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WELSH STATUTORY INSTRUMENTS

2008 No. 2141(W.190)

AGRICULTURE, WALES

The School Milk (Wales) Regulations 2008

<i>Made</i>	- - - -	<i>5 August 2008</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>11 August 2008</i>
<i>Coming into force</i>	- -	<i>1 September 2008</i>

The Welsh Ministers are designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to the common agricultural policy of the European Community.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Welsh Ministers that it is expedient for the references in these Regulations to—

- (a) Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)⁽³⁾, and
- (b) Commission Regulation (EC) No 657/2008 laying down detailed rules for applying Council Regulation (EC) No 1234/2007 as regards Community aid for supplying milk and certain milk products to pupils in educational establishments⁽⁴⁾

to be construed as a reference to that Regulation as amended from time to time.

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972⁽⁵⁾.

Title, commencement and application

1.—(1) The title of these Regulations is the School Milk (Wales) Regulations 2008 and they come into force on 1 September 2008.

(1) By virtue of section 59(1) and paragraph 30 of Schedule 11 to the Government of Wales Act 2006, functions conferred on the National Assembly for Wales are exercisable by the Welsh Ministers.

(2) 1972 c. 68. The Welsh Ministers are designated in relation to matters specified in Schedule 3 to the European Communities (Designation) (No.3) Order 2006 (S.I.2005/2766).

(3) OJ No L 299, 16.11.07, p.1; last amended by Council Regulation (EC) No 361/2008 (OJ No. L 121, 7.05.08, p 1).

(4) OJ No L 183, 11.07.08, p.17.

(5) Inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51).

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the 1996 Act” (“*Deddf 1996*”) means the Education Act 1996⁽⁶⁾;

“claimant” (“*ceisydd*”) means a qualifying educational establishment or local education authority or any supplier or organisation which claims Community or national aid in respect of qualifying milk products on behalf of a qualifying educational establishment or local education authority;

“Community aid” (“*cymorth Cymunedol*”) means Community aid granted pursuant to Article 102(1) of the Council Regulation and in accordance with the Commission Regulation;

“the Council Regulation” (“*Rheoliad y Cyngor*”) means Council Regulation (EC) No 1234/2007 on the common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)⁽⁷⁾ as amended from time to time;

“the Commission Regulation” (“*Rheoliad y Comisiwn*”) means Commission Regulation (EC) No 657/2008 laying down detailed rules for applying Council Regulation (EC) No 1234/2007 as regards Community aid for supplying milk and certain milk products to pupils in educational establishments⁽⁸⁾, as amended from time to time;

“the Community rules” (“*y rheolau Cymunedol*”) means the rules concerning the provision of subsidised milk and milk products to pupils attending educational establishments, laid down by the Council Regulation and the Commission Regulation;

“cost of supply” (“*cost cyflenwi*”) in relation to qualifying milk products means the cost of purchase plus an amount which the Welsh Ministers reasonably considers to be sufficient for the purposes of defraying the cost of procuring and administering the supply of those milk products;

“eligible pupils” (“*disgyblion cymwys*”) means pupils receiving primary education other than those in key stage 2 or those receiving nursery education;

“key stage 2” (“*cyfnod allweddol 2*”) has the meaning given to it by section 355 of the 199 Act;

“milk equivalent” (“*yr hyn sy'n gyfwerth a llaeth*”) means the amount specified in Article 5(2) of the Commission Regulation as representing the equivalent milk content of certain milk products;

“national aid” (“*cymorth gwladol*”) means aid granted by the Welsh Ministers under these Regulations pursuant to Article 102(2) of the Council Regulation;

“nursery education” (“*addysg feithrin*”) has the meaning given to it by section 117 of the School Standards and Framework Act 1998⁽⁹⁾;

“primary education” (“*addysg gynradd*”) has the meaning given to it by section 2(1) of the 199 Act;

“qualifying educational establishment” (“*sefydliad addysgol cymwys*”) means an educational establishment referred to in Article 2 of the Commission Regulation;

“qualifying milk products” (“*cynhyrchion llaeth cymwys*”) means the milk and milk products listed in Annex 1 to the Commission Regulation as products eligible for Community aid; and

⁽⁶⁾ 1996 c. 56.

⁽⁷⁾ OJ No. L 299, 16.11.07, p.1; last amended by Council Regulation (EC) No. 361/2008 (OJ No L 121, 7.05.08, p.1).

⁽⁸⁾ OJ No L 183, 11.07.08, p.17.

⁽⁹⁾ 1998 c. 31.

“the residual costs” (“*y costau gweddillio!*”) means the costs of supply, incurred by a purchaser in connection with the supply of qualifying milk products to a qualifying educational establishment, less any Community aid and national aid that may be granted in respect of that supply.

(2) Any reference in these Regulations to a numbered regulation is a reference to the regulation so numbered in these Regulations.

Grant of national aid

3.—(1) Subject to regulation 4, the Welsh Ministers may grant national aid in connection with the supply of qualifying milk products to pupils in educational establishments.

(2) For the purposes of paragraph (1), the Welsh Ministers may determine the type or class of qualifying educational establishments or qualifying milk products in relation to which national aid may be paid, by reference to any set of circumstances the Welsh Ministers think fit.

