

EXPLANATORY MEMORANDUM TO
THE HEALTHY START SCHEME AND WELFARE FOOD (MISCELLANEOUS
AMENDMENTS) REGULATIONS 2020

2020 No. 267

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes amendments to provide for the digitisation of the Healthy Start scheme. Digitisation will change the way people apply for, receive and use Healthy Start benefits, but it will not change the groups of people who are eligible for the scheme. The instrument also expands the definition of 'Healthy Start food' to include pulses and canned fruit and vegetables.
- 2.2 This instrument also makes consequential amendments to the Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005 (S.I. 2005/3262) ("the 2005 Regulations") and to relevant Scotland Act 1998 Agency Arrangements and Transfer of Functions orders. These amendments are necessary following the commencement of section 27 of the Scotland Act 2016 on 8th February 2019. Section 27 of the Scotland Act 2016 devolves powers over functions in relation to welfare food schemes to the Scottish Ministers.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument contains a discretionary power for the Secretary of State to increase or decrease the value of Healthy Start vouchers. Healthy Start vouchers are used by beneficiaries to purchase Healthy Start food. The current value of a single Healthy Start voucher is £3.10 per week. The amendments provide that the Secretary of State cannot use this power to decrease voucher value below £3.10, which will be a statutory minimum. Regulations are required to decrease the voucher value below £3.10.
- 3.2 In determining whether to exercise this power, the Secretary of State must have regard to the cost of purchasing Healthy Start food, any matters relating to the supply of Healthy Start food and any other relevant factors.
- 3.3 The purpose of this power is to enable the Secretary of State to respond quickly to food inflation or to particular circumstances which may affect families receiving Healthy Start benefits by increasing or decreasing the value of the Healthy Start food voucher, although not below £3.10. Any increase or decrease to the voucher or credit value will not impact upon any vouchers or credit which have already been issued to beneficiaries. The revised voucher or credit value will be published in advance on the Healthy Start website at www.nhsbsa.nhs.uk and the value of the revised voucher or

credit, along with the date the revision will take effect, will be communicated to beneficiaries in advance of the revision taking effect.

- 3.4 This instrument also corrects a typographical error in regulation 8A(6) of the 2005 Regulations. This is a correction to an incorrect cross-reference which does not change the effect of the provision. The Department of Health and Social Care has consulted with the Statutory Instrument Registrar and it has been agreed not to provide free replacement copies of the 2005 Regulations or issue a correction slip. It is considered that it would not be proportionate to do so given that regulation 8A(6) has been in force in its current form since 2006.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is to England and Wales, except for regulations 25 to 28 (which make consequential amendments to certain Scotland Act 1998 Orders) which extend to the United Kingdom.
- 4.2 The territorial application of this instrument is to England and Wales, except:-
- Regulations 17, 29 and 30 apply to England only; and
 - Regulations 25 to 28 apply to the United Kingdom.
- 4.3 The Department of Health in Northern Ireland will be producing its own legislation for Northern Ireland.
- 4.4 Since 8th February 2019, Scottish Ministers have legislative competence in respect of the subject matter of section 13 of the Social Security Act 1988 (benefits under schemes for improving nutrition: pregnant women, mothers and children) in relation to Scotland. Scottish Ministers have produced their own legislation for Scotland.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This instrument primarily amends the 2005 Regulations and the Welfare Food Regulations 1996 (S.I. 1996/1434) (“the 1996 Regulations”).
- 6.2 The 2005 Regulations provide entitlement to Healthy Start benefits for pregnant women, mothers of children under the age of one and children under the age of four, who are entitled to a “qualifying” income related benefit, or where certain members of their household are so entitled. They also provide entitlement to Healthy Start benefits for all pregnant women under the age of 18 provided they are not excluded from benefits under the Immigration and Asylum Act 1999. Healthy Start benefits are currently provided in the form of paper vouchers which may be exchanged for prescribed foods and Healthy Start Vitamins. Retailers (referred to in the 2005 Regulations as ‘food outlets’) who wish to supply Healthy Start food in exchange for a voucher and to receive reimbursement from the Secretary of State in respect of the vouchers spent in their stores are required to register with the Healthy Start scheme.

