

2019 No. 193

FOOD

**The Welfare Foods (Best Start Foods) (Scotland) Regulations
2019**

Made - - - - - *30th May 2019*

Laid before the Scottish Parliament *31st May 2019*

Coming into force in accordance with regulation 1(2)

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 13 of the Social Security Act 1988(a) and 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 National Assembly for Wales.

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019.

(2) These Regulations come into force on 12 August 2019, except regulation 21 and schedule 2 which come into force on 31 March 2020.

(3) These Regulations extend to Scotland only.

PART 2

General interpretation

General interpretation

2. In these Regulations—

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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) was amended by paragraph 29(4) of schedule 3 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2).

“assessment period” is to be construed in accordance with regulation 21 of the Universal Credit Regulations 2013(a),

“beneficiary” means an individual entitled to benefit as described in regulation 7 or 8,

“Best Start Foods” means the types of food described in column 2 of the table in schedule 1,

“child” means a person under 16 years of age or a person who is a dependant within the meaning of regulation 5,

“child tax credit” means the tax credit provided for by section 1(1)(a) of the Tax Credits Act 2002(b),

“kinship carer” means an individual who cares for a child if—

- (a) the individual is a qualifying person in relation to the child within the meaning of section 72(2) of the Children and Young People (Scotland) Act 2014(c), and
- (b) the child is living with the individual (exclusively or predominantly) under the terms of—
 - (i) a kinship care order as defined in section 72(1) of the Children and Young People (Scotland) Act 2014, or
 - (ii) an agreement between the individual, the individual’s partner or both of them and—
 - (aa) a local authority in Scotland by which the child is looked after within the meaning of section 17(6) of the Children (Scotland) Act 1995(d),
 - (bb) a local authority in England or Wales by which the child is looked after within the meaning of section 105(4) of the Children Act 1989(e), or
 - (cc) an authority in Northern Ireland by which the child is looked after within the meaning of article 25(1) of the Children (Northern Ireland) Order 1995(f), and

“the 2005 Regulations” means the Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005(g),

“universal credit” means universal credit payable under Part 1 of the Welfare Reform Act 2012(h).

PART 3

Meaning of certain expressions concerning interpersonal relationships

Meaning of “partner”

3. For the purposes of these Regulations, an individual is regarded as the partner of another individual if those two individuals would be regarded as a couple for the purposes of Part 1 of the Welfare Reform Act 2012 (see section 39 of that Act(i)).

Meaning of being “responsible” for a child

4.—(1) An individual is to be regarded as responsible for a child only if at least one of subparagraphs (a) to (g) applies—

- (a) the child is a dependant of the individual,

(a) S.I. 2013/376, as amended by S.I. 2014/2887, S.I. 2015/1362 and S.I. 2018/65.

(b) 2002 c.21. Part 1 of the Tax Credits Act 2002 is repealed by schedule 14 of the Welfare Reform Act 2012, subject to the savings provided for by article 3 of S.I. 2019/167.

(c) 2014 asp 8.

(d) 1995 c.36. Section 17(6) was amended by paragraph 9(4) of schedule 2 of the Adoption and Children (Scotland) Act 2007 (asp 4), by paragraph 2(4) of schedule 5 of the Children’s Hearings (Scotland) Act 2011 and by S.S.I. 2013/211.

(e) 1989 c.41. Section 105(4) was substituted by S.I. 2016/413.

(f) S.I. 1995/755 (N.I.2).

(g) S.I. 2005/3262.

(h) 2012 c.5.

(i) Section 39 is amended by S.I. 2014/3229.

- (b) the individual is one of the child’s parents and—
 - (i) normally lives with the child,
 - (ii) is under 20 years of age, and
 - (iii) is a dependant of another individual,
 - (c) the child is treated in law as the child of the individual by virtue of an order under section 54 of the Human Fertilisation and Embryology Act 2008(a),
 - (d) the child is treated in law as the child of the individual by reason of an adoption either—
 - (i) effected under the law of Scotland, or
 - (ii) effected under the law of another country or jurisdiction and recognised by the law of Scotland,
 - (e) the child is placed with the individual by an adoption agency,
 - (f) the individual is a guardian of the child appointed by deed, will or by a court,
 - (g) the individual is a kinship carer for the child.
- (2) In paragraph (1)(e), “adoption agency” means—
- (a) a local authority acting in its capacity as an adoption service provider under section 1 of the Adoption and Children (Scotland) Act 2007(b),
 - (b) an adoption service provided as mentioned in paragraph 8(1)(b) of schedule 12 of the Public Services Reform (Scotland) Act 2010(c) and registered under Part 5 of that Act,
 - (c) an adoption agency within the meaning of section 2(1) of the Adoption and Children Act 2002(d),
 - (d) an adoption agency within the meaning of article 3 of the Adoption (Northern Ireland) Order 1987(e).

