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SCOTTISH STATUTORY INSTRUMENTS

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**2021 No. 82**

**FOOD**

**The Milk and Healthy Snack  
Scheme (Scotland) Regulations 2021**

*Made* - - - - - *17th February 2021*  
*Laid before the Scottish*  
*Parliament* - - - - - *19th February 2021*  
*Coming into force* - - - *21st March 2021*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 13(1) of the Social Security Act 1988(1) and section 175(4) and (5) of the Social Security Contributions and Benefits Act 1992(2) and all other powers enabling them to do so.

In accordance with section 13(2) of the Social Security Act 1988, the Scottish Ministers have consulted the National Assembly for Wales.

**PART 1**

**Introduction**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Milk and Healthy Snack Scheme (Scotland) Regulations 2021.

(2) These Regulations come into force on 21 March 2021.

(3) These Regulations extend to Scotland only.

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(1) 1988 c.7. Section 13 was substituted by section 185(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c.43) and amended by section 27(5) of the Scotland Act 2016 (c.11) (“the 2016 Act”). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46) as read with section 32 of the 2016 Act.

(2) 1992 c.4. Section 175(4) and (5) is applied by section 15A(1) of the Social Security Act 1988 (c.7). Section 15A was inserted by paragraph 8(10) of schedule 6 of the Social Security Act 1990 (s.27) and amended by paragraph 96 of schedule 2 of the Social Security (Consequential Provisions) Act 1992 (c.6) and section 185(2) and paragraph 1 of schedule 14(5) of the Health and Social Care (Community Health and Standards) Act 2003 (c.43). Section 175(4) was amended by paragraph 29(4) of schedule 3 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2). Section 175(5) was amended by paragraph 36 of schedule 1(1) of the Social Security (Incapacity for Work) Act 1994 (c.18).

## PART 2

### General Interpretation

#### Interpretation

**2.** In these Regulations—

“the 1992 Act” means the Social Security Administration Act 1992<sup>(3)</sup>,

“the 2010 Act” means the Public Services Reform (Scotland) Act 2010<sup>(4)</sup>,

“benefit” is the food benefit prescribed in regulation 5,

“child minding” has the same meaning as in paragraph 12(1) of schedule 12 of the 2010 Act<sup>(5)</sup>,

“day care of children” has the same meaning as in paragraph 13 of schedule 12 of the 2010 Act,

“eligible child” means a person prescribed in regulation 3,

“healthy snack item” means fresh fruit or vegetables, including loose, whole, sliced, chopped, or mixed fruit but not fruit or vegetables to which fat, salt, sugar, flavouring or any other ingredient has been added,

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994<sup>(6)</sup> and “area” in relation to a local authority, means the local government area for which the authority is constituted,

“payment period” means—

(a) the period of 12 months beginning with 1 August 2021,

(b) any successive period of the same length, or

(c) such other shorter period as may be determined by the Scottish Ministers,

“pre-school child” is a pre-school child within the meaning given in section 1(4B) of the Education (Scotland) Act 1980<sup>(7)</sup>,

“registered childcare provider” means a childcare provider registered with the local authority under regulation 8,

“Scheme” means the Scottish Milk and Healthy Snack Scheme established by these Regulations, and

“SCSWIS” means Social Care and Social Work Improvement Scotland established by section 44 of the 2010 Act.

## PART 3

### Meaning of Certain Expressions

#### Meaning of eligible child

**3.** For the purposes of these Regulations, an eligible child is one who—

(a) is a pre-school child, and

(b) receives a service from a childcare provider.

(3) 1992 c.5.

(4) 2010 asp 8.

(5) Paragraph 12 was amended by S.S.I. 2013/211.

(6) 1994 c.39.

(7) 1980 c.44, amended by section 32(5) of the Scotland’s Schools etc. Act 2000 (asp 6).

### **Meaning of childcare provider**

4.—(1) For the purposes of these Regulations, a childcare provider is a provider of a childcare service where that service appears on the register of care services maintained by SCSWIS by virtue of regulation 5 of the Social Care and Social Work Improvement Scotland (Registration) Regulations 2011<sup>(8)</sup>.

