
SCOTTISH STATUTORY INSTRUMENTS

2021 No. 82

The Milk and Healthy Snack
Scheme (Scotland) Regulations 2021

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Milk and Healthy Snack Scheme (Scotland) Regulations 2021.

(2) These Regulations come into force on 21 March 2021.

(3) These Regulations extend to Scotland only.

PART 2

General Interpretation

Interpretation

2. In these Regulations—

“the 1992 Act” means the Social Security Administration Act 1992⁽¹⁾,

“the 2010 Act” means the Public Services Reform (Scotland) Act 2010⁽²⁾,

“benefit” is the food benefit prescribed in regulation 5,

“child minding” has the same meaning as in paragraph 12(1) of schedule 12 of the 2010 Act⁽³⁾,

“day care of children” has the same meaning as in paragraph 13 of schedule 12 of the 2010 Act,

“eligible child” means a person prescribed in regulation 3,

“healthy snack item” means fresh fruit or vegetables, including loose, whole, sliced, chopped, or mixed fruit but not fruit or vegetables to which fat, salt, sugar, flavouring or any other ingredient has been added,

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽⁴⁾ and “area” in relation to a local authority, means the local government area for which the authority is constituted,

“payment period” means—

(a) the period of 12 months beginning with 1 August 2021,

(1) 1992 c.5.

(2) 2010 asp 8.

(3) Paragraph 12 was amended by S.S.I. 2013/211.

(4) 1994 c.39.

- (b) any successive period of the same length, or
 - (c) such other shorter period as may be determined by the Scottish Ministers,
- “pre-school child” is a pre-school child within the meaning given in section 1(4B) of the Education (Scotland) Act 1980⁽⁵⁾,
- “registered childcare provider” means a childcare provider registered with the local authority under regulation 8,
- “Scheme“ means the Scottish Milk and Healthy Snack Scheme established by these Regulations, and
- “SCSWIS” means Social Care and Social Work Improvement Scotland established by section 44 of the 2010 Act.

PART 3

Meaning of Certain Expressions

Meaning of eligible child

3. For the purposes of these Regulations, an eligible child is one who—
- (a) is a pre-school child, and
 - (b) receives a service from a childcare provider.

Meaning of childcare provider

4.—(1) For the purposes of these Regulations, a childcare provider is a provider of a childcare service where that service appears on the register of care services maintained by SCSWIS by virtue of regulation 5 of the Social Care and Social Work Improvement Scotland (Registration) Regulations 2011⁽⁶⁾.

- (2) For the purpose of paragraph (1) “childcare service” means—
- (a) day care of children, or
 - (b) child minding.

PART 4

Entitlement

Entitlement of an eligible child

5.—(1) The Scheme entitles an eligible child, on each day that the requirement in paragraph (2) is met, to the benefit prescribed in paragraph (3).

(2) The requirement is that the child receives a service from a childcare provider for a total of 2 or more hours per day.

- (3) The benefit prescribed for an eligible child is—
- (a) the volume specified in the relevant row of column 2 of the table in schedule 1 of the type of milk or non-dairy alternative specified in the relevant row of column 3 of that table, and

⁽⁵⁾ 1980 c.44, amended by section 32(5) of the Scotland’s Schools etc. Act 2000 (asp 6).

⁽⁶⁾ S.S.I. 2011/28.

- (b) where the child has reached 6 months of age, one healthy snack item.
- (4) For the purposes of subparagraph 3(a)—
 - (a) “the relevant row of column 2” means the row in that column that corresponds to the age of the eligible child specified in column 1 of the table in schedule 1, and
 - (b) “the relevant row of column 3” is the row in that column that corresponds to the age of the eligible child specified in column 1 of the table in schedule 1 and adjusted by reference to any condition specified in column 4 of that table which applies in respect of that child.

Provision of benefit

6. The benefit to which an eligible child is entitled must be provided to that child by a childcare provider on each day and during the hours which that child is in receipt of the service from that childcare provider.

PART 5

Administration of the Scheme

Payment under the Scheme

7.—(1) The Scottish Ministers are to make a payment to a registered childcare provider on the first day of each payment period in respect of that period.

(2) Where a childcare provider registers for the Scheme after the first day of a payment period, the Scottish Ministers are to make a payment in respect of that period within 4 weeks of the date of registration.

Registration

8. In order to register under the Scheme, a childcare provider must provide the registration information specified in schedule 2 to the Scottish Ministers.