- 6.3 This instrument amends the 2005 Regulations to provide for the digitisation of the Healthy Start scheme. Digitisation will change the way people apply for, receive and use Healthy Start benefits, but it will not change the groups of people who are eligible for the scheme. This instrument provides for the gradual replacement of paper vouchers with vouchers in electronic form or in the form of pre-payment cards. It also expands the definition of ‘Healthy Start food’ set out in the 2005 Regulations to include pulses and canned fruit and vegetables (this amendment will only apply in relation to England as Welsh Ministers have a power in section 13(6) of the Social Security Act 1988 to prescribe descriptions of food in relation to Wales). This instrument also introduces a discretionary power for the Secretary of State to increase or decrease the value of Healthy Start vouchers, subject to the statutory minimum, as referred to in paragraph 3 above. An amendment unrelated to the digitisation of the Healthy Start scheme has also been made to paragraph 1(d) of Schedule 2 to cite a further reference to a family member in regulation 3(3)(c) which was inadvertently omitted in S.I. 2019/909.
- 6.4 As part of the digitisation of the Healthy Start scheme, a certificate confirming pregnancy for the purpose of obtaining welfare foods will no longer be required from Healthy Start applicants. This instrument therefore makes consequential amendments to relevant NHS General Medical Services and NHS Personal Medical Services contracts to remove references to such certificates.
- 6.5 Additionally, consequential amendments to the 2005 Regulations have been made following the commencement of section 27 of the Scotland Act 2016 and the introduction of the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019. This includes the omission of references to Scotland in the 2005 Regulations, for example in the definition of ‘Healthy Start food’. Similarly, this instrument will include provision so that those in receipt of benefit under the Welfare Food (Best Start Foods) (Scotland) Regulations 2019 will also not be entitled to benefit under the Healthy Start scheme. It further provides that persons will not be entitled to Healthy Start benefit unless specified persons are ordinarily resident in England or Wales, to reflect the fact that persons in Scotland are no longer eligible to apply for or receive Healthy Start benefit. It is not intended that specific evidence confirming ordinary residence will be required to be provided by applicants (instead, where entitlement to Healthy Start is linked with a qualifying benefit and/or tax credit, checks will be made with the Department for Work and Pensions (DWP) and Her Majesty’s Revenue and Customs (HMRC)). If there are any doubts as to whether a person is ordinarily resident in England or Wales, information may be requested by the Secretary of State from that person under the new regulation 9A of the 2005 Regulations.
- 6.6 The introduction of a digital scheme will take place on a gradual basis following the coming into force of this instrument. In light of this, transitional provisions are required to ensure that the regulations which applied immediately before the coming into force of this instrument continue to apply where a paper voucher has been issued to a beneficiary or where a food outlet seeks reimbursement in respect of a paper voucher from the Secretary of State. Transitional provisions will also apply where a beneficiary has failed to receive a benefit as a result of failure to receive a voucher prior to the coming into force of this instrument, or where a beneficiary failed to receive the benefit of a paper voucher or where a food outlet accepted a paper voucher from a beneficiary but failed to provide Healthy Start food to that beneficiary. The transitional provisions will ensure that beneficiaries and food outlets will not be

disadvantaged by any changes made in this instrument and help to ensure a smooth transition to the digitised scheme.