Meaning of “dependant”

5.—(1) In respect of any given week, an individual (“person A”) is to be regarded as the dependant of another individual (“person B”) only if—

- (a) paragraph (2) applies, or
- (b) in that week person B is a kinship carer for person A.

(2) This paragraph applies where—

- (a) person B has been awarded—
 - (i) child tax credit, child benefit or state pension credit in respect of the week in question (or for a period that includes that week), or
 - (ii) universal credit for—
 - (aa) an assessment period that includes the week in question, or
 - (bb) an assessment period that ended immediately before the assessment period mentioned in paragraph (aa) started, and
- (b) person A is recognised to be a child for whom person B has responsibility in terms of that award of assistance.

(3) It is immaterial for the purpose of this regulation that the award of assistance to person B referred to paragraph (2) does not include any amount in respect of person A due to a rule that

(a) 2008 c.22. Section 54 was amended by paragraph 206 of schedule 11 of the Crime and Courts Act 2013 (c.22), Part 1 of schedule 9 of the Justice Act (Northern Ireland) 2015 (c.9) and S.I. 2018/1413.

(b) 2007 asp 4.

(c) 2010 asp 8.

(d) 2002 c.38.

(e) S.I. 1987/2203 (N.I.22). Article 3 was amended by section 7 of the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001 (c.11), paragraph 1(1)(d) of schedule 6 of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c.1), S.I. 1994/429 and S.I. 2003/431.

restricts the number of dependants in respect of whom person B can be given that type of assistance.

PART 4

Entitlement

General

6.—(1) An individual described in regulation 7 or regulation 8 is entitled to be paid benefit in accordance with the provisions of Part 5 of these Regulations.

(2) An individual is not entitled to be paid benefit under these Regulations in respect of any week in which they received, or are due to receive, benefit under the 2005 Regulations.

(3) A person who is entitled to benefit under these Regulations only by virtue of payment of a kind of assistance mentioned in regulation 10(1)(h) does not cease to be so entitled until expiry of 8 weeks beginning with the day after the last day of the most recent completed assessment period for that kind of assistance.

Pregnant women

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

- (a) a pregnant woman who—
 - (i) is ordinarily resident in Scotland,
 - (ii) is 18 years of age or older, and
 - (iii) is, or is the partner or dependant of an 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, or
- (b) a pregnant woman under 18 years of age, provided that she meets the residence requirement in regulation 9.

(2) If an individual described in paragraph (1)(b) reaches the age of 18 years before the end of her pregnancy she remains entitled to benefit until the end of that pregnancy.

Children

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

- (a) a child who is—
 - (i) under 3 years of age,
 - (ii) for whom another individual is responsible, and
 - (iii) that other individual is, or is the partner or dependant 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, or
- (b) a child who is—
 - (i) under one year of age, or whose first anniversary of their estimated date of delivery has not yet passed,
 - (ii) for whom another individual is responsible, and
 - (iii) that other individual is under 18 years of age and meets the residence requirement set out in regulation 9.

(2) A child described in paragraph (1)(b) remains entitled to benefit until they are one year of age, including where the individual responsible for them has turned 18 years of age before the child's first birthday.