Determining the amount payable

9.—(1) The payment made by the Scottish Ministers to a childcare provider in accordance with regulation 7, in respect of a payment period, is to be determined by reference to—

- (a) the number of eligible children enrolled with that childcare provider at the beginning of each financial year,
- (b) the benefits provided (or reasonably expected to be provided) by that childcare provider under regulation 6,
- (c) the market price of the benefit provided (or reasonably expected to be provided) by that childcare provider under regulation 6, and
- (d) any adjustment made under regulation 10.

(2) In determining the payment under paragraph (1) the Scottish Ministers may also take into account any other relevant matter.

Adjustment to the amount payable

10.—(1) The Scottish Ministers may make an adjustment to the amount payable under regulation 9 in respect of a payment period as a result of a significant change, in that period, to—

- (a) the number of eligible children enrolled with that childcare provider,
 - (b) the benefits provided by that childcare provider under regulation 6, and
 - (c) the market price of the benefit provided by that childcare provider under regulation 6.
- (2) The Scottish Ministers must make any adjustment to the amount payable in respect of a payment period by the end of the immediately following payment period.

Provision of information in respect of significant change

11. In relation to a payment period, a childcare provider must inform the Scottish Ministers of any significant change to—

- (a) the number of eligible children enrolled with that childcare provider, and
- (b) the benefits provided by that childcare provider under regulation 6.

Change of circumstances affecting eligibility for the Scheme

12. A childcare provider that is no longer entitled to a payment under the Scheme due to a change in circumstances must inform the Scottish Ministers of that change as soon as reasonably practicable.

Provision of information for monitoring purposes

13. A childcare provider must provide to the Scottish Ministers, on request, the following information—

- (a) its status as a childcare provider under regulation 4,
- (b) the number of eligible children enrolled with the childcare provider during any period,
- (c) records of attendance in relation to any eligible child during any period,
- (d) the eligibility of a child under regulation 3,
- (e) the entitlement of a child under regulation 5,
- (f) the benefit provided or expected to be provided to a child under regulation 6, and
- (g) any other relevant information which the Scottish Ministers reasonably require in order to administer the Scheme.

Failure to provide benefit

14. In the event that the Scottish Ministers consider that a childcare provider has failed to provide a benefit under the Scheme, the Scottish Ministers may—

- (a) reduce the amount payable in forthcoming payment periods,
- (b) take any other action, which they consider reasonable, in all the circumstances.

Delegation

15. The following functions of the Scottish Ministers are delegated to the local authority for its area—

- (a) the function of determining a payment period shorter than 12 months under regulation 2, and
- (b) the functions under regulations 7 to 14.

Direction: local authority

16. A local authority must follow any direction issued by the Scottish Ministers when exercising any function under the Scheme.

Guidance: local authority

17. A local authority must have regard to any guidance issued by the Scottish Ministers when exercising any function under the Scheme.

Guidance: childcare provider

18. A childcare provider must have regard to any guidance issued by the Scottish Ministers with respect to the operation of the Scheme.

Information Sharing

19.—(1) A local authority must, on request, disclose the information specified in paragraph (2) to—

- (a) SCSWIS,
- (b) another local authority.

(2) For the purposes of paragraph (1), the information specified is information provided by—

- (a) a childcare provider under regulations 8, 11, 12 or 13,
- (b) SCSWIS,
- (c) another local authority,

in connection with the Scheme.

(3) SCSWIS must, on request, disclose to a local authority the information specified in paragraph (4).

(4) For the purposes of paragraph (3), the information specified is—

- (a) the name and address of a childcare provider,
- (b) the age groups to which a childcare provider provides services,
- (c) the number of meals a childcare provider provides, and
- (d) the types of day care a childcare provider provides.

Reporting requirement

20. A local authority must report to the Scottish Ministers annually, by such date as the Scottish Ministers may direct, on the following matters—

- (a) the number of childcare providers registered under the Scheme on 15 July 2021, and thereafter at the end of the immediately preceding financial year,
- (b) the amount paid to each childcare provider under the Scheme in the immediately preceding financial year,
- (c) the number of eligible children enrolled with each childcare provider at the end of the immediately preceding financial year,
- (d) the expenditure incurred by the authority in the administration of the Scheme in the immediately preceding financial year, and
- (e) such other information relating to the operation of the Scheme as the Scottish Ministers may direct.

