

HEALTH AND SOCIAL CARE (COMMUNITY HEALTH AND STANDARDS) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 - Miscellaneous

Welfare Food Scheme

Section 185: Replacement of the Welfare Food Schemes

428. The Welfare Food Scheme was established in 1940 to protect the health of mothers and children at a time of food shortages and price rises. The scheme currently provides tokens for milk (in both liquid and dried form) and vitamins to expectant mothers and children up to the age of 5. It also provides non means-tested milk to children up to age 5 in nurseries and day care and to a very few disabled children.
429. The consultation document, *'Healthy Start: proposals for reform of the Welfare Food Scheme'*¹, outlined the government's intention to set up a new scheme or schemes in 2004 with the aims of ensuring that children in low income families have access to a healthy diet and giving increased support for breastfeeding. *'Healthy Start, The Results of the Consultation Exercise'*¹ summarised responses to that consultation.
430. *Section 185* replaces section 13 of the Social Security Act 1988 ("the 1988 Act"), which provided powers for a scheme or a number of schemes to be set up to distribute welfare food. The new *section 13* provides powers for regulations to establish a new scheme or schemes, to help certain pregnant women, mothers and children to have access to and incorporate in their diets, food of a prescribed description.
431. It is intended that the nutritional basis of the existing scheme will be extended under the first new scheme to include a broader range of foods in addition to milk and infant formula. It is likely that the only additional foods in the first instance will be fruit and vegetables, and that their role in the scheme will be evaluated before the range of foods is modified further. The aim is to use a voucher bearing a fixed value to enable beneficiaries to access these foods. It is also intended that the new scheme should be integrated with, and consistent with, the NHS and health policies so that beneficiaries can receive appropriate advice on nutrition to complement the prescribed food benefit.
432. *Subsection (1)* supplies powers for regulations to establish one or more schemes to provide benefits for specified categories of pregnant women, mothers and children to have access to food of a prescribed description. The first set of regulations will be subject to the affirmative resolution procedure. Thereafter, regulations will be subject to negative procedure. It is intended that the new scheme, like the existing scheme, will continue to be targeted primarily at low income families in receipt of specified benefits

¹ For copies of these documents contact postal address: PO Box 777, London SE1 6XH. Website address: www.doh.gov.uk/healthystart

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such as Income Support, Income Based Jobseekers Allowance and Tax Credits, and that the nursery element of the scheme will remain non means-tested.

433. *Subsection (2)* obliges the Secretary of State to consult the Assembly and Scottish Ministers on the establishment or variation of a scheme. The scheme in Northern Ireland will be governed by separate legislation (See *section 186*).
434. *Subsection (3)* makes it clear that a scheme may impose requirements that must be met before pregnant women, mothers and children can become entitled to benefits under the scheme or remain entitled to continuing benefits.
435. The current section 13 of the 1988 Act enables regulations to provide for the distribution or disposal of welfare food. *Subsection (4)(a)* of the new *section 13* specifies on the face of the Act the categories of providers who may supply food under the scheme. This could include food suppliers, providers of day care, and health service bodies. It is intended that retailers will supply the majority of foods in exchange for a voucher as they do presently with the current milk token and that nursery or day care institutions will provide the non-means-tested element of the scheme. Other suppliers, such as food co-operatives or voluntary and community organisations will also be encouraged to participate. As set out in the consultation document, 'Healthy Start', the government intends to shift the supply of dried milk (infant formula) to retail outlets and to end distribution via NHS clinics in order to remove a potential barrier to the promotion of breastfeeding. It is not intended that a provider be required to provide the full range of foods available under the scheme in order to participate. This means, for example, that milk deliverers could participate and provide only milk, greengrocers or farmers' markets could participate and provide only fruit and vegetables, and pharmacies could participate and provide only infant formula.
436. *Subsection (4)(b)* makes it clear that a scheme may provide for beneficiaries to gain access to the prescribed food benefit by means of a voucher or other arrangement. The existing scheme is based primarily upon the use of tokens that are exchangeable for specified quantities of liquid or formula milk. As it is the intention to provide a wider range of foods under a new scheme or schemes, different mechanisms for enabling access to the foods may be required. These may include, for example, a system based on vouchers of a fixed value which will enable parents or beneficiaries to obtain food of a prescribed description from a wide variety of retailers.
437. *Paragraphs (d) and (e) of subsection (4)* provide powers for the recompense of registered providers and the payment of beneficiaries, for example, those who fail to receive the benefit for whatever reason. These provisions, amongst other things, replace respectively subsections (4)(c) and (3)(b) of the current section 13.
438. *Paragraphs (f) and (g) of subsection (4)* make it clear that a scheme may provide for the Secretary of State to arrange for the operation of all or part of a scheme, to be delegated to health service or other bodies described in the scheme. The Department of Health, for example, may wish to contract-out elements of the scheme which relate to the distribution of vouchers to beneficiaries and reimbursement of suppliers.
439. *Subsections (4)(h) and (5)* largely replace and update subsections (4)(d) and (5) of the current section 13 and make it clear that a scheme may provide for prescribed persons to be required to supply information to assist in the administration of the scheme. For instance, suppliers may be required to provide information to verify that vouchers have been properly exchanged in accordance with the provisions of the scheme. *Subsection (5)(a)* provides for a requirement that information be provided in legible form. Such a provision could, for example, ensure that computerised records are made available in printed form.
440. *Subsection (6)* provides a new power for the Assembly to prescribe the range of foods to be available under a scheme in relation to the operation of the scheme in Wales. Although the existing scheme is primarily based upon social security benefits, and is

