

POLICY NOTE

THE MILK AND HEALTHY SNACK SCHEME (SCOTLAND) AMENDMENT (NO. 2) REGULATIONS 2021

SSI 2021/274

The above instrument was made in exercise of the powers conferred by section 13 of the Social Security Act 1988 (1988 Act) and section 175(5) of the Social Security Contributions and Benefits Act 1992 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Purpose of the instrument. This instrument amends the Milk and Healthy Snack Scheme (Scotland) Regulations 2021 [**SSI 2021/82**]. Its aim is to clarify and address technical issues of immediate relevance to the operation of the Milk and Healthy Snack Scheme (“the Scheme”).

The Milk and Healthy Snack Scheme (Scotland) Regulations 2021 (“the Regulations”) prescribe for food benefits (being milk or a specified non – dairy alternative and a healthy snack item) to be provided to an eligible child, being a pre-school child who receives childcare services from a registered childcare provider, who is registered with the Scheme. The childcare provider, who is to be paid up-front payments by a local authority to do so, must provide the prescribed benefit in accordance with an eligible child’s entitlement when childcare services of at least two hours per day are provided to that child.

The Regulations –

- help and encourage eligible children to have access to incorporate in their diets, those prescribed food benefits;
- prescribe functions for the funding, administration and operation of the Scheme, including the lawful delegation of Ministerial functions to local authorities in its area; and
- modify the application of the Welfare Food Regulations 1996 (“the 1996 Regulations”) and UK National Milk Scheme (UK NMS) in Scotland, which the Regulations and Scheme are to replace.

This instrument amends the Regulations described above by:

- clarifying that it will be a specified local serving rate that will be used to determine the upfront payment to settings and not the market price as was previously included in the regulation;
- removing regulation 9(2) so that no other factors than those specified in regulation 9(1) are relevant to the determination of the upfront payment;
- removing in regulation 10(1)(c) the reference to market price and replacing it with a reference to the cost of the benefit provided;
- including a new Schedule 3 containing a table showing the combined local serving rates for milk and a healthy snack for Scheme year 1 (August 2021- July 2022).

Policy Objectives

The Policy Objectives remain those cited in the Policy Note accompanying the Regulations, subject to the minor modifications highlighted in bold below.

The Regulations and Scheme will replace the application of the 1996 Regulations and UK NMS in Scotland. The Regulations establish framework to deliver the purposes stated above and an upfront funding mechanism to childcare providers registered with the Scheme via local authorities.

The Scheme:

- will be delivered by local authorities who have been delegated prescribed Ministerial functions in the Regulations;
- provides that local authorities can make payments to eligible childcare providers registered with Social Work and Social Care Improvement Scotland (Care Inspectorate and who are registered with the Scheme; **the amendment clarifies that these payments will be determined with reference to the table of local serving rates derived following extensive consideration of pricing structures and not to market price as previously stated;**
- obligates childcare providers who provide a childcare service to an eligible pre-school child for at least two hours per day to provide prescribed benefits to that child in accordance with the child's entitlement and where that child has not already received the benefit that day;
- entitles an eligible child to the following food benefits [being prescribed volumes of infant formula, milk types or non – dairy alternative and a healthy snack item, in accordance with age of the eligible child and with regard to whether certain types of milk cannot be consumed by them because of medical, ethical or religious reasons] as follows:
 - where an eligible child is under one year of age, 189 mls of infant formula;
 - where an eligible child is one year of age and less than two years of age, 189 mls (or where the milk or non-dairy alternative is supplied in containers of 200 mls only) of the following types of milk can be provided - whole plain fresh liquid cow's milk, or where for medical, religious or ethical reasons an eligible child cannot consume cow's milk then goat's milk or sheep milk. Or where for medical, religious or ethical reasons an eligible child cannot consume cow's, goat's or sheep's milk then a non-dairy alternative (defined as "a drink which is an unsweetened, calcium enriched liquid and is commonly used as a substitute for milk");
 - where an eligible child has reached two years of age, 189 mls (or where the milk or non-dairy alternative is supplied in containers of 200 mls only) of the following types of milk can be provided – (whole/semi-skimmed) plain fresh liquid cow's milk, or where for medical, religious or ethical reasons an eligible child cannot consume cow's milk then goat's milk or sheep milk. Or where for medical, religious or ethical reasons an eligible child cannot consume cow's, goat's or sheep's milk then a non-dairy alternative defined as "a drink which is an unsweetened, calcium enriched liquid and is commonly used as a substitute for milk");
 - where an eligible child has reached six months, one healthy snack item (comprising fresh fruit, vegetables or mixed fruit).

- reduces administrative burdens for day care providers and childminders by moving to an ‘upfront’ payment approach aligned with funded Early Learning and Childcare (ELC) provision rather than the claims and reimbursement model used by the UK Nursery Milk Scheme which has operated in Scotland until now.

This policy has been developed from proposals described in the Welfare Foods consultation published in 2018.

Since funding will be delivered to local authorities (to make payment to childcare providers), the Scottish Government have been working collaboratively with the Convention of Scottish Local Authorities (COSLA) and relevant governance groups to develop proposals on the design and delivery of the Scheme.

The Scheme will support the Scottish Government’s policy intentions around improving children’s health and wellbeing. It is an opportunity to improve children’s nutrition, tackle health inequalities, and integrate the policy with broader Scottish approaches. Early intervention and prevention initiatives are fundamental as a healthy start lays the foundation to a healthy future. Establishing good nutrition, healthy diet and positive eating habits in a child’s early years is important as these habits can be taken forward into adolescence and throughout adult life. This supports both physical health and mental wellbeing in the long term, including helping to prevent obesity.

The Scheme will contribute to fulfilling the Scottish Government’s National Outcomes as per the National Performance Framework: Children and Young People:

- We grow up loved, safe and respected so that we realise our full potential;
- We are healthy and active;
- We tackle poverty by sharing opportunities, wealth and power more equally.

It will also support the Scottish Government’s Sustainable Development Goals:

SDG 1 – No Poverty

SDG 2 - Zero Hunger

SDG 3 – Good Health and Wellbeing

SDG 10 – Reduced Inequalities

Consultation

In developing the Regulations set out above, policy officials engaged with relevant stakeholders and consulted as required by statute, as set out in the Policy Note to the Regulations.

In bringing forward this amendment, officials continue to draw on the earlier consultation and on additional feedback offered by external stakeholders including representatives of the dairy industry and COSLA.

We have not explicitly consulted external stakeholders however, we have continued to engage with COSLA and we have drawn directly on feedback offered by industry stakeholders on the principal instrument to inform our amendments.

Impact Assessments

A Business and Regulatory Impact Assessment (BRIA), Children's Rights and Wellbeing Impact Assessment (CRWIA) and an Equalities Impact Assessment (EQIA) were completed on the Milk and Healthy Snack Scheme (Scotland) Regulations 2021.

The amending instrument makes no material changes to these. The financial and cost data referred to within the BRIA has formed part of the development of the table of Local Serving Rates, together with updated cost information including data from the Scotland Excel procurement framework.

Financial Effects

The amending instrument should have no impact on the Financial Assessment as set out in the policy note to the principal instrument. The Minister for Children and Young People has signed this impact assessment.

Scottish Government
Children and Families Directorate
28 July 2021