PART 6

Application of enactments and offences

Application of section 112 of the 1992 Act

21.—(1) Section 112 (false representations for obtaining benefit etc.) of the 1992 Act⁽⁷⁾ has effect, for the purposes of the administration of the Scheme, subject to the modifications in paragraph (2).

(2) The modifications mentioned in paragraph (1) are that section 112(1) of the 1992 Act is to be read as if—

- (a) in subsection (1)—
 - (i) “benefit or other” were deleted,
 - (ii) “the relevant social security legislation” were substituted by “a scheme made under section 13 of the Social Security Act 1988”, and
 - (iii) “that legislation” were a reference to “such a scheme”, and
- (b) subsections (1A) to (1F) were omitted.

Application of section 113 of the 1992 Act

22.—(1) Section 113 (breach of regulations) of the 1992 Act⁽⁸⁾ has effect, for the purposes of the administration of the Scheme, as if paragraph (2) had been made under it, and subject to the modifications in paragraph (3).

(2) A person who fails to comply with regulation 12 (change of circumstances affecting eligibility for the Scheme) is guilty of an offence under these Regulations.

(3) The modifications mentioned in paragraph (1) are that section 113 of the 1992 Act is to be read as if—

- (a) after subsection (1A)(a) there is inserted—
 - “(aa) section 13 of the Social Security Act 1988 or subordinate legislation made, or having effect as if made, under it,”, and
- (b) in subsection (3) paragraph (b) were omitted.

PART 7

Amendments and transitional arrangements

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

23. In subparagraph b(i) and (ii) of the definition of “Healthy Start food” in regulation 2(1) (interpretation) of the Healthy Start Scheme and Welfare Food Amendment Regulations 2005⁽⁹⁾, after “vitamins” insert “the food benefit prescribed in regulation 5 of the Milk and Healthy Snack Scheme (Scotland) Regulations 2021”.

(7) 1992 c.5. Section 112 was relevantly amended by paragraph 4(2) 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).

(8) Section 113 was relevantly amended by paragraph 7(2) of schedule 6 of the 2000 Act and paragraph 1 of schedule 2 of the National Insurance Contributions and Statutory Payments Act 2004 (c.3).

(9) S.I. 2005/3262.

Amendment to the Welfare Food Regulations 1996

- 24.**—(1) The Welfare Food Regulations 1996⁽¹⁰⁾ are amended as follows—
- (a) in regulation 10 (issue of milk tokens), after paragraph (5) insert—

“(6) A milk token issued by the Department of Health and Social Services in Northern Ireland or the Secretary of State is not valid on or after 1 August 2021.”,
 - (b) in regulation 13 (control of milk tokens), after paragraph (4) insert—

“(5) No beneficiary may apply for a replacement milk token under paragraph (4) on or after 1 August 2021.”,
 - (c) in regulation 16 (reimbursement of suppliers), after paragraph (1) insert—

“(1A) No supplier may submit a milk token together with a claim for reimbursement under paragraph (1) on or after 1 February 2022.”,
 - (d) in regulation 17 (special reimbursement), after paragraph (1) insert—

“(1A) No supplier may apply under paragraph (1) on or after 1 February 2022.”,
 - (e) in regulation 18 (milk or dried milk for children in day care), after paragraph (1) insert—

“(1A) No child is entitled under paragraph (1) on or after 1 August 2021.”,
 - (f) in regulation 19 (approval of suppliers), after paragraph (1) insert—

“(1A) No day care provider may apply under paragraph (1) for approval as a supplier on or after 1 August 2021.”,
 - (g) in regulation 20(1) (reimbursement of approved suppliers), after paragraph (1) insert—

“(1A) No day care provider may submit a claim for reimbursement under paragraph (1) on or after 1 February 2022.”, and
 - (h) in regulation 21A (functions of the NHS Business Services Authority), after paragraph (1) insert—

“(1A) The NHS Business Services Authority may not have the function mentioned in paragraph (1)(a) on or after 1 August 2021.”.

St Andrew’s House,
Edinburgh
17th February 2021

MAREE TODD
Authorised to sign by the Scottish Ministers

⁽¹⁰⁾ S.I. 1996/1434, relevant amending instruments are S.I. 2003/702, 2005/3262, S.I. 2006/2818, S.I. 2015/280, 2017/1032 and S.I. 2020/267.