

## The Welfare Foods (Best Start Foods) (Scotland) Amendment Regulations 2024

Regulation	Title	Proposed Amendment
3	General Interpretation	<p>This expands an existing provision which sets out the definition of beneficiary so that it includes a new category of entitled persons: the individual the pregnant woman is dependent on or the partner of that individual.</p> <p>This is required as a consequence of amendment regulation 7.</p>
4(1)	General	<p>This expands an existing provision which sets out that all categories of eligible persons are entitled to be paid Best Start Foods (BSF) so that it includes a new category of entitled persons: the individual the pregnant woman is dependent on or the partner of that individual.</p> <p>This is required as a consequence of amendment regulation 7.</p>
4(2)	General	<p>This expands an existing provision which seeks to prevent two individuals claiming BSF in respect of the same pregnancy so that it includes a new category of entitled persons: the individual the pregnant woman is dependent on or the partner of that individual. This is required as a consequence of amendment regulation 7.</p> <p>It also prevents two individuals being paid BSF on behalf of the same entitled child. This is required as a consequence of amendment regulation 11(6).</p>
4(3)	General	<p>This expands an existing provision which ensures that when an individual in receipt of BSF stops receiving Universal Credit they will continue to be entitled to BSF payments for a further 8 weeks so that it applies when any qualifying benefit ends.</p> <p>This is required to address any unfair treatment arising from the current rules and will ensure all pregnant women and children continue to benefit from the support that BSF provides when their family's income is in transition.</p>

5(1)	Pregnant Women	<p>This provision changes the entitlement rules so that pregnant women who are 18 can only be eligible if they or their partner receive a qualifying benefit. It removes the ability for them to be eligible if the person that they are dependent upon receives a qualifying benefit as all dependants who are 18 or 19 will now be automatically eligible, i.e. they will not require to receive or be dependent on someone who receives a qualifying benefit.</p> <p>This is required as a consequence of amendment regulation 5(2).</p>
5(2)	Pregnant Women	<p>This provision makes pregnant women who are 18 or 19 year old dependants and who meet the residency requirements set out in regulation 9, eligible without the need to receive a qualifying benefit.</p> <p>We are amending this rule to make access to our benefits simpler for young parents, a need identified during the policy development for Best Start Grant (BSG). It will also more closely align eligibility criteria for BSF with BSG where 18 or 19 year old dependants do not require to receive a qualifying benefit in order to be eligible. This will address any confusion for young parents caused by the divergence in eligibility criteria.</p>
5(3)	Pregnant Women	<p>This provision expands a current rule that if the pregnant woman turns 18, eligibility will continue until the child is born so that it also applies if the pregnant woman is an 18 or 19 year old dependant and stops being a dependant.</p> <p>We are amending this rule as a consequence of amendment regulation 5(2).</p>
6	Partners of pregnant women	<p>This provision ensures that the partner is subject to the same eligibility criteria as the pregnant woman.</p> <p>An individual who is the partner of a pregnant woman will be eligible if:</p> <ul style="list-style-type: none"> <li>• they are ordinarily resident in Scotland, aged 18 years or older and either they or the pregnant woman are in receipt of a qualifying benefit, including where they have applied but not yet received payment, or</li> </ul>

		<ul style="list-style-type: none"> <li>• they are under 18 or a dependant who is 18 or 19 years old, and they meet the residency requirements set out in regulation 9.</li> </ul> <p>If the individual turns 18 or they stop being an 18 or 19 year old dependant before the pregnancy has ended, they will remain eligible until the end of the pregnancy.</p> <p>This change will simplify the rules around who can be eligible for BSF, making it easier to understand who should apply and making it easier to access BSF. It will also align with eligibility for BSG where the eligibility criteria for partners of pregnant women is the same as for pregnant women.</p>
7	Other entitled individuals	<p>This provision expands the categories of entitled persons to include the person who an eligible pregnant woman is dependent upon or the partner of that person. These individuals must also meet the residency condition set out in regulation 9 in order to be eligible.</p> <p>If the pregnant woman stops being a dependant before the pregnancy has ended, the individual will remain eligible until the end of the pregnancy.</p> <p>This change will provide young pregnant women with more choice in how they access BSF. This approach responds to discussions during the original consultation on BSG which highlighted the need to empower young parents and the importance of young pregnant women and parents having the support of an adult in accessing the payment. This change will also more closely align BSF entitlement with entitlement for BSG Pregnancy and Baby Payment where both the individual the birthmother is dependent upon and the partner of that individual can be eligible for the benefits.</p>
8(1)	Children	<p>Amends the eligibility rules for children so that where the individual responsible for them is 18 or older the child is eligible if the individual or the partner of the individual receives a qualifying benefit. It removes the ability for them to be eligible if the individual responsible for them is dependent upon someone who receives a qualifying benefit. This is because where the individual responsible for the child is under 18 or an 18 or 19 year old dependant they will now be automatically eligible.</p>

