

2023 No. 371

FOOD

**The Welfare Foods (Best Start Foods) (Scotland) Amendment
Regulations 2023**

<i>Made</i>	- - - -	<i>5th December 2023</i>
<i>Laid before the Scottish Parliament</i>		<i>7th December 2023</i>
<i>Coming into force</i>	- -	<i>26th February 2024</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 13 of the Social Security Act 1988(a), section 175(4) of the Social Security Contributions and Benefits Act 1992(b) 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 Welsh Ministers(c).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Welfare Foods (Best Start Foods) (Scotland) Amendment Regulations 2023 and come into force on 26 February 2024.

(2) In these Regulations—

- (a) “the appointed day” means 26 February 2024,
- (b) “the principal Regulations” means the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019(d).

Amendments to the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019

2.—(1) The principal Regulations are amended in accordance with this regulation.

(2) In regulation 2 (general interpretation)—

- (a) in the definition of “beneficiary”, after “7A” insert “, 7B”,

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- (a) 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.
 - (b) 1992 c. 4. Section 175(4) is to be read in accordance with section 15A(1) of the Social Security Act 1988 (“the 1988 Act”) which provides that section 175(2) to (5) of the Social Security Contributions and Benefits Act 1992 (“the 1992 Act”) shall apply in relation to any provision of the 1988 Act to make orders or regulations as they apply in relation to any power conferred by the 1992 Act to make orders or regulations. Section 175(4) of the 1992 Act was amended by paragraph 29(4) of schedule 3 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).
 - (c) Functions conferred or imposed on the National Assembly for Wales immediately before the first appointment of a First Minister under section 46 of the Government of Wales Act 2006 (c. 32) by an enactment contained in an Act were transferred to the Welsh Ministers by paragraph 30(2)(c) of schedule 11 of that Act.
 - (d) S.S.I. 2019/193, relevantly amended by S.S.I. 2019/232, S.S.I. 2020/399, S.S.I. 2021/221, S.S.I. 2021/320, S.S.I. 2022/108, S.S.I. 2022/129, S.S.I. 2022/167, S.S.I. 2022/336 and S.S.I. 2023/309.

- (b) after the definition of “child tax credit” insert—
 - ““state pension credit” means state pension credit under the State Pension Credit Act 2002(a),”.
- (3) In regulation 5 (meaning of “dependant”)—
 - (a) in paragraph (2)(a)(ii)(bb), for “paragraph (aa)” substitute “sub-head (aa)”,
 - (b) in paragraph (3), before “paragraph” insert “in”,
 - (c) after paragraph (3) insert—
 - “(4) In this regulation “child benefit” means child benefit under section 141 of the Social Security Contributions and Benefits Act 1992(b).”.
- (4) In regulation 6 (general)—
 - (a) in paragraph (1), for “regulation 7A or regulation 8” substitute “ 7A, 7B or 8”,
 - (b) for paragraph (1A) substitute—
 - “(1A) Subject to regulation 11(1A) to (1C), an individual described in regulation 7, regulation 7A or regulation 7B is not entitled to be paid benefit where another individual is being paid benefit in respect of the same pregnancy.”,
 - (c) after paragraph (3) insert—
 - “(4) A person who is entitled to benefit under these Regulations by virtue of payment of a kind of assistance mentioned in regulation 10(1)(a) to (g) does not cease to be so entitled until the expiry of 8 weeks beginning with the day after the last day on which the person is entitled to that kind of assistance.”.
- (5) In regulation 7 (pregnant women)—
 - (a) in paragraph (1)(a)(iii) omit “or dependant”,
 - (b) for paragraph (1)(b) substitute—
 - “(b) a pregnant woman who is—
 - (i) under 18 years of age, or
 - (ii) a dependant (within the meaning of regulation 5) who is 18 or 19 years of age, and meets the residence requirement in regulation 9.”,
 - (c) for paragraph (2), substitute—
 - “(2) If an individual described in paragraph (1)(b) reaches the age of 18 years or ceases to be a dependant before the end of their pregnancy, the individual remains entitled to benefit until the end of the pregnancy.”.
- (6) For regulation 7A (partners of pregnant women) substitute—

“Partners of pregnant women

7A.—(1) For the purposes of regulation 6 an individual so described is—

- (a) an individual who—
 - (i) is the partner of a pregnant woman,
 - (ii) is, or the pregnant woman mentioned in head (i) is, in receipt of a kind of assistance mentioned in regulation 10, including a person who has been awarded a kind of assistance but has not yet received payment,
 - (iii) is 18 years of age or over,
 - (iv) ordinarily resident in Scotland, and

(a) 2002 c. 16.