- 6.7 The 1996 Regulations provide for a scheme which allows for the reimbursement of approved childcare providers of the cost of one-third of a pint of cow's milk (or an equivalent amount of infant formula for children under the age of one) provided to children under the age of five years where they are looked after, or provided with day care, for two hours or more in a day.
- 6.8 This instrument amends the 1996 Regulations to amend the administrative functions that may be carried out by the NHS Business Services Authority (NHSBSA) on behalf of the Secretary of State in relation to this scheme to enable the NHSBSA to, if requested by the Secretary of State, carry out administrative functions relating to the approval of suppliers of nursery milk or to administer the Nursery Milk Scheme. At present the NHSBSA plays a relatively limited role in the administration of the Nursery Milk Scheme, which is primarily performed by an external contractor. These amendments allow for the possibility that the NHSBSA may play a greater administrative role in the future. It also clarifies that only dried milk can be provided to children under the age of one and amends the definition of 'dried milk' to enable reimbursement under the Nursery Milk Scheme for a greater variety of suitable infant formulae, rather than limiting reimbursement to particular brands. These amendments do not change the policy in respect of provision for children under the age of one. The 1996 Regulations did not work correctly in that they allowed for the provision of liquid cow's milk for children under the age of one, but then also restricted provision to dried milk only. These amendments make it clear that only dried milk provided to children under the age of one is eligible for reimbursement. For nearly forty years it has been the policy that children under the age of one should be fed with a suitable infant formula rather than cow's milk. The 1996 Regulations sought to define infant formula by setting out suitable infant formula with reference to the manufacturer's name and the name of the formula in question. However, with the passage of time, some manufacturers have ceased to trade, others have entered the market, and names of formulae have changed. This substitution of brand names with a generic definition does not change the policy, but it will ensure that suitable infant formulae always fall within the definition in the regulations.
- 6.9 Part 3, regulations 25 to 28 of this instrument makes consequential amendments to Scottish agency arrangements and transfer of functions orders. These orders make provision for certain functions relating to welfare foods to be transferred to Scottish Ministers in relation to welfare foods. As the welfare food functions contained in the 2005 Regulations and the 1996 Regulations are now exercisable by Scottish Ministers, these provisions are redundant.

7. Policy background

What is being done and why?

- 7.1 Healthy Start is a statutory benefit which aims to provide additional support to improve the diets of lower income pregnant women, mothers with children under the age of one and children under the age of four to give them the best start in life. Eligible pregnant women, mothers and children currently receive paper vouchers, worth £3.10 per week. The Healthy Start vouchers issued to qualifying beneficiaries can be exchanged with registered retailers for fresh or frozen fruit and vegetables, plain cow's milk and infant formula, and for Healthy Start Vitamins. The voucher for

Healthy Start Vitamins can be exchanged locally for free supplies of vitamins, available through such outlets as are commissioned locally, but which typically include ante-natal clinics, child health clinics and community pharmacies.

- 7.2 The 2005 Regulations provide entitlement to Healthy Start benefits for pregnant women, mothers of children under the age of one and children under the age of four, who are entitled to a “qualifying” income related benefit, or where certain members of their household are so entitled. The qualifying benefits are:
- Income Support
 - Income-based Jobseeker’s Allowance
 - Income-related Employment and Support Allowance
 - Child Tax Credit (with an annual family income of £16,190 or less)
 - Universal Credit (with a family take-home pay of less than £408 per month)
 - Pension Credit

They also provide entitlement to Healthy Start benefits for all pregnant women under the age of 18, regardless of whether they receive any of the qualifying benefits. Following the birth of their baby, women aged under 18 must meet the benefit criteria to continue receiving Healthy Start benefits.

- 7.3 The Department of Health and Social Care is working with the NHS Business Services Authority to digitise the Healthy Start scheme. Digitisation is intended to make it more straightforward for families to apply for, receive and use Healthy Start benefits, but it will not change the groups of people who are eligible for the scheme. The paper Healthy Start application form will be replaced by an online application, with a telephone alternative for people needing assisted digital support, and the paper vouchers will be gradually replaced by vouchers in an electronic form or in the form of a pre-payment card. The digitised service will initially be introduced for new Healthy Start beneficiaries, with existing beneficiaries then being invited to transition across from the paper-based to the digitised service.