(3) Subject to paragraph (2), the following provisions of the Commission Regulation apply in relation to national aid as if it were Community aid—

- (a) Article 2 (beneficiaries);
- (b) Articles 3(1) and 3(4) (eligible milk products);
- (c) Article 5(4), first sub-paragraph (milk and milk products used in preparation of meals not to benefit from aid);
- (d) Article 8 (general conditions for approval),
- (e) Article 9 (specific conditions for the approval of certain applicants);
- (f) Article 10 (suspension and withdrawal of approval);
- (g) Article 11 (payment applications);
- (h) Article 12 (payment of aid);
- (i) Article 14 (price monitoring);
- (j) Article 15 (controls and sanctions).

Conditions applying to grant of national aid

4.—(1) National aid under regulation 3 must be granted subject to the conditions specified in paragraph (2).

(2) The conditions referred to in paragraph (1) are—

- (a) that claimants are registered or approved by the Welsh Ministers for the purpose of claiming Community aid;
- (b) that the Welsh Ministers are satisfied that a claimant and a qualifying educational establishment (if different), are complying, and have complied, with the Community rules and with any other obligations or requirements that may have been notified to them by the Welsh Ministers;
- (c) that for any qualifying educational establishment, the maximum quantity of qualifying milk products in respect of which national aid may be granted must be 0.25 litres of milk or milk equivalent as the case may be, per pupil on the school roll, per school day;

Additional national aid for eligible pupils

5. Where national aid is granted in connection with the supply of a qualifying milk product which is either flavoured or unflavoured, whole or semi skimmed milk, to eligible pupils, the amount so

granted, may be an amount sufficient to defray the residual costs that would otherwise be borne by such pupils or their parents or guardians in respect of that supply.

Payment of national aid

6. National aid granted by the Welsh Ministers pursuant to regulation 3 must be paid to claimants by the Rural Payments Agency acting as the agent of the Welsh Ministers⁽¹⁰⁾.

Withholding and recovery of Community aid or national aid

7.—(1) The Welsh Ministers may on demand withhold or recover from a claimant the whole or any part of any Community or national aid granted under these Regulations where they are satisfied that the claimant or a qualifying educational establishment in respect of which a claim has been made by a claimant, is not complying or has not complied with any of the conditions specified in regulation 4(2).

(2) Before taking action under paragraph (1), the Welsh Ministers must—

- (a) give the claimant written reasons for the action the Welsh Ministers propose to take;
- (b) afford the claimant the opportunity to make written representations within such time as the Welsh Ministers considers reasonable; and
- (c) consider any such representations.

(3) Any money due to the Welsh Ministers under or by virtue of these Regulations is recoverable as a debt.

Applicable exchange rate

8.—(1) For the purposes of calculating national aid in sterling, the Welsh Ministers must determine and may, subject to paragraph (2), periodically revise, the sterling/euro rate of exchange to be applied to the calculation.

(2) Prior to any proposed revision of the sterling/euro rate of exchange in accordance with paragraph (1), the Welsh Ministers must provide claimants with at least 14 days written notice of the revised rate to be applied.

Revocations

9. The School Milk (Wales) Regulations 2001⁽¹¹⁾ are revoked.

5 August 2008

John Griffiths
Under authority of the Minister for Children,
Education, Lifelong Learning and Skills, one of
the Welsh Ministers

⁽¹⁰⁾ The Welsh Ministers have entered into arrangements with the Secretary of State for Environment, Food and Rural Affairs for the Rural Payments Agency to make national aid payments on behalf of the Welsh Ministers pursuant to section 83 of the Government of Wales Act 2006.

⁽¹¹⁾ S.I. 2001/275 (W. 11).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1 September 2008 implement measures in respect of Article 102 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)(12).

These Regulations revoke and replace the School Milk (Wales) Regulations 2001(13).

In these Regulations references to Council Regulation (EC) No 1234/2007 and to Commission Regulation (EC) No 657/2008(14) laying down detailed rules for applying Council Regulation (EC) No 1234/2007 as regards Community aid for supplying milk and certain milk products to pupils in educational establishments (OJ No L 183, 11.7.08, p.17) are references to those Regulations as amended from time to time.

The Welsh Ministers may grant national aid (supplementing Community aid) in connection with the supply of milk and certain milk products to pupils in educational establishments (regulation 3(1)).

The Welsh Ministers may determine the type or class of educational establishment or milk products in relation to which national aid may be paid (regulation 3(2)).

National aid granted by the Welsh Ministers must be subject to the same rules, requirements and conditions that apply to Community aid under Article 102(1) of the Council Regulation and which are contained in the Commission Regulation (EC) No 657/2008 (regulation 4(2)).

Where national aid is granted in connection with the supply of flavoured or unflavoured, whole or semi skimmed milk to primary pupils other than those receiving nursery education or those in key stage 2, that aid may amount to a sum sufficient for the purposes of defraying any cost that would otherwise have to be borne by those pupils or their parents or guardians in circumstances where Community aid does not fully meet the cost of supplying that product (regulation 5).

(12) OJ No L 299, 16.11.07, p.1.

(13) S.I. 2001/275 (W.11).

(14) OJ No L 183, 11.07.08, p.17.