(b) 1992 c. 4. Section 141 was amended by section 1(1) of the Child Benefit Act 2005 (c. 6).

- (v) is receiving benefit for the use of the pregnant woman mentioned in head (i),
or
- (b) an individual who is—
 - (i) the partner of a pregnant woman,
 - (ii) either—
 - (aa) under 18 years of age, or
 - (bb) a dependant (within the meaning of regulation 5) who is 18 or 19 years of age, and
 - (iii) receiving benefit for the use of the pregnant woman mentioned in head (i).
- (2) The individual described in paragraph (1)(b) must meet the residence requirement in regulation 9.
- (3) If an individual mentioned in paragraph (1)(b) reaches the age of 18 years or ceases to be a dependant before the end of their partner’s pregnancy, the individual remains entitled to benefit until the end of that pregnancy.”.
- (7) After regulation 7A (partners of pregnant women) insert—

“Other entitled individuals in respect of a pregnant woman

- 7B.**—(1) For the purposes of regulation 6 an individual so described is—
 - (a) the individual that a pregnant woman as described in regulation 7(1)(b) is a dependant of, or
 - (b) the partner of the individual described in sub-paragraph (a),
who is receiving benefit for the use of the pregnant woman.
- (2) The individual described in paragraph (1) must meet the residence requirement in regulation 9.
- (3) If the pregnant woman is no longer a dependant of the individual described at paragraph (1)(a) before the end of their pregnancy, that individual or their partner remains entitled to benefit until the end of that pregnancy.”.
- (8) For regulation 8 (children) substitute—

“Children

- 8.**—(1) For the purposes of regulation 6 an individual so described is—
 - (a) a child who is under 3 years of age, and—
 - (i) for whom another individual is responsible, and
 - (ii) the individual responsible for the child, or the partner of that individual, is—
 - (aa) in receipt of a kind of assistance mentioned in regulation 10, including where the individual or their partner has been awarded a kind of assistance but has not yet received payment, and
 - (bb) ordinarily resident in Scotland, or
 - (b) a child who is under 3 years of age—
 - (i) for whom another individual is responsible, and
 - (ii) the individual responsible for the child, or the partner of that individual—
 - (aa) is under 18 years of age,
 - (bb) is a dependant (within the meaning of regulation 5) who is 18 or 19 years of age,
 - (cc) was previously entitled to benefit by virtue of regulation 7(1)(b) or 7A(1)(b) in respect of a pregnancy which resulted in the birth of the child, or

- (dd) was previously entitled to benefit by virtue of regulation 7(1)(b) or 7A as they applied immediately before 26 February 2024, in respect of a pregnancy whilst resulted in the birth of the child,
and meets the residence requirement in regulation 9.

(2) Where the individual responsible for the child mentioned in paragraph (1)(b), or the partner of that individual, turns 18 years of age or ceases to be a dependant, that child remains entitled to benefit until the later of—

- (a) the day on which the child turns one year of age,
- (b) the first anniversary of their estimated date of delivery, or
- (c) the day on which the individual responsible for them, or their partner, turns 18 years of age or ceases to be a dependant.”.

(9) In regulation 9 (residence requirement)—

- (a) in paragraph (1)(b), for “the individual, the individual’s partner nor the person on whom the individual is dependent” substitute “the individual nor the individual’s partner”,
- (b) for paragraph (2)(aa) substitute—

“(aa) a person who, or has a partner who, is habitually resident in the European Economic Area or Switzerland and has been granted indefinite or limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971(a) by virtue of Appendix EU to the immigration rules made under section 3(2) of that Act.”.

(10) In regulation 10 (kinds of assistance)—

- (a) in paragraph (1), for sub-paragraphs (a) to (h) substitute—

- “(a) child tax credit,
- (b) working tax credit,
- (c) housing benefit,
- (d) income-based jobseeker’s allowance,
- (e) income-related employment and support allowance,
- (f) income support,
- (g) state pension credit,
- (h) universal credit in the period specified in paragraph (2).”.