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therefore reserved, it is recognised that the potential range of foods links closely to the devolved health policies of the Assembly. This power has therefore been transferred to the Assembly, with agreement that the scheme will be uniform across Great Britain at the outset.

441. Powers to prescribe the range of foods will be transferred to Scottish Ministers by means of an order under section 63 of the Scotland Act 1998.
442. *Subsection (7)* provides power for the Secretary of State to give directions to bodies, such as a health body or contracted service provider, in relation to the operation of the scheme. *Subsection (8)* provides a power for the Assembly to direct bodies administering the scheme in relation to matters relating to the operation of the scheme (or that part of the scheme) in Wales. The subsection also requires the Assembly to gain the prior agreement of the Secretary of State to ensure that any proposed changes will not adversely affect the operation of the scheme throughout Great Britain, beyond the boundaries of devolved responsibilities. This qualified power will also be transferred to Scottish Ministers by section 63 Order. Section 63 of the [Scotland Act 1998 \(c.46\)](#) enables Her Majesty, by Order in Council, to provide for the transfer to the Scottish Ministers of functions of a Minister of the Crown which are exercisable in or as regards Scotland. The Order will be subject to the affirmative procedure in both the Westminster Parliament and the Scottish Parliament.
443. *Subsection (9)* replaces and updates the current power in section 13(4)(e) of the 1988 Act relating to the prosecution of some offences.
444. *Subsection (11)* contains, among other definitions, a definition of “enactment” which takes account of changes made by the Scotland Act 1988 to the Interpretation Act 1978. It also contains a definition of “women” that includes persons under the age of 18.
445. The amendment in *subsection (2)* of the Section to section 15A of the 1988 Act ensures that the Assembly’s procedures regarding subordinate legislation are reflected in the primary legislation.

Section 186: Replacement of the Welfare Food Schemes: Northern Ireland

446. [Section 186](#) will enable Northern Ireland to replicate the provisions in [Section 185](#) of the Act by way of Order in Council subject to negative resolution procedure. This will ensure that women and children in Northern Ireland have the same access to the reformed welfare food scheme as women and children in England, Scotland and Wales. Currently women and children in Northern Ireland, under the separate Northern Ireland Welfare Food Scheme, have access to the same benefits as those in the rest of the UK. This has been the position since the Scheme’s inception in 1940 and we would wish to maintain this position.
447. During suspension of the Northern Ireland Assembly, Northern Ireland legislation may be made by Order in Council under the Northern Ireland Act 2000. Such Orders are normally subject to the affirmative resolution procedure. However, if there is a requirement for immediate parity in legislative provisions between Northern Ireland and Great Britain, the Northern Ireland Act 2000 provides for Orders to be made subject to the negative resolution procedure. This is permitted only if the provisions of the Order will correspond in their purpose to the relevant provisions of the GB Act.