		<p>This is required as a consequence of amendment regulations 8(2) and 8(3).</p> <p>It also ensures that the individual responsible for the child must be ordinarily resident in order for the child to be eligible.</p>
8(2)	Children	<p>Amends the eligibility rules for children who are under one year old so that where the individual responsible for them meets the residency conditions set out in regulation 9 and they:</p> <ul style="list-style-type: none"> <li>• are under 18, or</li> <li>• are an 18 or 19 year old dependant, or</li> <li>• were entitled to receive BSF during the pregnancy which resulted in the child by virtue of being under 18 or an 18 or 19 year old dependant,</li> </ul> <p>the child will be entitled to BSF.</p> <p>This change extends automatic eligibility so that where the individual responsible for a child is an 18 or 19 year old dependant, the child is entitled without the need for the individual responsible for them to receive a qualifying benefit.</p> <p>This change will also make explicit that where an individual is under 18 and receives BSF during pregnancy and turns 18 during the pregnancy, they will not only remain entitled until the end of the pregnancy but their child will then be eligible up until the child turns 1. This reflects current policy and practice.</p> <p>In addition to making this explicit, we are expanding this rule so that it also applies to dependants who are 18 or 19 and receiving BSF during pregnancy and who stop being a dependant during the pregnancy.</p>
8(3)	Children	<p>Amends the eligibility rules for children who are over one year old and under three years old, so that where the individual responsible for them meets the residency conditions set out in regulation 9 and they:</p> <ul style="list-style-type: none"> <li>• are under 18, or</li> </ul>

		<ul style="list-style-type: none"> <li>• are an 18 or 19 year old dependant, the child will continue be entitled to BSF.</li> </ul> <p>This change is being made to simplify the process and ensure that young parents are supported throughout their child’s early years as children of young parents will continue to be eligible until their parents are old enough to claim qualifying benefits in their own right. The present rules mean that once the child turns 1, the young parent may have to ask their partner or their own parent/carer to claim BSF, which could be disempowering. Furthermore, if nobody else is responsible for the child then the child will no longer be eligible.</p> <p>This also further aligns eligibility for BSF with BSG where under 18s and dependants who are 18 or 19 years old are eligible for all 3 BSG payments, i.e. the age of the child is not relevant. The current divergence in the eligibility criteria for BSG and BSF is likely to result in a confusing journey for young parents and by making this change we will address this.</p>
8(4)	Children	<p>This provision expands an existing rule that if a child is receiving BSF due to the individual responsible for them being under 18, the child will continue to be eligible until the child turns one or reaches the first anniversary of its estimated delivery date, whichever is later, so that it also applies where the individual responsible for the child is an 18 or 19 year old dependant. Furthermore, if the individual responsible for the child turns 18 or stops being a dependant before the child turns one, the child will continue to be eligible until the child turns one or reaches the first anniversary of its estimated delivery date, whichever is later.</p> <p>We are amending this rule as a consequence of amendment regulation 8(2).</p> <p>The provision also makes clear that where the child is older than one or has reached the first anniversary of its estimated delivery date, whichever is later, and is entitled to BSF due to the individual responsible for them being under 18 or an 18 or 19 year old dependant, the child will remain entitled without the need for the individual responsible for them to receive a qualifying benefit, up until the day that the individual responsible for them turns</p>