(b) after paragraph (2) insert—

“(2A) An individual is not to be regarded as having been awarded a kind of assistance for a day or a period if—

- (a) the award was made in error (whether or not induced by the individual), or
- (b) the sum awarded to the individual for the day or period is £0.

(2B) In paragraph (2A)(b), the reference to “the sum awarded” means, in a case where a deduction has been made—

- (a) in respect of any liability the individual has to another person, or
- (b) by way of sanction,

the sum that would have been awarded had the deduction not been made.”.

(c) in paragraph (3)—

- (i) omit the definitions of “earned income”, “relevant income” and “state pension credit”,
- (ii) after the definition of “housing benefit” insert—

(a) 1971 c. 77.

““income-based jobseeker’s allowance” means income-based jobseeker’s allowance within the meaning of the Jobseekers Act 1995(a),

“income-related employment and support allowance” means income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007(b),

“income support” means income support payable under Part 7 of the Social Security Contributions and Benefits Act 1992(c).”

(11) In regulation 11 (entitlement – further provision)—

(a) in paragraph (1), after “(2)” insert “and regulation 18B”,

(b) for paragraph (1A) substitute—

“(1A) This paragraph applies where the Scottish Ministers receive an application in respect of an individual described in regulation 7, and they are also in receipt of—

- (a) an application in respect of an individual described in regulation 7A or an individual described in regulation 7B,
- (b) an application in respect of an individual described in regulation 7A and an individual described in regulation 7B, or
- (c) applications in respect of two or more individuals described in regulation 7B,

and each application relates to the same pregnancy.

(1B) Where paragraph (1A) applies, the Scottish Ministers must—

- (a) approve the application in respect of the individual described in regulation 7 in priority to any application made in respect of an individual described in regulation 7A or 7B, and
- (b) cease any payment of this benefit to the individual described in regulation 7A or regulation 7B.

(1C) Where—

- (a) the Scottish Ministers receive an application in respect of—
 - (i) an individual described in regulation 7A and they are also in receipt of an application in respect of an individual described in regulation 7B, or
 - (ii) an individual described in regulation 7B and are also in receipt of an application in respect of at least one other person described in regulation 7B, and
- (b) the applications mentioned in sub-paragraph (a) are made in connection with the same pregnant woman,

the Scottish Ministers must decide which of the individuals is entitled to benefit having regard to the circumstances of the pregnant woman and cease any payment of this benefit to the individual whom the Scottish Ministers decide is not entitled.”

(c) for paragraph (2) substitute—

“(2) A child described in paragraph (2A) is entitled to benefit payable from the date of their birth.

(2A) A child—

- (a) who is entitled to benefit by virtue of regulation 8,
- (b) who is under 4 months of age, and
- (c) for whom another individual is responsible, and that individual, their partner, the person on whom that individual was dependent, or the partner of that person—

(a) 1995 c. 18.
(b) 2007 c. 5.
(c) 1992 c. 4.

- (i) was previously entitled to benefit by virtue of regulation 7, 7A or 7B in respect of the pregnancy which resulted in the birth of the child, and
 - (ii) notifies the Scottish Ministers of the date of birth of the child.”,
- (d) in paragraph (3), for “7, 7A, 8 or 20” substitute “7, 7A, 7B or 8”,
- (e) for paragraph (4) substitute—
- “(4) Where any provision of these Regulations requires or enables anything to be done by or in respect of a beneficiary and that beneficiary is a child as described in regulation 8, the provision is deemed to refer to the individual responsible for the child or the partner of that individual (as described in regulation 8(1)(a) or (b)).”,
- (f) after paragraph (4) insert—
- “(5) Where a beneficiary is entitled to benefit under these Regulations, the Scottish Ministers may, where they consider it appropriate, give the benefit to another person (“the appropriate person”) to be used for the benefit of the beneficiary.
- (6) Where the Scottish Ministers consider, for any reason, that it is no longer appropriate for the appropriate person to continue to receive the benefit, they may cease giving the benefit to that person.”.
- (12) For regulation 12 (change of circumstances affecting entitlement to benefit) substitute—

“Change of circumstances affecting entitlement to benefit

12.—(1) The persons mentioned in paragraph (2) must inform the Scottish Ministers of a change of circumstances affecting a beneficiary’s entitlement to benefit under these Regulations.