Residence requirement

- 9.**—(1) The residence requirement is—
- (a) the individual is ordinarily resident in Scotland, and
 - (b) where neither the individual, the individual’s partner nor the person on whom the individual is dependent has been awarded a kind of assistance mentioned in regulation 10, the condition set out in paragraph (2) is also met.
- (2) The condition is that the individual is—
- (a) habitually resident in the United Kingdom, the Channel Islands, the Isle of Man, the European Economic Area or Switzerland,
 - (b) a refugee within the definition in Article 1 of the Convention relating to the status of refugees done at Geneva on 28 July 1951, as extended by article 1(2) of the protocol relating to the status of refugees done at New York on 31 January 1967,
 - (c) a person who has been granted, or who is deemed to have been granted, leave outside the rules made under section 3(2) of the Immigration Act 1971(a), where that leave is—
 - (i) discretionary leave to enter or remain in the United Kingdom,
 - (ii) leave to remain under the destitution domestic violence concession, or
 - (iii) leave deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005(b),
 - (d) a person who has humanitarian protection granted under rules made under section 3(2) of the Immigration Act 1971, or
 - (e) a person who—
 - (i) is not a person who is subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999 (exclusion from benefits)(c), and
 - (ii) is in the United Kingdom as a result of deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom.

Kinds of assistance

- 10.**—(1) The kinds of assistance referred to in regulations 7 to 9 and 20 are—
- (a) child tax credit, where the relevant income of the individual or individuals to whom the award of child tax credit is made is determined at the time of the award not to exceed £16,190 per annum,
 - (b) child tax credit and working tax credit, where—
 - (i) the relevant income if the person or persons to whom the award of tax credit is made is determined at the time of the award not to exceed £7,320, or
 - (ii) the person or persons entitled to the award is or are being treated as engaged in qualifying remunerative work by virtue of regulation 7D of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(d),
 - (c) housing benefit, where the weekly income calculated under regulation 27 of the Housing Benefit Regulations 2006(e) of the person or persons to whom the award of housing benefit is made does not exceed £311,
 - (d) income-based jobseeker’s allowance,
 - (e) income-related employment and support allowance,

(a) 1971 c.77.

(b) S.I. 2005/1379, which is prospectively revoked by regulation 52 of the Immigration, Nationality and Asylum (EU Exit) Regulations 2019 (S.I. 2019/745).

(c) 1999 c.33.

(d) S.I. 2002/2005. Regulation 7D was inserted by S.I. 2009/1829 and amended by S.I. 2012/848.

(e) S.I. 2006/213.

- (f) income support,
- (g) state pension credit,
- (h) universal credit, where—
 - (i) the person is a single claimant of universal credit and has an earned income of £610 or less, or
 - (ii) the person is one of joint claimants of universal credit and the joint claimants have combined earned income of £610 or less in the period specified in paragraph (2).

(2) The period is—

- (a) the most recent complete assessment period, or
- (b) the assessment period immediately preceding that assessment period.

(3) In this regulation—

“earned income” means a person’s earned income calculated in accordance with Chapter 2 of Part 6 of the Universal Credit Regulations 2013(a),

“housing benefit” means housing benefit provided by virtue of a scheme under section 123(1) of the Social Security Contributions and Benefits Act 1992(b),

“relevant income” has the same meaning as in section 7(3) of the Tax Credits Act 2002(c),

“state pension credit” means state pension credit provided for by the State Pension Credit Act 2002(d), and

“working tax credit” means the tax credit provided for by section 1(1)(b) of the Tax Credits Act 2002.

Entitlement – further provision

11.—(1) Subject to paragraph (2), no beneficiary is entitled to benefit under these Regulations unless an application for such benefit has been approved by the Scottish Ministers.

(2) Where an individual described in regulation 7, who has responsibility for a child described in regulation 8 and that child is under 4 months of age, notifies the Scottish Ministers of the date of birth of the child, that child is entitled to benefit payable from the date of their birth.

(3) If an individual described in regulations 7, 8 or 20—

- (a) has ceased to be entitled to benefit,
- (b) less than 12 weeks have elapsed since they ceased to be so entitled, and
- (c) can demonstrate to the reasonable satisfaction of the Scottish Ministers that they are once again entitled,

then the Scottish Ministers may renew their entitlement without further process.

(4) Where any provision of these Regulations requires or enables anything to be done in respect of a beneficiary and that beneficiary is a child, the provision is deemed to refer to an individual who is responsible for that child.

Change of circumstances affecting entitlement to benefit

12. An individual who is no longer entitled to benefit under these Regulations due to a change in circumstances must inform the Scottish Ministers of that change without delay.

(a) S.I. 2013/376.

(b) 1992 c.4. Section 123(1) was relevantly amended by paragraph 1(1) of schedule 9 of the Local Government Finance Act 1992 (c. 14).