- (2) For the purpose of paragraph (1) “childcare service” means—
- (a) day care of children, or
  - (b) child minding.

## **PART 4**

### **Entitlement**

#### **Entitlement of an eligible child**

5.—(1) The Scheme entitles an eligible child, on each day that the requirement in paragraph (2) is met, to the benefit prescribed in paragraph (3).

(2) The requirement is that the child receives a service from a childcare provider for a total of 2 or more hours per day.

(3) The benefit prescribed for an eligible child is—

- (a) the volume specified in the relevant row of column 2 of the table in schedule 1 of the type of milk or non-dairy alternative specified in the relevant row of column 3 of that table, and
- (b) where the child has reached 6 months of age, one healthy snack item.

(4) For the purposes of subparagraph 3(a)—

- (a) “the relevant row of column 2” means the row in that column that corresponds to the age of the eligible child specified in column 1 of the table in schedule 1, and
- (b) “the relevant row of column 3” is the row in that column that corresponds to the age of the eligible child specified in column 1 of the table in schedule 1 and adjusted by reference to any condition specified in column 4 of that table which applies in respect of that child.

#### **Provision of benefit**

6. The benefit to which an eligible child is entitled must be provided to that child by a childcare provider on each day and during the hours which that child is in receipt of the service from that childcare provider.

## **PART 5**

### **Administration of the Scheme**

#### **Payment under the Scheme**

7.—(1) The Scottish Ministers are to make a payment to a registered childcare provider on the first day of each payment period in respect of that period.

(2) Where a childcare provider registers for the Scheme after the first day of a payment period, the Scottish Ministers are to make a payment in respect of that period within 4 weeks of the date of registration.

### **Registration**

**8.** In order to register under the Scheme, a childcare provider must provide the registration information specified in schedule 2 to the Scottish Ministers.

### **Determining the amount payable**

**9.—(1)** The payment made by the Scottish Ministers to a childcare provider in accordance with regulation 7, in respect of a payment period, is to be determined by reference to—

- (a) the number of eligible children enrolled with that childcare provider at the beginning of each financial year,
- (b) the benefits provided (or reasonably expected to be provided) by that childcare provider under regulation 6,
- (c) the market price of the benefit provided (or reasonably expected to be provided) by that childcare provider under regulation 6, and
- (d) any adjustment made under regulation 10.

(2) In determining the payment under paragraph (1) the Scottish Ministers may also take into account any other relevant matter.

### **Adjustment to the amount payable**

**10.—(1)** The Scottish Ministers may make an adjustment to the amount payable under regulation 9 in respect of a payment period as a result of a significant change, in that period, to—

- (a) the number of eligible children enrolled with that childcare provider,
- (b) the benefits provided by that childcare provider under regulation 6, and
- (c) the market price of the benefit provided by that childcare provider under regulation 6.

(2) The Scottish Ministers must make any adjustment to the amount payable in respect of a payment period by the end of the immediately following payment period.

### **Provision of information in respect of significant change**

**11.** In relation to a payment period, a childcare provider must inform the Scottish Ministers of any significant change to—

- (a) the number of eligible children enrolled with that childcare provider, and
- (b) the benefits provided by that childcare provider under regulation 6.

### **Change of circumstances affecting eligibility for the Scheme**

**12.** A childcare provider that is no longer entitled to a payment under the Scheme due to a change in circumstances must inform the Scottish Ministers of that change as soon as reasonably practicable.

### **Provision of information for monitoring purposes**

**13.** A childcare provider must provide to the Scottish Ministers, on request, the following information—

- (a) its status as a childcare provider under regulation 4,

- (b) the number of eligible children enrolled with the childcare provider during any period,
- (c) records of attendance in relation to any eligible child during any period,
- (d) the eligibility of a child under regulation 3,
- (e) the entitlement of a child under regulation 5,
- (f) the benefit provided or expected to be provided to a child under regulation 6, and
- (g) any other relevant information which the Scottish Ministers reasonably require in order to administer the Scheme.

#### **Failure to provide benefit**

14. In the event that the Scottish Ministers consider that a childcare provider has failed to provide a benefit under the Scheme, the Scottish Ministers may—

- (a) reduce the amount payable in forthcoming payment periods,
- (b) take any other action, which they consider reasonable, in all the circumstances.

