

POLICY NOTE

THE MILK AND HEALTHY SNACK SCHEME (SCOTLAND) REGULATIONS 2021

SSI 2021/82

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(4) and (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.

These Regulations establish the Milk and Healthy Snack Scheme (the Scheme) in Scotland.

The Regulations prescribe for food benefits (being milk, a 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 Regulations) and UK National Milk Scheme (UK NMS) in Scotland, which the Regulations and Scheme are to replace.

Policy Objectives

As set out above, 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;

- Obligates childcare providers who provide a childcare service to an eligible child for at least two hours per day to provide prescribed benefits to that child in accordance with the child's entitlement;
- 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, 189 mls of the following types of milk can be provided - whole plain fresh liquid cow's milk unless medical, ethical or religious apply reasons (applicable conditions), in which case, whole plain fresh liquid goat or whole plain fresh liquid sheep milk can be provided, or a non-dairy alternative (being an unsweetened, liquid, calcium enriched, soya drink);
 - where an eligible child has reached two years of age, semi-skimmed of those milk types (whole plain fresh liquid cow's, goat's or sheep's milk) can be provided in with regard applicable conditions;
 - where an eligible child has reached six months, one healthy snack item (which generally includes 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 current claims and reimbursement model.

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

Policy officials have engaged with relevant stakeholders and consulted as required by statute, as indicated, below-

Within Government

Scottish Government officials leading on this policy sit within the Improving Health and Wellbeing Division of the Children and Families Directorate.

Officials have engaged across policy directorates within the Scottish Government and more widely to develop the policy for the Scheme.

Input from these policy areas helped to inform officials of existing relationships with the childcare and dairy sectors and also the internal processes required in order to deliver the Scheme.

In particular officials have engaged substantively with the following areas and bodies, and consulted to comply with statutory obligations, where indicated:

Scottish Government;

- Children and Families Directorate
- Early Learning and Childcare Directorate
- Population Health Directorate
- Learning Directorate
- Health Finance Directorate
- Agriculture and Rural Development Directorate
- Parliament and Legislation Unit
- Legal Services Directorate

External to Scottish Government;

- Social Care and Social Work Improvement Scotland (Care Inspectorate)
- Department of Health and Social Care, UK Government
- Welsh Assembly – consulted to comply with statutory requirement under s. 13(2) of the 1988 Act *
- Information Commissioner's Office (ICO) –consulted to comply with the Data Protection Act 2018 and the Article 36 (4) of the United Kingdom General Data Protection Regulation*

*** Note**

Statutory Obligations to Consult

Despite the Welsh Assembly having no direct material interest in the Scheme, it was consulted to comply with the requirements of s. 13(2) of the 1988. The Welsh government confirmed, in verbal consultation, no further consultation was required for the purposes s. 13 (2) of the 1988 Act.

Given the Regulations are a regulatory measure based on a legislative measure which relates to processing, the Information Commissioner was consulted during the preparations of the Regulations, to comply with the Data Protection Act 2018 and Article 36 (4) of the General Data Protection Regulation (GDPR) and confirmed no further consultation was required.

Public Consultation

The Scottish Government was not required to undergo public consultation on this Scheme given there was no statutory obligation to do so.

A public consultation on [Welfare Foods](#) ran from 5 April to 28 June 2018, responses from that consultation (and stakeholder comments) were considered in the policy development underpinning the Scheme

The consultation included proposals to replace the UK NMS in Scotland with a new Scottish scheme which would increase the age of eligibility from under 5 years to include 5 year olds; and offer a daily healthy snack such as a piece of prepared fruit or vegetable. It was proposed this be delivered as part of ELC funded provision, complementing the free meal offer. Provision to unfunded providers was also considered.

147 responses were received where the majority of individual responses (58%) were uncategorised, but there were also individual responses from: medical or healthcare professionals (21%); parents or carers (5%); and childminders (4%). Organisational responses included responses from: third sector or community organisations (28%); NHS Boards (22%); local authorities (18%); representative bodies for professionals (6%); and retailers including retailers' representative bodies (4%).

The consultation and analysis papers are available on the Scottish Government's website: <https://www.gov.scot/publications/welfare-foods-consultation-meeting-needs-children-families-scotland/>

90% of respondents agreed with the proposal to provide free milk to all children in funded ELC provision from 2020, with many respondents pointing out that dairy-free alternatives should also be available.