(2) The persons are—

- (a) where the benefit is paid to a person other than the beneficiary under and in accordance with regulation 11(5) or regulation 12A(1)(b), the person to whom the benefit is paid, or
- (b) in any other case, the beneficiary.”.

(13) In regulation 12A (appointment of a person to act on behalf of an individual)—

- (a) in paragraph (2), for “(3) or (4)” substitute “(3), (4) or (4A)”,
 - (b) after paragraph (4) insert—
- “(4A) This paragraph applies if—
- (a) the individual is under 16 years of age, and
 - (b) it appears to the Scottish Ministers that there is no person who—
 - (i) has authority to act on behalf of the individual,
 - (ii) resides with, and has care of, the individual, and
 - (iii) is willing, and practicably able, to act on the individual’s behalf in relation to the matters mentioned in paragraph (1).”,
- (c) in paragraph (6), after “individual” where it first appears insert “who is 16 years of age or over”,
- (d) after paragraph (6) insert—
- “(6A) Where an appointee is appointed to act on behalf of an individual who is under 16 years of age—
- (a) the appointee can do anything that a person with authority (however arising) to act on behalf of the individual in relation to the determination of the individual’s entitlement to benefit could do in connection with the determination of the individual’s entitlement to benefit (including making an application for benefit),

- (b) the Scottish Ministers may request that the appointee provide them with information that they might otherwise request from the individual in connection with the determination of the individual’s entitlement to benefit,
- (c) any information that would be given to the individual by virtue of these Regulations must be given to the appointee instead.”,
- (e) after paragraph (9) insert—
 - “(9A) The Scottish Ministers must consider whether to make an appointment by virtue of paragraph (4A), or to terminate such appointment, if requested to do so by—
 - (a) the individual, or
 - (b) anyone else who appears to the Ministers to—
 - (i) have authority to act on behalf of the individual,
 - (ii) reside with, and have care of the individual, or
 - (iii) have an interest in the welfare or financial affairs of the individual.”,
- (f) in paragraph (10), after “(4)” insert “or (4A)”,
- (g) in paragraph (11)—
 - (i) in sub-paragraph (a), omit “and”,
 - (ii) in sub-paragraph (b), for “individual” substitute “individual, and”, and
 - (iii) after sub-paragraph (b) insert—
 - “(c) where the individual is under 16 years of age, the views of anyone who is a relevant person in relation to the individual within the meaning of section 200 of the Children’s Hearings (Scotland) Act 2011(a).”,
- (h) after paragraph (12) insert—
 - “(12A) A person appointed by the Scottish Ministers under and in accordance with section 85A(b) of the 2018 Act may be treated by them as an appointee of an individual under 16 years of age in connection with the determination of the individual’s entitlement to benefit under these Regulations.”,
 - (i) in paragraph (13), for “to appointments under section 85B of that Act” substitute “to appointments under that Act”.
- (14) In regulation 13 (value of benefit)—
 - (a) for paragraph (1) substitute—
 - “(1) The benefit to which an individual described in regulation 7, 7A or 7B is entitled is a payment to the value of £4.95 (“the basic rate”) for each week that individual is so entitled.”,
 - (b) in paragraph (2)—
 - (i) in the opening words—
 - (aa) after “regulation 8(1)(a)” insert “or 8(1)(b)”,
 - (bb) for “credit” substitute “payment”,
 - (ii) in sub-paragraph (a), for “£9.90” substitute “double the basic rate”,
 - (iii) in sub-paragraph (b), for “£4.95” substitute “the basic rate”,
 - (c) for paragraphs (3) and (4) substitute—
 - “(3) A child, as described in regulation 8, is entitled to the full amount of payment for the week in which they reach the age of 3 years.”.
- (15) For regulation 14 (form in which benefit is given) substitute—

(a) 2011 asp 1.

(b) Section 85A was inserted by sections 1(2) of the 2020 Act.

“Form in which benefit is given

14.—(1) Subject to paragraph (2), the payment mentioned in regulation 13 is to be given in the form of a payment card.

(2) Where the Scottish Ministers consider it appropriate, they may pay the beneficiary an amount equal to the value on the payment card mentioned in paragraph (1).