#### **Delegation**

15. The following functions of the Scottish Ministers are delegated to the local authority for its area—

- (a) the function of determining a payment period shorter than 12 months under regulation 2, and
- (b) the functions under regulations 7 to 14.

#### **Direction: local authority**

16. A local authority must follow any direction issued by the Scottish Ministers when exercising any function under the Scheme.

#### **Guidance: local authority**

17. A local authority must have regard to any guidance issued by the Scottish Ministers when exercising any function under the Scheme.

#### **Guidance: childcare provider**

18. A childcare provider must have regard to any guidance issued by the Scottish Ministers with respect to the operation of the Scheme.

#### **Information Sharing**

19.—(1) A local authority must, on request, disclose the information specified in paragraph (2) to—

- (a) SCSWIS,
  - (b) another local authority.
- (2) For the purposes of paragraph (1), the information specified is information provided by—
- (a) a childcare provider under regulations 8, 11, 12 or 13,
  - (b) SCSWIS,
  - (c) another local authority,

in connection with the Scheme.

(3) SCSWIS must, on request, disclose to a local authority the information specified in paragraph (4).

(4) For the purposes of paragraph (3), the information specified is—

- (a) the name and address of a childcare provider,
- (b) the age groups to which a childcare provider provides services,
- (c) the number of meals a childcare provider provides, and
- (d) the types of day care a childcare provider provides.

### Reporting requirement

**20.** A local authority must report to the Scottish Ministers annually, by such date as the Scottish Ministers may direct, on the following matters—

- (a) the number of childcare providers registered under the Scheme on 15 July 2021, and thereafter at the end of the immediately preceding financial year,
- (b) the amount paid to each childcare provider under the Scheme in the immediately preceding financial year,
- (c) the number of eligible children enrolled with each childcare provider at the end of the immediately preceding financial year,
- (d) the expenditure incurred by the authority in the administration of the Scheme in the immediately preceding financial year, and
- (e) such other information relating to the operation of the Scheme as the Scottish Ministers may direct.

## PART 6

### Application of enactments and offences

#### Application of section 112 of the 1992 Act

**21.—**(1) Section 112 (false representations for obtaining benefit etc.) of the 1992 Act<sup>(9)</sup> has effect, for the purposes of the administration of the Scheme, subject to the modifications in paragraph (2).

(2) The modifications mentioned in paragraph (1) are that section 112(1) of the 1992 Act is to be read as if—

- (a) in subsection (1)—
  - (i) “benefit or other” were deleted,
  - (ii) “the relevant social security legislation” were substituted by “a scheme made under section 13 of the Social Security Act 1988”, and
  - (iii) “that legislation” were a reference to “such a scheme”, and
- (b) subsections (1A) to (1F) were omitted.

<sup>(9)</sup> 1992 c.5. Section 112 was relevantly amended by paragraph 4(2) of schedule 1 of the Social Security Administration (Fraud) Act 1997 (c.47), paragraph 6 of schedule 6 of the Child Support, Pensions and Social Security Act 2000 (c.19) (“the 2002 Act”) and section 16(3) of the Social Security Fraud Act 2001 (c.11).

### **Application of section 113 of the 1992 Act**

**22.**—(1) Section 113 (breach of regulations) of the 1992 Act<sup>(10)</sup> has effect, for the purposes of the administration of the Scheme, as if paragraph (2) had been made under it, and subject to the modifications in paragraph (3).

(2) A person who fails to comply with regulation 12 (change of circumstances affecting eligibility for the Scheme) is guilty of an offence under these Regulations.

(3) The modifications mentioned in paragraph (1) are that section 113 of the 1992 Act is to be read as if—

(a) after subsection (1A)(a) there is inserted—

“(aa) section 13 of the Social Security Act 1988 or subordinate legislation made, or having effect as if made, under it,” and

(b) in subsection (3) paragraph (b) were omitted.