(c) 2002 c.21. Part 1 of the Tax Credits Act 2002 is repealed by schedule 14 of the Welfare Reform Act 2012, subject to the savings provided for by article 3 of S.I. 2019/167.

(d) 2002 c.16.

PART 5

Benefit to be given

Value of benefit

13.—(1) The benefit to which an individual described in regulation 7 is entitled is credit for Best Start Foods to the value of £4.25 for each week that the individual is so entitled.

(2) The benefit to which a child described in regulation 8(1)(a) is entitled is credit for Best Start Foods to the value of—

- (a) £8.50 for each week that the child is so entitled until the child has reached the age of one year, or has reached the first anniversary of their estimated date of delivery, whichever occurs later,
- (b) £4.25 for each week thereafter that the child is so entitled until the child has reached the age of 3 years.

(3) The benefit to which a child described in regulation 8(1)(b) is entitled is credit for Best Start Foods to the value of £8.50 for each week that the child is so entitled.

(4) A child who is entitled to Best Start Foods is entitled to the full amount of credit for the week in which they reach the age of 3 years.

Form in which benefit is given

14. The credit mentioned in regulation 13 is to be given in the form of a payment card.

Supporting breastfeeding

15. Credit issued to a beneficiary who is a breastfed child may be used by the breastfeeding mother to purchase Best Start Foods for consumption by her.

Property in payment card

16.—(1) Every payment card is the property of the Scottish Ministers.

(2) Any person in possession of a payment card must, if requested to do so by the Scottish Ministers, produce or deliver the card within such time and to such place as the Scottish Ministers may specify.

PART 6

Application of enactments and offences

Application of enactments - offences

17.—(1) Section 112 (false representation for obtaining benefit) and section 113 (breach of regulations) of the Social Security Administration Act 1992^(a) (“the 1992 Act”) have effect, for the purposes of the administration of the scheme provided for by these Regulations, subject to the modifications in paragraph (2).

(a) 1992 c.5. Section 112 was relevantly amended by paragraph 4 of schedule 1 of the Social Security Administration (Fraud) Act 1997 (c.47), paragraph 6 of schedule 6 of the Child Support, Pensions and Social Security Act 2000 (c.19) (“the 2002 Act”) and section 16(3) of the Social Security Fraud Act 2001 (c.11). Section 113 was relevantly amended by paragraph 7(2) of schedule 6 of the 2000 Act and Part 1 of schedule 2 of the National Insurance Contributions and Statutory Payments Act 2004 (c.3).

- (2) The modifications are—
- (a) section 112(1) of the 1992 Act is to be read as if—
 - (i) in subsection (1)—
 - (aa) “or other payment” were omitted,
 - (bb) “the relevant social security legislation” were substituted by “a scheme made under section 13 of the Social Security Act 1988”,
 - (cc) “that legislation” were a reference to “such a scheme”, and
 - (ii) subsections (1A) to (1F) were omitted.
 - (b) section 113 is to be read as if, after subsection (1A)(a) there is inserted—
 - “(aa) section 13 of the Social Security Act 1988;”.

Further offences

18. A person who fails to comply with regulations 12 or 16(2) is guilty of an offence under section 13 of the Social Security Act 1988 and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PART 7

Amendments, transitional arrangements and revocations

Amendment to the Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005

19.—(1) The Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005(a) are amended as follows.

- (2) In regulation 4 (claim for benefit), after paragraph (1) insert—
 - “(1A) No application for a claim for benefit under this regulation may be made on or after 12 August 2019.”.

Transitional arrangements

20.—(1) The benefit to which a child described in this regulation is entitled is credit for Best Start Foods.

- (2) For the purposes of this regulation a child so described is a child—
 - (a) who is under 4 years of age,
 - (b) who was 2 years of age or over at the date of application,
 - (c) who was in receipt of benefit under the 2005 Regulations, as they apply to Scotland, either—
 - (i) at the date of application, or
 - (ii) less than 12 weeks prior to the date of application, and
 - (d) for whom an individual described in paragraph (3) is responsible.
- (3) For the purposes of paragraph (2) the individual—
 - (a) is, or is the partner or dependant of an individual who is, in receipt 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, and
 - (b) made an application under these Regulations on or before the 31 March 2020.