- 7.4 The introduction of the online application form will remove the requirement for the application to be countersigned by a healthcare professional. The healthcare professional signature was identified in research carried out by the Department of Health and Social Care as a barrier to applying for the Healthy Start scheme. Healthcare professionals will be encouraged to continue to discuss Healthy Start with pregnant women and families as part of wider conversations about nutrition and infant feeding and to support them to apply for the scheme. An individual applicant’s eligibility for Healthy Start, linked to the receipt of qualifying benefits and/or tax credits, will be checked with DWP and HMRC.

- 7.5 The introduction of vouchers in an electronic form or in the form of a pre-payment card means that retailers will no longer be required to collect and return paper healthy Start vouchers for reimbursement. They will also no longer be required to register to accept vouchers, meaning that beneficiaries will be able to spend their Healthy Start benefit in any retail outlet which sells Healthy Start food. This will offer more flexibility for beneficiaries, for example by being able to spend their Healthy Start benefit in a wider range of retail outlets and in amounts which are smaller than the value of an individual voucher. It will also remove the stigma reported by beneficiaries when spending paper vouchers. The policy intention is to gradually introduce pre-payment cards to replace paper vouchers after the coming into force of

this instrument and, in due course, to continue to consider other suitable electronic payment methods in line with changes in technology and practice in the retail sector.

- 7.6 This instrument also refers to ‘credit’. Credit is only relevant in respect of pre-payment cards or other electronic payment methods, which will gradually replace paper Healthy Start vouchers. Unlike paper vouchers, a beneficiary will not receive a new pre-payment card each week, instead the beneficiary’s pre-payment card will be credited with the current voucher (or credit) value for each week that the beneficiary is entitled to Healthy Start benefit.
- 7.7 In addition, following the removal of retailer registration, retailers will no longer be required to complete basket checks to ensure that beneficiaries only spend Healthy Start vouchers on Healthy Start food. This means that beneficiaries will be solely responsible for ensuring their Healthy Start voucher is spent on Healthy Start food. The current regulations stipulate that vouchers may be used in exchange for Healthy Start food. As the definition of ‘voucher’ will include pre-payment cards, which will not be ‘exchanged’ for Healthy Start food (instead credit on the pre-payment card may be used to purchase Healthy Start food), references to ‘exchange’ have been substituted in this instrument with the words ‘used to purchase’. The use of a voucher, except in accordance with the Regulations, is an existing offence under regulation 22(2) of the 1996 Regulations (which refers to regulation 9(4) of the 2005 Regulations). The purpose of the Healthy Start voucher will be clearly communicated to beneficiaries and options are being considered to provide further protection against fraud, for example by considering any information the card supplier is able to provide.
- 7.8 The instrument enables the Secretary of State to require a person to take reasonable steps to provide such information or evidence as may be reasonably needed in connection with the administration of the Healthy Start scheme. Where a person fails to provide the information or evidence requested, the Secretary of State may suspend the provision of Healthy Start vouchers or credit until such information is provided or the Secretary of State is otherwise satisfied of the person’s entitlement to benefit and/or compliance with requirements relating to the use of the voucher. Where the issue of vouchers or credit has been suspended for a period of 16 consecutive weeks, the person ceases to be entitled to Healthy Start benefit.
- 7.9 The instrument also includes a provision for circumstances where a Healthy Start voucher or credit has not been used for a period of 16 consecutive weeks. In such circumstances the Secretary of State may cancel the voucher or credit and the beneficiary will cease to be entitled to the benefit. The beneficiary will be notified of the cancellation of the voucher in such circumstances.
- 7.10 In cases where a voucher has been lost, stolen or accidentally destroyed, or the beneficiary is unable to use the voucher for its intended purpose, the beneficiary must notify the Secretary of State. For paper vouchers, the 2005 Regulations require this notification to be given before the expiry of the period of validity of the voucher. For electronic vouchers or credit, this notification must be given within 16 weeks of the receipt of the voucher or credit where the voucher has been lost, stolen or accidentally destroyed. This aligns with the new requirement in regulation 9 that a voucher must be used within 16 weeks or the voucher will be cancelled. It also ensures that beneficiaries will not lose out where, for example, they lose a voucher which contains several weeks’ worth of credit. Beneficiaries will not however be entitled to reimbursement of any credit spent prior to making the notification to the Secretary of State. Where a beneficiary claims that they are unable to use the voucher for its

