
SCOTTISH STATUTORY INSTRUMENTS

2022 No. 167

FOOD

**The Welfare Foods (Best Start Foods)
(Scotland) Amendment Regulations 2022**

<i>Made</i>	- - - -	<i>18th May 2022</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>20th May 2022</i>
<i>Coming into force</i>	- -	<i>2nd July 2022</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 13 of the Social Security Act 1988(1) and all other powers enabling them to do so.

In accordance with section 13(2) of the Social Security Act 1988, they have consulted with the Welsh Ministers(2).

Citation and commencement

1. These Regulations may be cited as the Welfare Foods (Best Start Foods) (Scotland) Amendment Regulations 2022 and come into force on 2 July 2022.

Amendment to the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019

2. The Welfare Foods (Best Start Foods) (Scotland) Regulations 2019(3) are amended in accordance with regulations 3 to 8.

3. In regulation 2 (general interpretation), in the definition of “beneficiary”, after “regulation 7” insert “, 7A”.

4. In regulation 6 (general)—

- (a) in paragraph (1), after “regulation 7” insert “, regulation 7A”,
- (b) after paragraph (1) insert—

(1) 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.

(2) Functions conferred or imposed on the National Assembly for Wales immediately before the first appointment of a First Minister under section 46 of the Government of Wales Act 2006 (c. 32) by an enactment contained in an Act were transferred to the Welsh Ministers by paragraph 30(2)(c) of Schedule 11 to that Act.

(3) S.S.I. 2019/193, as amended by S.S.I. 2019/232, S.S.I. 2020/399, S.S.I. 2021/221, S.S.I. 2021/320, S.S.I. 2022/108 and S.S.I. 2022/129.

“(1A) Subject to regulation 11(1A)—

- (a) an individual described in regulation 7 is not entitled to be paid benefit where their partner described in regulation 7A is being paid benefit,
- (b) an individual described in regulation 7A is not entitled to be paid benefit where their partner described in regulation 7 is being paid benefit.”.

5. After regulation 7 (pregnant women), insert—

“Partners of pregnant women

7A. For the purposes of regulation 6 an individual so described is—

- (a) the partner of an individual described in regulation 7, and
- (b) receiving benefit for the use of the individual described in regulation 7.”.

6. In regulation 11 (entitlement – further provision)—

- (a) in paragraph (1), for “paragraph (2)” insert “paragraphs (1A) and (2)”,
- (b) after paragraph (1), insert—

“(1A) Where the Scottish Ministers receive an application in respect of an individual described in regulation 7, and they are also in receipt of an application in respect of an individual described in regulation 7A, they must—

- (a) approve the application in respect of the individual described in regulation 7 in priority to the application in respect of the individual described in regulation 7A, and,
- (b) cease any payment of this benefit to the individual described in regulation 7A.”,
- (c) in paragraph (2), after “7” insert “, or 7A”, and
- (d) in paragraph (3), after “7” insert “, 7A”.

7. After regulation 12, insert—

“Appointment of a person to act on behalf of an individual

12A.—(1) The Scottish Ministers may appoint a person (“an appointee”)—

- (a) to—
 - (i) act on behalf of an individual described in regulation 7 or 7A in connection with the determination of that individual’s entitlement to benefit under and in accordance with these Regulations, or
 - (ii) act on behalf of an individual responsible for a child described in regulation 8 (as read with regulation 11(4)) in connection with the determination of that child’s entitlement to benefit under and in accordance with these Regulations, and
- (b) to be paid benefit on the individual’s behalf.

(2) The Scottish Ministers may only appoint an appointee if it appears to them that either paragraph (3) or (4) applies.

(3) This paragraph applies if—

- (a) the individual is deceased, and
- (b) there is no executor appointed on the individual’s estate.

(4) This paragraph applies if, in relation to the matters mentioned in paragraph (1)—

- (a) the individual is incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000(4),
 - (b) there is no guardian acting or appointed under that Act,
 - (c) the individual's estate is not being administered by a judicial factor, and
 - (d) there is no other person who has authority to act on behalf of the individual and is willing to do so.
- (5) An individual who is under 16 years may not be appointed as an appointee.
- (6) Where an appointee is appointed in relation to an individual—
- (a) the appointee can do anything that the individual 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 may 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.
- (7) The Scottish Ministers may terminate an appointment under this regulation at any time.
- (8) The Scottish Ministers must consider whether to terminate an appointment made by virtue of paragraph (3) if requested to do so by anyone who appears to the Ministers to have an interest in the financial affairs of the individual.
- (9) The Scottish Ministers must consider whether to make an appointment by virtue of paragraph (4), or to terminate such an 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, or
 - (ii) have an interest in the welfare or financial affairs of the individual.
- (10) Paragraph (11) applies where the Scottish Ministers are deciding whether to make an appointment by virtue of paragraph (4) or to terminate such an appointment.
- (11) In making the decision, the Scottish Ministers must, insofar as practicable, have regard to—
- (a) the wishes and feelings of the individual, and
 - (b) the views of anyone else who appears to the Ministers to have an interest in the welfare or financial affairs of the individual.
- (12) A person appointed by the Scottish Ministers under and in accordance with section 85B(5) of the 2018 Act may be treated by them as an appointee of—
- (a) an individual described in regulation 7 or 7A, or
 - (b) a person who is responsible for an individual described in regulation 8,
- in connection with the determination of the individual's entitlement to benefit under these Regulations.

(4) 2000 asp 4.

(5) Section 85B was inserted by section 2(4) of the Social Security Administration and Tribunal Membership (Scotland) Act 2020 (asp 18) ("the 2020 Act").

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(13) In respect of decisions in relation to appointees for the purposes of this regulation, the Scottish Ministers must act in accordance with guidelines prepared for the purposes of section 85C(6) of the 2018 Act as if the references in those guidelines to appointments under section 85B of that Act were references to appointments under these Regulations.

(14) A person appointed under this regulation must have regard to any guidance issued by the Scottish Ministers about the way in which the role of appointee should be carried out.

(15) In this regulation, “the 2018 Act” means the Social Security (Scotland) Act 2018(7).”.

8. In regulation 13(1) (value of benefit), after “regulation 7” insert “or regulation 7A”.

St Andrew’s House,
Edinburgh
18th May 2022

BEN MACPHERSON
Authorised to sign by the Scottish Ministers

(6) Section 85C was inserted by section 2(5) of the 2020 Act.
(7) 2018 asp 9.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 (“the principal Regulations”) which make provision for a scheme to provide payments for the benefit of pregnant women, mothers and children. These Regulations amend the principal Regulations to provide for—

- (a) the payment of benefit to partners of pregnant women, provided the payment is to be used for the benefit of the pregnant woman, and
- (b) a system for the Scottish Ministers to appoint persons (“appointees”) to handle applications for and receipt of payments on behalf of eligible pregnant women, eligible partners of pregnant women and persons responsible for eligible children.