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WELSH STATUTORY INSTRUMENTS

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**2017 No. 724 (W. 174)**

**AGRICULTURE, WALES**

**The School Milk (Wales) Regulations 2017**

<i>Made</i>	- - - -	<i>2 July 2017</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>7 July 2017</i>
<i>Coming into force</i>	- -	<i>1 August 2017</i>

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

These Regulations make provision for a purpose mentioned in that section and it appears to the Welsh Ministers that it is expedient for any reference in these Regulations to EU instruments to be construed as a reference to those instruments as amended from time to time.

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

There has been consultation as required by 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<sup>(3)</sup>.

**Title, commencement and application**

1.—(1) The title of these Regulations is the School Milk (Wales) Regulations 2017 and they come into force on 1 August 2017.

(2) These Regulations apply in relation to Wales.

**Interpretation**

2.—(1) In these Regulations—

“applicant” (“*ceisydd*”) means an applicant for aid as described in Article 5 of the Commission Delegated Regulation that has been approved in accordance with Article 6 of the Commission Delegated Regulation;

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(1) [S.I. 2010/2690](#).

(2) [1972 c. 68](#). Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 ([c. 51](#)) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 ([c. 7](#)). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006.

(3) OJ L 31, 1.2.2002, p. 1, to which there are no relevant amendments to Article 9.

“authorised person” (“*person awdurdodedig*”) means any person authorised by the Welsh Ministers to act in matters arising under these Regulations or the European Regulations;

“Commission Delegated Regulation” (“*Rheoliad Dirprwyedig y Comisiwn*”) means Commission Delegated Regulation (EU) 2017/40 of 3 November 2016 supplementing 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 and amending Commission Delegated Regulation (EU) No 907/2014, as amended from time to time<sup>(4)</sup>;

“Commission Implementing Regulation” (“*Rheoliad Gweithredu'r Comisiwn*”) means Commission Implementing Regulation (EU) 2017/39 of 3 November 2016 on rules of 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, as amended from time to time<sup>(5)</sup>;

“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;

“Council Regulation” (“*Rheoliad y Cyngor*”) means Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007<sup>(6)</sup> as amended by Regulation (EU) 2016/791 of the European Parliament and of the Council of 11 May 2016 amending Regulations (EU) No 1308/2013 (the Council Regulation) and (EU) No 1306/2013 as regards the aid scheme for the supply of fruit and vegetables, bananas and milk in educational establishments<sup>(7)</sup>, and as amended from time to time;

“eligible pupils” (“*disgyblion cymwys*”) means pupils receiving education at a qualifying educational establishment and are in reception, year 1 or year 2;

“European Regulations” (“*Rheoliadau Ewropeaidd*”) means the—

- (a) Council Regulation,
- (b) Commission Delegated Regulation,
- (c) Commission Implementing Regulation;

“Horizontal Implementing Regulation” (“*Rheoliad Gweithredu Llorweddol*”) means Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance, as amended from time to time<sup>(8)</sup>;

“national aid” (“*cymorth gwladol*”) means aid granted by the Welsh Ministers under these Regulations pursuant to Articles 23a(6) and 217 of the Council Regulation;

“qualifying educational establishment” (“*sefydliad addysgol cymhwysol*”) means an educational establishment referred to in Article 22 of the Council Regulation;

“qualifying milk products” (“*cynhyrchion llaeth cymhwysol*”) means the milk and milk products listed in Article 23(3)(b) and (4)(b) of, and Annex V to the Council Regulation;

(4) OJ L 5, 10.1.2017, p. 11.

(5) OJ L 5, 10.1.2017, p. 1.

(6) OJ L 347, 20.12.2013, p. 671.

(7) OJ L 135, 24.5.2016, p. 1.

(8) OJ L 227, 31.7.2014, p. 69.

“reception” (“*blwyddyn derbyn*”) means a year group in which the majority of children will, in the school year, attain the age of 5;

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

“school year” (“*blwyddyn ysgol*”) in relation to a school, means the period beginning with the first school term to begin after July and ending with the beginning of the first such term to begin after the following July;

“Union aid” (“*cymorth Undeb*”) means Union aid granted pursuant to Article 23(1) of the Council Regulation and in accordance with the Commission Delegated Regulation and Commission Implementing Regulation;

“year 1” (“*blwyddyn 1*”) means a year group in which the majority of children will, in the school year, attain the age of 6;

“year 2” (“*blwyddyn 2*”) means a year group in which the majority of children will, in the school year, attain the age of 7;

“year group” (“*grŵp blwyddyn*”) means a group of children at a school the majority of whom will, in a particular school year, attain the same age.