## **PART 7**

### **Amendments and transitional arrangements**

#### **Amendment to the Healthy Start Scheme and Welfare Food (Amendment) Regulations**

**23.** In subparagraph b(i) and (ii) of the definition of “Healthy Start food” in regulation 2(1) (interpretation) of the Healthy Start Scheme and Welfare Food Amendment Regulations 2005<sup>(11)</sup>, after “vitamins” insert “the food benefit prescribed in regulation 5 of the Milk and Healthy Snack Scheme (Scotland) Regulations 2021”.

#### **Amendment to the Welfare Food Regulations 1996**

**24.**—(1) The Welfare Food Regulations 1996<sup>(12)</sup> are amended as follows—

(a) in regulation 10 (issue of milk tokens), after paragraph (5) insert—

“(6) A milk token issued by the Department of Health and Social Services in Northern Ireland or the Secretary of State is not valid on or after 1 August 2021.”,

(b) in regulation 13 (control of milk tokens), after paragraph (4) insert—

“(5) No beneficiary may apply for a replacement milk token under paragraph (4) on or after 1 August 2021.”,

(c) in regulation 16 (reimbursement of suppliers), after paragraph (1) insert—

“(1A) No supplier may submit a milk token together with a claim for reimbursement under paragraph (1) on or after 1 February 2022.”,

(d) in regulation 17 (special reimbursement), after paragraph (1) insert—

“(1A) No supplier may apply under paragraph (1) on or after 1 February 2022.”,

(e) in regulation 18 (milk or dried milk for children in day care), after paragraph (1) insert—

“(1A) No child is entitled under paragraph (1) on or after 1 August 2021.”,

(f) in regulation 19 (approval of suppliers), after paragraph (1) insert—

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<sup>(10)</sup> Section 113 was relevantly amended by paragraph 7(2) of schedule 6 of the 2000 Act and paragraph 1 of schedule 2 of the National Insurance Contributions and Statutory Payments Act 2004 (c.3).

<sup>(11)</sup> S.I. 2005/3262.

<sup>(12)</sup> S.I. 1996/1434, relevant amending instruments are S.I. 2003/702, 2005/3262, S.I. 2006/2818, S.I. 2015/280, 2017/1032 and S.I. 2020/267.

“(1A) No day care provider may apply under paragraph (1) for approval as a supplier on or after 1 August 2021.”,

- (g) in regulation 20(1) (reimbursement of approved suppliers), after paragraph (1) insert—

“(1A) No day care provider may submit a claim for reimbursement under paragraph (1) on or after 1 February 2022.”, and

- (h) in regulation 21A (functions of the NHS Business Services Authority), after paragraph (1) insert—

“(1A) The NHS Business Services Authority may not have the function mentioned in paragraph (1)(a) on or after 1 August 2021.”.

St Andrew’s House,  
Edinburgh  
17th February 2021

*MAREE TODD*  
Authorised to sign by the Scottish Ministers



SCHEDULE 1

Regulation 5

SPECIFIED MILK AND NON-DAIRY ALTERNATIVE

In this schedule—

“cow’s milk” means plain, unsweetened, fresh liquid cow’s milk, but not milk to or from which chemicals, vitamins, flavours or colours have been added or removed,

“goat’s milk” means plain, unsweetened, fresh liquid goat’s milk, but not milk to or from which chemicals, vitamins, flavours or colours have been added or removed,

“infant formula” means a liquid or a non-liquid which, where a non-liquid can be prepared to form a liquid, based on cow’s milk, sheep’s milk or goat’s milk, intended for particular nutritional use from birth by infants in good health,

“non-dairy alternative” means an unsweetened, liquid, calcium enriched, soya drink, and

“sheep’s milk” means plain, unsweetened, fresh liquid sheep’s milk, but not milk to or from which chemicals, vitamins, flavours or colours have been added or removed.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Age of eligible child</i>	<i>Volume of Milk or non-dairy alternative</i>	<i>Type of milk or non-dairy alternative</i>	<i>Condition</i>
Under 1 year of age	189 millilitres, or made up to provide 189 millilitres where the infant formula was in non-liquid form	infant formula	none
1 year of age and less than 2 years of age	189 millilitres, or where the milk or non-dairy alternative is supplied in containers of 200 millilitres only, to 200 millilitres	whole cow’s milk whole goat’s milk or whole sheep’s milk  non-dairy alternative	none where for medical, religious, or ethical reasons, an eligible child cannot consume cow’s milk  where for medical, religious or ethical reasons, an eligible child cannot consume—  (a) whole cow’s milk, (b) whole goat’s milk, and (c) whole sheep’s milk
2 years of age and older	189 millilitres, or where such milk or non-dairy alternative is supplied in containers of 200 millilitres only, to 200 millilitres	whole cow’s milk or semi-skimmed cow’s milk whole goat’s milk,	none where for medical, religious or ethical reasons, an eligible