(3) Where paragraph (2) applies, an individual is not entitled to the credit on the payment card mentioned in paragraph (1).”.

(16) After regulation 18 (further offences) insert—

“PART 6A

Procedural matters

When an application is to be treated as made

18A.—(1) An application is to be treated as made—

- (a) on the day it is received by the Scottish Ministers, or
- (b) on the day chosen by the Scottish Ministers in accordance with paragraph (2).

(2) If, before making a decision on the basis of an application, the Scottish Ministers consider that the beneficiary—

- (a) would not be entitled to benefit under these Regulations if the application were treated as made on the day they received it, and
- (b) would be entitled to benefit under these Regulations if the application were treated as made on a day falling within a period of 10 days beginning with the day they received it,

the Scottish Ministers may choose the day within that 10 day period on which the application is to be treated as made.

Decision following backdated award of assistance

18B.—(1) The Scottish Ministers are to make a decision on an individual’s entitlement to benefit under these Regulations (without receiving an application) where the circumstances in paragraphs (2) to (6) apply.

(2) The Scottish Ministers have previously made a decision that the individual is not entitled to benefit under these Regulations (“the original decision”).

(3) The original decision was made on or after 26 February 2024.

(4) The Scottish Ministers establish that a backdated award of assistance of a kind specified in—

- (a) regulation 5(2)(a) is made in circumstances in which regulation 5(2)(b) applies, or
- (b) regulation 10 is made.

(5) The award referred to in paragraph (4) (“the backdated award”) is backdated to a day, or a period that begins on a day, that falls no later than the day on which the original decision was made.

(6) Had the backdated award been made before the original decision, a decision that the individual is entitled to benefit under Regulations would have been made.

(7) For the purposes of this regulation, an award is backdated if it relates to a day, or a period that begins on a day, that falls before the day the decision to make the award was taken.

(8) In making a decision required by paragraph (1) the Scottish Ministers are to use—

- (a) the information provided in the application that led to the original decision, and
- (b) any other information they have obtained in connection with that application.

(9) Where a decision is to be, or has been, made without an application by virtue of paragraph (1), an individual's entitlement to benefit under these Regulations begins on the day the application that led to the original decision was made."

Transitional provisions – treatment of applications made but not approved when these Regulations come into force

3.—(1) Where an application for benefit under the principal Regulations is—

- (i) made before the appointed day, and
- (ii) decided on or after that day,

paragraph (2) applies.

(2) Despite the amendments to the principal Regulations made by these Regulations, the principal Regulations, as they applied immediately before the appointed day, continue to have effect and are to apply subject to the modifications specified in paragraph (3).

(3) The modifications are—

(a) that—

- (i) an individual is not to be regarded as having been awarded a kind of assistance mentioned in regulation 10 of the principal regulations for a day or period if—
 - (aa) the sum awarded was made in error (whether or not induced by the individual), or
 - (bb) the sum awarded to the individual for the day or period is £0, and
- (ii) in sub-paragraph (a) the reference to “the sum awarded” means, in a case where a deduction has been made—
 - (aa) in respect of any liability the individual has to another person, or
 - (bb) by way of sanction,

the sum that would have been awarded had the deduction not been made.

(b) that despite regulation 11 of the principal Regulations—

- (i) the Scottish Ministers may, where they consider it appropriate, give the benefit to another person (“the appropriate person”) to be used for the benefit of the beneficiary, and
- (ii) the Scottish Ministers may cease giving the benefit to the appropriate person where they consider, for any reason, that it is no longer appropriate for that person to continue to receive the benefit,

(c) that regulation 12A of the principal Regulations (appointment of a person to act on behalf of an individual) applies as if—

- (i) in paragraph (2) for “(3) or (4)” there were substituted “(3), (4) or (4A)”,
- (ii) after paragraph (4) insert there were inserted—

“(4A) This paragraph applies if—

- (a) the individual is under 16 years of age, and
- (b) it appears to the Scottish Ministers that there is no person who—
 - (i) has authority to act on behalf of the individual,
 - (ii) resides with, and has care of, the individual, and
 - (iii) is willing, and practicably able, to act on the individual's behalf in relation to the matters mentioned in paragraph (1).”,

(iii) in paragraph (6) after “individual” where it first appears there were inserted “who is 16 years of age or over”,

