Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Milk and Milk Products (Pupils in Educational Establishments) (England and Northern Ireland) Regulations 2017. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2017 No. 734

AGRICULTURE, ENGLAND
AGRICULTURE, NORTHERN IRELAND

The Milk and Milk Products (Pupils in Educational Establishments) (England and Northern Ireland) Regulations 2017

Made - - - -	*11th July 2017*
Laid before Parliament	*11th July 2017*
Coming into force - -	*1st August 2017*

The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972 [F1] in relation to the common agricultural policy of the European Union [F2] and makes these Regulations in exercise of the powers conferred by that section and by paragraph 1A of Schedule 2 to that Act.

These Regulations make provision for a purpose mentioned in that section and it appears to the Secretary of State that it is expedient for references to EU instruments in these Regulations to be construed as references to those instruments as amended from time to time.

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 [F3].

F1 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 and was amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 and S.I. 2007/1388.

F2 S.I. 1972/1811. The power of the Secretary of State to make Regulations that extend to Northern Ireland is exercisable by virtue of article 3(2) of the European Communities (Designation) (No. 3) Order 2000 (S.I. 2000/2812).

F3 O.J. L31, 1.2.2002, p.1. There are no relevant amendments to Article 9.

Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Milk and Milk Products (Pupils in Educational Establishments) (England and Northern Ireland) Regulations 2017. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Citation, commencement and application

1.—(1) These Regulations may be cited as the Milk and Milk Products (Pupils in Educational Establishments) (England and Northern Ireland) Regulations 2017, and come into force on 1st August 2017.

(2) Except for regulations 6 and 7, these Regulations—

(a) extend to England and Wales and to Northern Ireland, and

(b) apply in England and Northern Ireland only.

(3) An amendment of an instrument by regulation 6, or a revocation of an instrument by regulation 7, has the same extent and application as the instrument being amended or revoked.

Interpretation

2.—(1) In these Regulations—

"applicant" means an applicant for aid as described in Article 5 of the Delegated Regulation;

"the Council Regulation" means Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17th 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[F4];

"the Delegated Regulation" means Commission Delegated Regulation (EU) 2017/40 of 3rd 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 [F5];

"the Department" means the Department of Agriculture, Environment and Rural Affairs;

"the Implementing Regulation" means Commission Implementing Regulation (EU) 2017/39 of 3rd November 2016 on rules for 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 [F6];

"Union aid" means aid granted pursuant to Article 23(1) of the Council Regulation.

F4 O.J. L347, 20.12.2013, p. 671, as amended by Regulation (EU) 2016/791 (O.J. L135, 24.5.2016, p.1).
F5 O.J. L5, 10.1.2017, p. 11.
F6 O.J. L5, 10.1.2017, p. 1.

Additional payment under Articles 23a(6) and 217 of the Council Regulation

3.—(1) Where an applicant is in receipt of Union aid—

(a) the Secretary of State in respect of an applicant situated in England; or

(b) the Department in respect of an applicant situated in Northern Ireland may, in accordance with Articles 23a(6) and 217 of the Council Regulation, make a payment to that applicant in addition to that Union aid.

(2) The provisions specified in paragraph (3) apply to additional payments under paragraph (1).

(3) The specified provisions are—

(a) Article 22 (target group) and Article 23 (aid for the supply of school fruit and vegetables and of school milk, accompanying educational measures and related costs) of the Council Regulation;

(b) paragraphs (1) and (2) of Article 6 (conditions for approval of aid applicants); Article 7 (suspension and withdrawal of approval), and paragraph (2)(b) of Article 11 (distribution of products in conjunction with regular school meals) of the Delegated Regulation ; and

(c) 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) of the Implementing Regulation.

Withholding or recovery

4.—(1) Where an applicant has received Union aid or a payment under regulation 3 to which the applicant was not entitled, or where the applicant is in breach of any commitment given by that applicant as a condition of receiving such Union aid or payment, the Secretary of State or the Department (as the case may be) may—

(a) withhold the whole or any part of such Union aid or payment that might otherwise have been made to that applicant; or

(b) recover on demand the whole or any part of any such Union aid or payment already made to that applicant.

(2) Before taking any action under paragraph (1), the Secretary of State or the Department shall—

(a) give to the applicant written notification of the proposed action (including the amount to be withheld or recovered, with an explanation of the reasons for the proposed action);

(b) afford that applicant the opportunity of making written representations within such time as the Secretary of State or the Department considers reasonable; and

(c) consider any such representations.

(3) In any case where an amount falls to be paid to the Secretary of State or the Department by virtue of these Regulations, that amount, and any interest charged under regulation 5, shall be recoverable by them as a debt.

Interest

5.—(1) Where regulation 4 applies, interest may be charged in respect of each day of the period referred to in Article 7(2) of Commission Implementing Regulation (EU) No 809/2014 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 [F7].

(2) For the purpose of paragraph (1), the rate of interest applicable in respect of any day is one percentage point above the Bank of England base rate on that day.

(3) In this regulation "the Bank of England base rate" means—

(a) except where sub-paragraph (b) applies, the rate announced from time to time by the Monetary Policy Committee of the Bank of England [F8] as the official dealing rate being the rate at which the Bank is willing to enter into transactions for providing short-term liquidity in the markets; or

(b) if an order under section 19 (reserve powers) of the Bank of England Act 1998 is in force, an equivalent determined by the Treasury under that section.

F7 O.J. L227, 31.7.2014, p.69.

F8 The Monetary Policy Committee was established under section 13 of the Bank of England Act 1998 (c. 11).