POLICY NOTE

THE MILK AND HEALTHY SNACK SCHEME (SCOTLAND) AMENDMENT REGULATIONS 2021

SSI 2021/206

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. This instrument amends the Milk and Healthy Snack Scheme (Scotland) Regulations 2021. 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 (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.

This instrument amends the Regulations described above by:

- clarifying that there is no duty to provide the benefit prior to 1 August 2021;
- clarifying that the obligation to provide the benefit devolves only on those childcare providers who are registered both with the Care Inspectorate and with the Local Authority for the Scheme;
- clarifying that a childcare provider is not required to provide the benefit where a child has already received this on the same day;
- amending the Schedule of benefits that may be provided to confirm that specified non-dairy alternatives may include non-soya based alternatives where these conform to the guidance;
- making a small number of technical amendments to reduce the potential for ambiguity in interpretation of the Regulations.

Policy Objectives

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

- 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 (now defined as "**a drink which is an unsweetened, calcium enriched liquid and is commonly used as a substitute for dairy 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 (now defined as "**a drink which is an unsweetened, calcium enriched liquid and is commonly used as a substitute for dairy 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 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

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 other than the UK Government – Welsh Assembly (consulted to comply with statutory requirement under s. 13(2) of the 1988 Act *) on the detail of the proposed amendments, however, we have continued to engage with COSLA, Social Care and Social Work Improvement Scotland (Care Inspectorate) - Department of Health and Social Care, UK Government and we have drawn directly on

feedback offered by industry stakeholders on the principal instrument to inform our amendments.

*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.

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 expansion at Schedule 1 of the list of non-dairy alternatives to include those that do not include soya for children who are unable to consume cow's milk for medical, ethical or religious reasons and who are also unable to tolerate soya, improves the accessibility of the policy. Simplifying registration requirements at Schedule 2 aligns with our ambition to reduce the administrative burden, outlined in the BRIA.

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

13 May 2021