(2) Except where the context otherwise requires, other expressions used in the Regulations have the meaning they bear in the European Regulations.

### **Grant of national aid**

3.—(1) Where an applicant is in receipt of Union aid, the Welsh Ministers may pay that applicant national aid in addition to that Union aid.

(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 specified provisions apply in relation to national aid as if it were Union aid—

- (a) of the Council Regulation; Article 22 (Target Group), Article 23 (Aid for the supply of school fruit and vegetables and of school milk, accompanying educational measures and related cost) and Annex V (eligible milk products);
- (b) of the Commission Implementing Regulation; Article 4 (Aid application submitted by aid applicant), Article 5 (Payment of the aid); Article 9 (Administrative checks), Article 10 (On-the-spot checks) and Article 11 (Recovery of undue payments), and
- (c) of the Commission Delegated Regulation; Article 6 (Conditions for approval of aid applicants) paragraphs (1) and (2) only, Article 7 (Suspension and withdrawal of approval); and Article 11 (Distribution of products in conjunction with regular school meals) paragraph (b) of the second paragraph only.

### **Additional national aid for eligible pupils**

4. 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.

### **Withholding and recovery of Union aid or national aid**

5.—(1) Where an applicant has received Union aid or national aid under regulation 3 to which the applicant was not entitled, or where the applicant is in breach of any commitment given by the applicant as a condition of such Union aid or of national aid under that regulation, the Welsh Ministers may—

- (a) withhold the whole or any part of such Union aid or national aid under regulation 3 that they might otherwise have made; or
- (b) recover on demand the whole or any part of any such Union aid or national aid under regulation 3 already made by them.

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

- (a) give the applicant written reasons for the action the Welsh Ministers propose to take;
- (b) afford the applicant 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.

### **Interest**

6. Interest may be charged in respect of each day of the period referred to in Article 7(2) of the Horizontal Implementing Regulation and for this purpose the rate of interest applicable on any day is one percentage point above the sterling three month London interbank offered rate (LIBOR) on the first working day of each calendar month.

### **Powers of entry**

7.—(1) An authorised person may exercise any of the powers specified in this regulation and regulation 8 for the purposes of enforcing these Regulations or the European Regulations.

(2) An authorised person, on producing, if so required, a duly authenticated document showing that person's authority, may at any reasonable hour enter any land or premises other than premises used wholly or mainly as a private dwelling.

(3) Paragraph (2) does not affect any right of entry conferred by a warrant issued in accordance with paragraph (4).

(4) A justice of the peace may by signed warrant permit an authorised person to enter any land or premises, if necessary by reasonable force, if the justice, sworn on information in writing, is satisfied that—

- (a) there are reasonable grounds for an authorised person to enter the land or premises for the purpose mentioned in paragraph (1); and
- (b) one of the conditions in paragraph (5) is met.

(5) The conditions are that—

- (a) entry to the land or premises has been refused, or is likely to be refused, and—
  - (i) notice of the intention to apply for a warrant has been served on the occupier, or
  - (ii) no such notice has been served on the occupier because serving such a notice would interfere with the purpose or effectiveness of the entry;
- (b) entry is required urgently; or
- (c) the premises are unoccupied or the occupier is temporarily absent.

(6) A warrant is valid for three months.

(7) An authorised person entering any land or premises by virtue of this regulation may be accompanied by—

- (a) any representative of the European Commission; and
- (b) such other persons as the authorised person considers necessary.

(8) An authorised person who enters any unoccupied premises must leave them as effectively secured as they were before entry.