- (iv) after paragraph (6) there were inserted—
 - “(6A) Where an appointee is appointed to act on behalf of an individual who is under 16 years of age—
 - (a) the appointee can do anything that a person with authority (however arising) to act on behalf of the individual in relation to the determination of the individual’s entitlement to benefit could do in connection with the determination of the individual’s entitlement to benefit (including making an application for benefit),
 - (b) the Scottish Ministers may request that the appointee provide them with information that they might otherwise request from the individual in connection with the determination of the individual’s entitlement to benefit,
 - (c) any information that would be given to the individual by virtue of these Regulations must be given to the appointee instead.”,
 - (v) after paragraph (9) there were inserted—
 - “(9A) The Scottish Ministers must consider whether to make an appointment by virtue of paragraph (4A), or to terminate such appointment, if requested to do so by—
 - (a) the individual, or
 - (b) anyone else who appears to Ministers to—
 - (i) have authority to act on behalf of the individual,
 - (ii) reside with, and have care of the individual, or
 - (iii) have an interest in the welfare or financial affairs of the individual.”,
 - (vi) in paragraph (10) after “(4)” there were inserted “or (4A)”,
 - (vii) in paragraph (11)—
 - (aa) in sub-paragraph (a) there were omitted “and”, and
 - (bb) after sub-paragraph (b) there were inserted—
 - “(c) where the individual is under 16 years of age, the views of anyone who is a relevant person in relation to the individual within the meaning of section 200 of the Children’s Hearings (Scotland) Act 2011.”,
 - (viii) after paragraph (12) there were inserted—
 - “(12A) A person appointed by the Scottish Ministers under and in accordance with section 85A(a) of the 2018 Act may be treated by them as an appointee of an individual under 16 years of age in connection with the determination of the individual’s entitlement to benefit under these Regulations.”,
 - (d) that despite regulation 12 of the principal Regulations, the person to whom the benefit is given must inform the Scottish Ministers of a change of circumstances affecting a beneficiary’s entitlement to benefit,
 - (e) that despite regulation 14 of the principal Regulations, where the Scottish Ministers consider it appropriate, they may pay the beneficiary an amount equal to the value on the payment card mentioned in regulation 14.
- (4) In this regulation—
 - (a) “Best Start Foods” means the types of food described in column 2 of the table in schedule 1 of the principal Regulations, and
 - (b) reference to a regulation of the principal Regulations is reference to the principal Regulations as they applied immediately before the appointed day.

(a) Section 85A was inserted by sections 1(2) of the 2020 Act.

Transitional provisions – treatment of applications made and approved before the coming into force of these Regulations

4.—(1) Where, immediately before the appointed day, an individual is entitled to benefit under regulation 6(1) of the principal Regulations by virtue of being—

- (a) an individual described in regulation 7(1)(a), and
- (b) a dependant (within the meaning of regulation 5) who is 18 or 19 years of age,

the individual is to be treated, on and after that day, as if they are entitled under regulation 6(1) by virtue of being an individual described in regulation 7(1)(b) as it has been amended by these Regulations.

(2) Where, immediately before the appointed day, an individual is entitled to benefit under regulation 6(1) of the principal Regulations by virtue of being an individual described in regulation 7(1)(b), the individual is to be treated, on and after that day, as if they are entitled under regulation 6(1) by virtue of being an individual described in regulation 7(1)(b) as it has been amended by these Regulations.

(3) Where, immediately before the appointed day, an individual is—

- (a) entitled to benefit under regulation 6(1) of the principal Regulations by virtue of being an individual described in regulation 7A,
- (b) 18 years of age or older, and
- (c) the partner of a pregnant woman who is 18 years of age or older,

the individual is to be treated, on and after that day, as if they are entitled under regulation 6(1) by virtue of being an individual described in regulation 7A(1)(a) as it has been inserted into the principal Regulations by these Regulations.

(4) Where, immediately before the appointed day, an individual is—

- (a) entitled to benefit under regulation 6(1) of the principal Regulations by virtue of being an individual described in regulation 7A, and
- (b) either—
 - (i) under 18 years of age,
 - (ii) a dependant (within the meaning of regulation 5) who is 18 or 19 years of age,
 - (iii) the partner of a pregnant woman who is under 18 years of age, or
 - (iv) the partner of a pregnant woman who is a dependant (within the meaning of regulation 5) and is 18 or 19 years of age,

the individual is to be treated, on and after that day, as if they are entitled under regulation 6(1) by virtue of being an individual described in regulation 7A(1)(b) as it has been inserted into the principal Regulations by these Regulations.

