is subject to negative resolution procedure.

2. Purpose of the instrument

2.1 The Regulations will:

- revoke and replace the Drinking Milk Regulations 1998 (SI 1998/2424) insofar as they extend to Scotland and make specific provision for Scotland;
- update EU law references with new references required as a result of Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)(“the Single CMO Regulation”) which consolidated existing EU law;
- make separate provision for enforcement for Scotland;
- make specific references to EU law ambulatory.

3. Legislative Context

3.1 The Regulations revoke and replace the Drinking Milk Regulations 1998. Those Regulations ensured that milk was sold, or delivered, subject to EU marketing standards. However, as responsibility for agriculture has been devolved, it is now appropriate that new Regulations are made that extend to Scotland only.

3.2 These Regulations make provision for the enforcement for Article 114(2) of, and Annex XIII (“the Annex”) to the Single CMO Regulation.

3.3 The Drinking Milk Regulations 1998 enforced Council Regulation (EC) No 2597/97 laying down additional rules on the common organisation of the market in milk and milk products for drinking milk. That Regulation was amended by Council Regulation (EC) No 1602/1999, which deleted article 4(d) of Council Regulation (EC) No 2597/97 in relation to the fat-free dry matter content of milk. It was further amended by Council Regulation (EC) No 1153/2007, which added an additional subparagraph to Article 3(1) of Council Regulation (EC) No 2597/97 which allowed milk with a fat content outwith the three set fat categories, whole milk, semi-skimmed and skimmed milk, to be marketed subject to the correct labelling. Council Regulation (EC) No 2597/97 was then repealed by, and consolidated into, the Single CMO Regulation. These Regulations enforce the consolidated Single CMO Regulation.

3.4 The Regulations provide that the sale or delivery of milk and the use or non-use of a sales description for any product in contravention of the Annex is prohibited (regulation 3). The importation of any product from outside the EU in contravention of point IV of the Annex is also prohibited (regulation 4). They also make provision for enforcement, offences and penalties (regulations 5 and 6). The Regulations apply certain provisions of the Food Safety Act 1990 for the purposes of interpretation and enforcement and now additionally include a

power of entry (by applying section 32 of that Act with modifications) to assist with enforcement.

3.5 The enforcement of the Annex incorporates the new provision on fat content which will allow milk with fat content outwith the three previously agreed set fat categories, whole milk, semi skimmed milk and skimmed milk to be marketed subject to correct labelling and allows for the relaxation of the rules on fat-free dry matter content.

3.6 Notwithstanding the fact that the Single CMO defines drinking milk as including raw milk, the sale of raw milk in Scotland is prohibited by the Food Hygiene (Scotland) Regulations 2006 (regulation 32 and schedule 6). This is permitted and envisaged by the Single CMO Regulation (article 114(2)) which provides that the rules of the Single CMO Regulation only apply in so far as they are without prejudice to exemptions provided for in EU law and to measures for the protection of public health. The prohibition on the sale of raw milk is a provision which is for the protection of public health and is underpinned by exemptions in other EU law such as Regulation (EC) No 853/2004 of the European Parliament and the Council laying down specific hygiene rules for food of animal origin, Chapter IV, Article 10, point 8(a).

3.7 The Regulations also provide that any references to the relevant provisions of the Single CMO Regulation (Article 114(2) and Annex XIII) are to be construed as references to those provisions as amended from time to time. Should further amendments be made to those provisions of the Single CMO Regulation, the Scottish Government will publish relevant information on its website and send updates to interested parties where considered appropriate. Any amendments to these provisions will also be published on the Europa website, (http://europa.eu/documentation/legislation/index_en.htm).

3.8 The Regulations have been the subject of consultation with interested stakeholders as required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety. Scottish Ministers have also had regard to relevant advice given by the Food Standards Agency.

4. Territorial Extent and Application

4.1 This instrument applies to Scotland only.

5. Policy Background

5.1 The main objective of the Regulations is to revoke and replace the Drinking Milk Regulations 1998 for Scotland and update EU law references. The Regulations again ensure that milk is sold or delivered subject to marketing standards. References to the obsolete EU law will be replaced with references to the new EU law in this area. This will include incorporation of a new provision which will allow milk with a fat content outwith the three previously agreed set fat categories, whole milk, semi-skimmed milk and skimmed milk to be marketed subject to correct labelling, provide for the relaxation of the rules on fat-free dry matter content and apply a power of entry from the Food Safety Act 1990.

6. Consultation outcome

6.1 The bodies listed in Annex A have been consulted during the preparation of the instrument. The consultation was also published on the SG website. We received no responses.

7. Financial Effects

7.1 The Regulations should have no cost implications for the milk industry. For this reason a Business Regulatory Impact Assessment has not been prepared.

8. Contact

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The Scottish Government Rural and Environment Directorate
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ANNEX A

Arla Foods
Association of Public Service excellence
NFU Scotland
Convention of Scottish Local Authorities
Dairy UK Scotland
Dairy Farmers of Scotland
Scottish Dairy Cattle Association
First Milk
Food Standards Agency Scotland
Graham's Family Dairy
Orkney Milk
Robert Wiseman Daires
Scottish Consumer Council
Scottish Grocers Federation
Scottish Retail Consortium