96% of respondents agreed with the proposal to provide a healthy snack to all children in funded ELC provision from 2020. Clarification was sought by many respondents on what constituted a 'healthy snack', and some thought it should be restricted to a portion of fruit or vegetables.

The consultation did not explicitly ask whether respondents were in favour of the proposal to provide free milk outwith the funded ELC entitlement; rather, it asked how this may be done.

However, from the answers to this question it could be inferred that a large majority of respondents (approximately three quarters) were in favour of this proposal. 20% did not express a clear view in favour or against. It was suggested that this could be administered through: a voucher or smartcard, direct payments to childcare providers (similar to the current UK Nursery Milk System), or by embedding milk for non-funded ELC provision in the wider procurement of milk for childcare providers within each local authority.

A large majority of respondents (83%) were also in favour of providing a healthy snack to children outwith funded ELC provision. The same mechanisms for the provision of milk outwith funded ELC provision were suggested.

Consideration of Responses

As a result of the consultation responses, Scottish Ministers decided to progress plans for a Scheme that would:

- Provide milk through funded ELC provision, with funding agreed with local authorities;
- Also include non-funded and funded childcare providers ;
- Include the provision of a healthy snack item;
- Take account and provide for the needs of children who cannot consume milk or certain types of milk due to medical, religious or ethical by providing different types of milk and a non-dairy alternative;
- Expand the cohort of eligible children from children age 4 and under, to include all pre-school age children.

Some respondents offered views on the administration of the Scheme for settings providing non-funded provision. An overriding theme was that it should be as non-bureaucratic and administratively simple as possible. Scottish Government considered the various options for delivering the Scheme, and concluded that streamlining with existing systems for the provision of ELC would best achieve these objectives. As such, it has progressed discussions with COSLA to develop proposals that would achieve this objective. The Scottish Government has continued to engage with several public stakeholders and considered stakeholder information and comments in policy development.

Impact Assessments

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

Children's Rights and Wellbeing Impact Assessment: The impact of the Scheme on children's rights and wellbeing is overwhelmingly positive and we received no negative feedback about the policy in this regard.

Equalities Impact Assessment: A key piece of early feedback in relation to equalities issues was the need to support the nutritional development of children who cannot drink cow's milk for medical, ethical or religious reasons. The inclusion of sheep, goat and non-dairy, unsweetened and approved calcium-enriched alternatives ensures that this cohort are not disadvantaged by the Scheme, whilst recognising that cow's milk remains the most nutritious

option which the majority of children will receive through the Scheme. We received no negative feedback about the policy in this regard.

Business and Regulatory Impact Assessment: Engagement with stakeholders throughout the development of the policy, and specifically on the draft BRIA, has raised a number of issues which the Scottish Government have welcomed and continue to address through clarification and the development of guidance.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The Scottish Government has agreed to meet the costs of the new burden on local government of the delivery and administration of the new Scheme. This will include: the cost of the provision of milk and the healthy snack (fresh fruit and vegetables) and the estimated cost to local authorities of administering the Scheme.

It is estimated that up to 190,000 children in registered pre-school settings may be eligible for the Scheme when it is introduced. It is however, very difficult to estimate the initial level of uptake and clearly the policy intention (aligned to the roll out of 1140) is for uptake to be maximised as soon as possible to ensure that as many as possible of the eligible children will be receiving milk and the healthy snack (portion of fruit or vegetable). The Scottish Government will work with local government, ELC and day care network associations and suppliers to raise awareness of the new Scheme and promote uptake.

The overall quantum of funding will therefore be dependent on uptake with local authorities receiving an adequate level of funding each year in line with the overall agreement reached between Scottish Government and COSLA, and the number of registrations achieved.

It is estimated that the Scottish Government's expenditure on milk and healthy snack for Financial Year 2021/22 will be of the order of £9-10m across the two Schemes (UK Nursery Milk and Scottish Healthy Milk and Snack Scheme). This takes account of the factors outlined above and that the new Scheme will not be introduced until 1 August 2021. Milk supplied in the first months of the new financial year (until 31 July 2021) will be reclaimed from the NMRU (within a period of six months from the date of purchase) which will recover this cost from the Scottish Government in line with existing procedures; the cost of the healthy snack will only accrue from 1 August 2021. The Minister for Children and Young People has signed this impact assessment.

Scottish Government
Children and Families Directorate
17 February 2021