(5) Where paragraph (4) applies, paragraph (3) does not apply.

(6) Where, immediately before the appointed day, a child—

- (a) who is entitled to benefit under regulation 6(1) of the principal Regulations by virtue of being an individual described in regulation 8(1)(a), and
- (b) for whom another individual is responsible, and that individual is, or is the partner of another individual who is, in receipt of a kind of assistance mentioned in regulation 10, including an individual who has been awarded a kind of assistance but has not yet received payment,

the child is to be treated, on and after that day, as if they are entitled under regulation 6(1) by virtue of being an individual described in regulation 8(1)(a) as it has been amended by these Regulations.

(7) Where, immediately before the appointed day, a child—

- (a) who is entitled to benefit under regulation 6(1) of the principal Regulations by virtue of being an individual described in regulation 8(1)(a) and 8(1)(b), and
- (b) for whom another individual is responsible and that individual, or their partner, is—
 - (i) under 18 years of age, or
 - (ii) a dependant (within the meaning of regulation 5) who is 18 or 19 years of age,

the child is to be treated, on and after that day, as if they are entitled under regulation 6(1) by virtue of being an individual described in regulation 8(1)(b) as it has been amended by these Regulations.

SHIRLEY-ANNE SOMERVILLE
A member of the Scottish Government

St Andrew's House,
Edinburgh
5th December 2023

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 (“the principal Regulations”) which make provision for a scheme to provide payments for the benefit of pregnant women, mothers and children.

Regulation 2(2)(b) adds a definition of “state pension credit” to regulation 2 of the principal Regulations and regulation 2(10)(c)(i) omits the definition from regulation 10(3) of the principal Regulations.

Regulation 2(3) corrects minor drafting errors in regulation 5 of the principal Regulations and adds a definition of “child benefit” for the purposes of that regulation.

Regulation 2(4)(c) inserts a new regulation 6(4) into the principal Regulations. Regulation 6(4) makes provision for an individual’s entitlement to benefit where the individual is entitled by virtue of a kind of assistance mentioned in regulation 10(1)(a) to (g) of the principal Regulations, and entitlement to that assistance ends.

Regulation 2(5) amends regulation 7 of the principal Regulations, to provide that a pregnant woman, who is an 18 or 19 year old dependant (within the meaning of regulation 5 of the principal Regulations), is entitled to benefit provided they meet the residence requirement in regulation 9.

Regulation 2(6) substitutes a new regulation 7A into the principal Regulations. Regulation 7A makes provision for entitlement to benefit for the partner of a pregnant woman. The individual is only entitled if the payment is to be used for the benefit of the pregnant woman.

Regulation 2(7) inserts a new regulation 7B into the principal Regulations. Regulation 7B makes provision for entitlement to benefit for the individual responsible, or their partner, of a pregnant woman who is entitled to benefit by virtue of regulation 7 of the principal Regulations, provided the payment is to be used for the benefit of the pregnant woman. Consequential amendments in connection with regulation 2(7) are made in paragraphs (3), (4)(a), (4)(b), (11)(d) and (14)(a)(i) of regulation 2.

Regulation 2(8) amends regulation 8 of the principal Regulations to make provision for entitlement of children under 3, where the individual responsible for the child is either a dependant who is 18 or 19 years of age, or was entitled to benefit as either a pregnant woman or the partner of a pregnant woman and who was under 18 years old or a dependant at the time of the pregnancy.

Regulation 2(9)(a) amends regulation 9(1)(b) of the principal Regulations to provide that an individual who is a dependant must meet the residence requirement in regulation 9(2), where neither the individual nor their partner has been awarded a kind of assistance mentioned in regulation 10. Regulation 2(9)(b) makes consequential amendment to regulation 9(2)(aa) of the principal Regulations following the revocation of the Immigration (European Economic Area) Regulations 2016.