(a) S.I. 2005/3262.

(4) The benefit to which a child described in this regulation is entitled is credit for Best Start Foods to the value of £4.25 per week for each week that the child is entitled until the child has reached 4 years of age.

(5) For the purposes of this regulation, “date of application” means the date on which an application made under these Regulations is received by the Scottish Ministers.

Revocations

21. The instruments listed in column 1 of the table in schedule 2 are revoked to the extent specified in the corresponding entry in column 3 of that table.

St Andrew’s House,
Edinburgh
30th May 2019

JOE FITZPATRICK
Authorised to sign by the Scottish Ministers

SCHEDULE 1
BEST START FOODS

Regulation 2

<i>Column 1</i> <i>Category of food</i>	<i>Column 2</i> <i>Type of food</i>
Milk	Plain liquid cow's milk, including long life, pasteurised or ultra-heat treated varieties of milk, but not milk to or from which chemicals, vitamins, flavours or colours have been added or removed.
First infant formula milk	Infant formula based on cow's or goat's milk intended for particular nutritional use from birth by infants in good health, which meets the requirements of the Infant Formula and Follow-on Formula (Scotland) Regulations 2007(a) or the Infant Formula and Follow-on Formula (England) Regulations 2007(b).
Fruit and vegetables	Fresh, frozen or canned fruit or vegetables, including loose, pre-packed, whole, sliced, chopped, or mixed fruit or vegetables, but not fruit or vegetables to which fat, salt, sugar, flavouring or any other ingredient has been added.
Pulses	Fresh, dried or canned pulses, including but not limited to lentils, beans, peas and barley, but not those to which fat, salt, sugar, flavouring or any other ingredient has been added.
Eggs	Fresh eggs

(a) S.S.I. 2007/549.

(b) S.I. 2007/3521.

SCHEDULE 2 REVOCATIONS

Regulation 21

<i>Column 1</i> <i>Instrument revoked</i>	<i>Column 2</i> <i>Reference</i>	<i>Column 3</i> <i>Extent of revocation</i>
The Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005	S.I. 2005/3262	Regulations 3, 4, 5(2), 5A, 6, 7, 7A, 8, 8A, 9(4)(c), 10, 17, 18 and schedule 2
The Healthy Start Scheme and Welfare Food (Amendment No. 2) Regulations 2006	S.I. 2006/2818	Regulations 4, 5, 6, 7 and 8
The Healthy Start Scheme and Welfare Food (Amendment) Regulations 2008	S.I. 2008/408	The whole Regulations
The Employment and Support Allowance (Consequential Provisions) (No. 3) Regulations 2008	S.I. 2008/1879	Regulation 10(3) and 10(4)
The Healthy Start Scheme and Welfare Food (Amendment) Regulations 2009	S.I. 2009/295	The whole Regulations
The Healthy Start Scheme and Welfare Food (Amendment) Regulations 2010	S.I. 2010/434	The whole Regulations
The National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Saving Provisions) Order 2013	S.I. 2013/235	Paragraph 91(3) of schedule 2
The Healthy Start Scheme and Welfare Food (Amendment) Regulations 2016	S.I. 2016/985	The whole Regulations
The Healthy Start Scheme and Welfare Food (Miscellaneous Amendments) Regulations 2017	S.I. 2017/1032	Regulation 2

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for a scheme to provide benefits for pregnant women and children.

Part 1 deals with citation, commencement and extent. These Regulations extend to Scotland only.

Part 2 provides for general interpretation.

Part 3 of the Regulations provides for the interpretation of certain expressions used in the Regulations concerning interpersonal relationships.

Part 4 sets out who is eligible to receive the benefit and procedural matters relating to the application for benefit and change of circumstances.

Part 5 is concerned with the value and form of the benefit to be given under the Regulations.

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

Part 7 makes consequential amendments and revocations to various secondary legislation. Regulation 19 makes a consequential amendment to the Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005 (“the 2005 Regulations”) to prevent new applications for benefit under the 2005 Regulations in Scotland following the coming into force of these Regulations. Regulation 20 makes provision for transitional arrangements. Regulation 21 revokes certain provisions of the 2005 Regulations and secondary legislation that amended those Regulations. The revocations made by regulation 21 take effect on 31 March 2020.

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