intended purpose, for example where they are unable to use the voucher to purchase Healthy Start food within a reasonable distance of their home, notification must be given within eight weeks of receipt of the voucher or credit. Following such notifications, the Secretary of State may, if it is considered appropriate, issue the beneficiary a voucher or credit or pay the beneficiary a sum equal to the value of the voucher or credit.

- 7.11 The beneficiary will receive a Healthy Start voucher or credit every four weeks and will be made aware of the date the next voucher or credit is due to be received by e-mail or text message.
- 7.12 The instrument also includes a new provision for the Secretary of State to be able to increase or decrease the value of the Healthy Start voucher or credit. However, an important caveat to this power is that the value may not be decreased below the current value of £3.10 per pregnant woman, mother with a child under the age of one or child under the age of four, which is a statutory minimum. Further regulations would be needed to make such a change. The revised voucher or credit value will be published in advance on the Healthy Start website at www.nhsbsa.nhs.uk and the value of the revised voucher or credit, along with the date the revision will take effect, will be communicated to beneficiaries in advance of the revision taking effect by text message or e-mail. Beneficiaries will also be able to check their Healthy Start account online, at an ATM or via a telephone helpline to see the total value of credit available to them. The purpose of this power is to enable the Secretary of State to respond quickly to food inflation or to particular circumstances which may affect families receiving Healthy Start benefits by adjusting the voucher value accordingly. The Department of Health and Social Care has no current plans to change the value of the Healthy Start voucher.
- 7.13 ‘Healthy Start food’ currently includes fresh and frozen fruit and vegetables, cow’s milk and infant formula suitable for use from birth. The instrument expands the definition of ‘Healthy Start food’ in Schedule 3 to the 2005 Regulations to include pulses and canned fruit and vegetables, but not those to which fat, salt, sugar or flavouring have been added. Research carried out by the Department of Health and Social Care with Healthy Start beneficiaries has identified that some beneficiaries find it easier to store and prepare canned fruit and vegetables than fresh and frozen ones. Canned fruit and vegetables can also provide good value for money and compare favourably in nutritional terms with fresh and frozen fruit and vegetables, therefore meeting the policy aims of the Healthy Start scheme. The change to the definition of ‘Healthy Start food’ will come into force later than the other provisions in this instrument, on 1 October 2020, to allow retailers the necessary time to prepare for the changes.
- 7.14 Government nutritional advice has, for some considerable time, noted that children under the age of one should not consume cow’s milk and that infant formula should be used instead of cow’s milk. The 1996 Regulations therefore defined the “dried milk” for which reimbursement can be claimed under the Nursery Milk Scheme to refer only to infant formula. They did not however work correctly in that they allowed for the provision of liquid cow’s milk for children under the age of one, but then also restricted provision to dried milk only. These amendments make it clear that only dried milk provided to children under the age of one is eligible for reimbursement. Schedule 3 of the 1996 Regulations provided a list of named brands of infant formula for which reimbursement could be claimed. This instrument

removes Schedule 3 and instead provides a generic definition of infant formula made from cow's milk which is suitable from birth. This amendment does not change any aspect of policy or eligibility and does not make any changes to the type of formula which can be reimbursed. However, it does mean that there will not be a need to replace named formulae with other named formulae, when companies either enter or leave the infant formula market, or when they change the name (but not the composition) of their products. It will ensure that suitable infant formulae always fall within the definition in the regulations.