### **Powers of inspection etc.**

**8.**—(1) An authorised person who has entered any land or premises in exercise of a power conferred by regulation 7 may—

- (a) carry out any inquiries, checks, examinations, measurements and tests;
- (b) take samples;
- (c) inspect all or any part of the premises;
- (d) have access to, inspect, copy and print any documents or records (in whatever form they are held) or remove such documents to enable them to be copied or retained as evidence;
- (e) have access to, inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the documents or records;
- (f) take a photograph of, or record in digital form, anything on the premises;
- (g) remove anything reasonably believed to be evidence of any non-compliance.

(2) An authorised person who enters any land or premises under a power under other legislation may exercise any of the powers specified in this regulation for the purposes of enforcing these Regulations.

(3) Paragraph (1) applies in relation to a person referred to in regulation 7(7)(b) when such person is acting under the instructions of an authorised person, as if such person were an authorised person.

### **Amendment to the Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Wales) Regulations 2004**

**9.**—(1) The Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Wales) Regulations 2004<sup>(9)</sup> are amended in accordance with paragraph (2).

(2) In the table in the Schedule (Schemes in respect of which the National Assembly for Wales may establish an appeals procedure) for “(EC) No. 1255/1999 on the common organisation of the market in milk and milk products (Article 14) as last amended by (EC) No.1787/2003” substitute—

“Regulation (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products (Article 23) as last amended by Regulation (EU) 2016/791”.

### **Revocations**

**10.** The following Regulations are revoked—

- (a) the School Milk (Wales) Regulations 2008<sup>(10)</sup>;
- (b) the School Milk (Wales) (Amendment) Regulations 2009<sup>(11)</sup>.

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<sup>(9)</sup> S.I. 2004/685 (W. 73).

<sup>(10)</sup> S.I. 2008/2141 (W. 190).

<sup>(11)</sup> S.I. 2009/108 (W. 21).

2 July 2017

*Kirsty Williams*  
Cabinet Secretary for Education, one of the  
Welsh Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations repeal and replace the School Milk (Wales) Regulations 2008 (“the 2008 Regulations”) (as amended) in light of changes in EU law. Regulation 10 of these Regulations provides for the revocation of the 2008 Regulations and the other provisions which have amended the 2008 Regulations.

Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products is being amended by Regulation (EU) 2016/791 of the European Parliament and of the Council of 11 May 2016 amending Regulations (EU) No 1308/2013 and (EU) No 1306/2013 as regards the aid scheme for the supply of fruit and vegetables and milk in educational establishments.

The new EU instruments which are relevant in supplementing Regulation (EU) No 1308/2013 in this context are Commission Implementing Regulation (EU) 2017/39 of 3 November 2016 and Commission Delegated Regulation (EU) 2017/40 of 3 November 2016.

The new EU law deals with the same subject matter as the EU law which it revokes and replaces i.e. the rules governing the provision of Union aid for milk and other products in educational establishments.

National aid payments are permitted by Article 23a(6) of Regulation (EU) No 1308/2013 (as amended). Regulation 3 of these Regulations provides that the Welsh Ministers can pay this national aid to applicants in receipt of Union aid and confirms that the Welsh Ministers may determine the type or class of educational establishment or milk products in relation to which national aid may be paid. It also provides that any national aid payment is subject to the same rules, requirements and conditions as apply to Union aid.

Regulation 4 provides that where national aid is granted in connection with the supply of flavoured or unflavoured, whole or semi skimmed milk to pupils receiving education at a qualifying educational establishment and are in reception, year 1 or year 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.

These Regulations also provide for the withholding or recovery of any Union aid or any national payment, made under regulation 3 of the Regulations, to which an applicant is not entitled or where the applicant is in breach of any commitments given as a condition of such Union aid or national aid (regulation 5). Regulation 6 provides for interest to be charged.

Member states are required to undertake administrative checks and on-the-spot checks of applicants premises under Articles 9 and 10 of Commission Implementing Regulation (EU) 2017/39. Regulations 7 (powers of entry) and 8 (powers of inspection) help the Welsh Ministers (via authorised persons) to comply with EU obligations to undertake effective on-the-spot checks to ensure compliance and prevent error and fraud.

Regulation 9 amends the Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Wales) Regulations 2004 in consequence of the changes being made to EU law. Under those Regulations the Welsh Ministers can continue to establish a procedure for the further consideration of an initial determination made under the School Milk Scheme.

**Status:** *This is the original version (as it was originally made).*