Regulation 2(10)(a) amends regulation 10 of the principal Regulations to remove the income thresholds that applied to certain forms of assistance and to add working tax credit as a form of assistance. Regulation 2(10)(c)(i) is a consequential amendment connected to regulation 2(10)(a). Regulation 2(10)(c)(ii) inserts definitions for income-based jobseeker’s allowance, income-related employment and support allowance and income support.

Regulation 2(10)(b) inserts new paragraphs (2A) and (2B) into regulation 10 of the principal Regulations. Paragraph (2A) provides that an individual is not to be regarded as having been awarded a kind of assistance where the award was made in error, or the sum awarded to the individual is £0. Paragraph (2B) provides that liabilities and sanctions are to be disregarded when determining the sum awarded.

Regulation 2(11)(b) substitutes a new regulation 11(1A) and inserts a new regulation 11(1B) into the principal Regulations to provide that where there is a competing claim to benefit between a pregnant woman and her partner and/or the person responsible for the pregnant woman (or their

partner), the pregnant woman is to receive the benefit. Regulation 2(11)(b) also inserts new paragraph (1C) into regulation 11 of the principal Regulations. Paragraph (1C) provides that, where two or more individuals described in regulation 7A or 7B apply to benefit in respect of the same pregnancy, the Scottish Ministers must decide which of the individuals is entitled by having regard to the circumstances of the pregnant woman, and stop any payment to the individual the Scottish Ministers decide is not entitled.

Regulation 2(11)(c) substitutes a new paragraph (2) and inserts a new paragraph (2A) into regulation 11 of the principal Regulations. Paragraphs (2) and (2A) provide that a child described in regulation 8 and who is under 4 months of age is entitled to benefit payable from the date of their birth where the individual responsible for them notifies the Scottish Ministers of their date of birth, and that individual was entitled to benefit by virtue of regulation 7, 7A or 7B, before the child's birth.

Regulation 2(11)(e) substitutes a new regulation 11(4) into the principal Regulations, to provide that the individual responsible for a child described in regulation 8, or their partner, may act on behalf of the child for the purpose of the principal Regulations.

Regulation 2(11)(f) inserts new paragraphs (5) and (6) into regulation 11 of the principal Regulations. Paragraph (5) provides that where the Scottish Ministers consider it appropriate, they may give the benefit to another individual to be used for the benefit of the beneficiary. Paragraph (6) provides that where the Scottish Ministers consider it no longer appropriate, for any reason, they may stop giving the benefit to that person.

Regulation 2(12) substitutes a new regulation 12 into the principal Regulations to provide which persons are under the duty to report a change of circumstances in accordance with regulation 12(1).

Regulation 2(13) amends regulation 12A of the principal Regulations to expand the Scottish Ministers' power to appoint a person to act on behalf of an individual, in certain circumstances, in accordance with regulation 12A(1), to include where the individual described in regulation 12A(1) is an individual under 16 years old. This power does not prevent an individual under 16 years of age from acting on their behalf.

Regulation 2(14)(a) and (b) make technical amendments to regulation 13 of the principal Regulations to provide the value of the benefit to which an individual is entitled. Regulation 2(14)(c) substitutes a new paragraph (3) to provide the rate of entitlement for a child entitled by virtue of regulation 8(1)(b) of the principal Regulations.

Regulation 2(15) amends regulation 14 of the principal Regulations to provide an exception to the rule that the credit mentioned in regulation 13 is to be given in the form of a payment card.

Regulation 2(16) inserts Part 6A (procedural matters) into the principal Regulations, which comprises regulations 18A and 18B. Regulation 18A provides when an application is to be treated as made by the Scottish Ministers. Regulation 18B imposes a duty on the Scottish Ministers to make a decision, without having received an application, in the circumstances in which they establish that a backdated award of assistance of the kind specified in regulation 5(2)(a) and regulation 10 is made. Regulation 2(11)(a) of these Regulations is a consequential amendment connected to regulation 16.

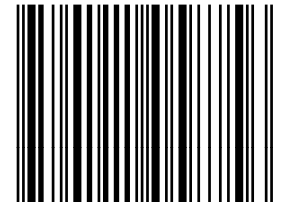
Regulation 3 makes transitional provision in respect of applications that were made before these Regulations come into force, but have not been decided by the Scottish Ministers.

Regulation 4 makes transitional provision in respect of the treatment of individuals who are entitled to benefit in respect of an application made before these Regulations come into force.

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