- 7.15 The instrument also amends the 1996 Regulations to amend the administrative functions that may be carried out by the NHS Business Services Authority on behalf of the Secretary of State in relation to the Nursery Milk Scheme. At present the NHSBSA plays a relatively limited role in the administration of the Nursery Milk Scheme, which is primarily performed by an external contractor. These amendments allow for the possibility that the NHSBSA may play a greater administrative role in the future.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 No timetable has been set for consolidation of the Principal Regulations.

10. Consultation outcome

- 10.1 Government digital projects are taken forward in three stages – discovery, alpha and beta. The Healthy Start digitisation programme entered its beta phase in November 2018. The beta has involved extensive research with Healthy Start beneficiaries and pregnant women and families eligible for, but not claiming, Healthy Start benefits in locations across England, Wales and Northern Ireland. This included a survey of 2710 Healthy Start beneficiaries, interviews with 62 individuals, a diary study with 11 beneficiaries and a “private beta” to test the changes with a small number of beneficiaries. Research with beneficiaries identified strong support for the Healthy Start scheme, areas for improvement to the online application, difficulties with using paper vouchers and areas where users needed additional support to access a digital scheme. The findings of the user research have all been taken into account in the design of the digitised service.
- 10.2 Research was also carried out with retailers and healthcare professionals, including surveys, interviews with midwives and health visitors, a retailer engagement day attended by major retailers, discussions with the Association of Convenience Stores and visits to major retailers, convenience stores and market traders. This research has also informed the design of the digitised service.
- 10.3 There is a statutory duty to consult the Welsh Ministers before making any variations to the Principal Regulations. They are content with the proposed amendments.
- 10.4 The Department of Health in Northern Ireland were sent the instrument for information only as the Healthy Start scheme is fully devolved in Northern Ireland.

10.5 The Scottish Government were also sent the instrument for information only as the subject matter of section 13 of the Social Security Act 1988 is fully devolved to Scotland.

11. Guidance

11.1 The Healthy Start website (www.healthystart.nhs.uk and www.nhsbsa.nhs.uk) will be updated during March 2020 to explain the changes. The NHS Business Services Authority will also communicate directly with the Healthy Start beneficiaries affected, as part of the transitional arrangements for the introduction of the digitised service.

12. Impact

12.1 The impact on business, charities or voluntary bodies is limited to the impact on retailers created by the change from paper vouchers to pre-payment cards. This is expected to create a low level of impact on retailers during the first year, due to the need for retailers to train staff about the changes and prepare to accept pre-payment card payments, followed by cost savings in subsequent years created by no longer needing to collect paper Healthy Start vouchers and return them to the Department of Health and Social Care for reimbursement.

12.2 There is no significant impact on the public sector. The transition from the current Healthy Start service to the digitised service will be funded from the Department of Health and Social Care's existing budget for the Healthy Start scheme. The changes will mean that Healthy Start application forms will no longer be required to be countersigned by a healthcare professional, usually a health visitor or midwife.

12.3 An Impact Assessment has not been prepared for this instrument due to the low level of impact per business.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is that small businesses will no longer be required to register to accept Healthy Start vouchers, or to return vouchers for reimbursement.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is for the Department of Health and Social Care to receive regular management information from its contractors and the NHS Business Services Authority on the operation of the Healthy Start scheme.

14.2 The regulation does not include a statutory review clause.

15. Contact

15.1 Rebecca Sidwell at the Department of Health and Social Care Telephone: 0113 254 6710 or email: rebecca.sidwell@dhsc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Dorian Kennedy, Deputy Director for Children, Families and Communities at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jo Churchill, Parliamentary Under Secretary of State for Prevention, Public Health and Primary Care at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.