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

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Age of eligible child</i>	<i>Volume of Milk or non-dairy alternative</i>	<i>Type of milk or non-dairy alternative</i>	<i>Condition</i>
		semi-skimmed goat's milk,  whole sheep's milk, or  semi-skimmed sheep's milk  non-dairy alternative	child cannot consume cow's milk, or     where for medical, religious or ethical reasons, an eligible child cannot consume—  (a) cow's milk, (b) goat's milk, and (c) sheep's milk.

SCHEDULE 2

Regulation 8

SPECIFIED INFORMATION REQUIRED FOR REGISTRATION

1. For the purposes of regulation 8, registration information is—
  - (a) the full name and address of the childcare provider,
  - (b) the category of childcare provision (“day care of children” or “childminding”),
  - (c) the address where eligible children are to be cared for by the childcare provider,
  - (d) whether the childcare provider keeps attendance records,
  - (e) the number of day care sessions expected to be provided by the childcare provider per week and the expected duration of each session in the first month after the date of application for registration,
  - (f) the number of eligible children expected to be cared for by a childcare provider at a session in the first month after the date of application for registration,
  - (g) the number of eligible children enrolled with the childcare provider at the beginning of the financial year,
  - (h) the number of eligible children enrolled with the childcare provider at the date of application for registration,
  - (i) the banking details of the childcare provider
  - (j) a copy of the childcare provider’s certificate of registration issued by Social Work Improvement Scotland,
  - (k) the anticipated benefit to be provided by the childcare provider to eligible children under the Scheme in the period to the end of the financial year, and
  - (l) any other relevant information which the Scottish Ministers reasonably require in order to register the childcare provider.

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## EXPLANATORY NOTE

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

These Regulations establish a scheme in Scotland to provide benefits for children (“the Scottish Milk and Healthy Snack Scheme”).

The Regulations also amend, in respect of Scotland, the Welfare Food Regulations 1996 (“the 1996 Regulations”) and the Healthy Start Scheme and the Welfare Food (Amendment) Regulations 2005 (“the 2005 Regulations”).

Part 1 provides for citation, commencement and extent. These Regulations extend to Scotland only.

Part 2 provides for general interpretation.

Part 3 deals with the meaning of certain key expressions used in the Regulations. Regulation 3 provides for the meaning of eligible child and regulation 4 provides for the meaning of childcare provider.

Part 4 deals with entitlement in the Regulations. Regulation 5 provides for the entitlement of any eligible child to the prescribed benefit. The rules for entitlement are set out in regulation 5(1) and (2). The benefit is set out in regulation 5(3). The requirement placed on the childcare provider to provide the benefit is set out in regulation 6.

Part 5 deals with the administration of the Scheme. Regulation 15 delegates the functions (as specified in that regulation) of Scottish Ministers to the local authority for its area. These functions include, but are not limited to, determining payment periods shorter than 12 months, registering childcare providers and determining the amounts payable to childcare providers. Regulations 16 and 17 provide respectively that a local authority must follow any direction, or have regard to any guidance, issued by the Scottish Ministers when exercising any function under the Scheme.

Part 5 also sets out the obligations of childcare provider obligations in relation to the operation of the Scheme. It also provides that a childcare provider must have regard to Guidance issued by the Scottish Ministers.

Part 6 makes provision for the application of certain enactments and offences.

Part 7 makes amendments to certain subordinate legislation. Regulation 22 provides for an amendment, to the 2005 Regulations, to clarify that the food benefit prescribed by regulation 5 is not a Healthy Start food under the 2005 Regulations. Regulation 23 makes transitional provision in respect of the 1996 Regulations.