
SCOTTISH STATUTORY INSTRUMENTS

2023 No. 371

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

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”,
 - (b) after the definition of “child tax credit” insert—
““state pension credit” means state pension credit under the State Pension Credit Act 2002(1).”.
- (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(2).”.
- (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,

(1) 2002 c. 16.

(2) 1992 c. 4. Section 141 was amended by section 1(1) of the Child Benefit Act 2005 (c. 6).

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

(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(3) 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—
 - ““income-based jobseeker’s allowance” means income-based jobseeker’s allowance within the meaning of the Jobseekers Act 1995(4),
 - “income-related employment and support allowance” means income-related employment and support allowance payable under Part 1 of the Welfare Reform Act 2007(5),
 - “income support” means income support payable under Part 7 of the Social Security Contributions and Benefits Act 1992(6).”.
- (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.

(4) 1995 c. 18.

(5) 2007 c. 5.

(6) 1992 c. 4.

- (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—
 - (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(7).”,
 - (h) after paragraph (12) insert—
 - “(12A) A person appointed by the Scottish Ministers under and in accordance with section 85A(8) 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—

“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—

(7) 2011 asp 1.

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

“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.”.