		<p>18 or the day that the individual stops being a dependant or the child turns 3, whichever is later.</p> <p>We are amending this rule as a consequence of amendment regulations 8(3).</p>
9	Residence requirement	<p>Amends the residency requirements so that individuals who are 18 or 19 and a dependant must meet the further residency conditions set out in regulation 9(2) of the Best Start Foods (Welfare Foods) Regulations (Scotland) 2019. This is required as 18 or 19 dependants will no longer require that the individual they are dependent upon receives a qualifying benefit in order to be eligible.</p> <p>We are amending this rule as a consequence of amendment regulations 5(2), 6, 8(2) and 8(3).</p>
10(1)(a)	Kinds of assistance	Removes the income threshold for Child Tax Credit.
10(1)(b)	Kinds of assistance	<p>Makes Working Tax Credit a qualifying benefit in its own right.</p> <p>It also removes the income threshold which currently applies to Working Tax Credit.</p> <p>This will address the fact the current rules could disadvantage some pregnant women where a pregnant woman does not have any other children and is in receipt of Working Tax Credits meaning they would not become eligible for BSF until the child is born. Whereas if that same individual was in receipt of Universal Credit they would be eligible during their pregnancy.</p> <p>This change also resolves another scenario highlighted by stakeholders that could disadvantage some children where their parent or carer is not classed as responsible for the child for Child Tax Credit purposes, e.g. some kinship carers.</p>

		As a result of this change eligibility for BSF will be more closely aligned with BSG and Scottish Child Payment (SCP) where Working Tax Credits is already a qualifying benefit in its own right.
10(1)(c)	Kinds of assistance	Removes the income threshold for Housing Benefit.
10(1)(d)	Kinds of assistance	Removes the income threshold for Universal Credit (UC).
10(2)	Kinds of assistance	Where for any period an individual has received a qualifying benefit in error or where the amount they have received is £0, the individual is not entitled to BSF.  This provision is required as a consequence of amendment regulation 10(3).
10(3)	Kinds of assistance	For applicants who are in receipt of any qualifying benefit, any deductions made from their award due to sanctions or to pay any liability should be disregarded.  This change will ensure that if an individual has a nil award because of these deductions, we still treat them as being in receipt of the qualifying benefit and they will, therefore, be eligible for BSF. This is already policy and practice for BSF, BSG and SCP but it is not specified in BSF regulations and we are therefore taking the opportunity to make this explicit.
10(4)	Kinds of assistance	Removes the definitions of “earned income” and “relevant income”.  These are no longer required due to the removal of the income thresholds.
11(1)	Entitlement	Expands the circumstances where an application is not required to include where a new decision can be made because an individual was denied BSF due to not being in receipt of a qualifying benefit or child responsibility benefit and has subsequently received a backdated award of the benefit and the period of the backdated award includes the date of the original application. In these instances a decision will be able to be made to award BSF from the date of their original application, as set out in amendment regulation 16.

		<p>We are adding this provision as a consequence of the new provision to allow a decision following backdated award of assistance as part of amendment regulation 16.</p>
11(2)	Entitlement	<p>Expands an existing rule so that where BSF is being paid to the individual the pregnant woman is dependent on or the partner of that individual and an application is received from the pregnant woman and she is eligible, the pregnant woman's claim will be approved and the claim from the individual the pregnant woman is dependent on or the partner of that individual will be ended.</p> <p>We are amending this rule as a consequence of amendment regulation 7.</p> <p>This change will ensure that the pregnant woman will always be able to access BSF payments in their own right as it is paid to support their nutrition.</p>
11(3)	Entitlement	<p>Amends an existing rule so that where the individual the pregnant woman is dependent on or the partner of that individual has responsibility for an entitled child and that child is under 4 months of age and provides notification of the date of birth of the child, the child is entitled to BSF from the date of their birth.</p> <p>We are amending this rule as a consequence of amendment regulation 7.</p>
11(4)	Entitlement	<p>Amends existing rule which enables BSF to be awarded without the need for a new application where the individual loses entitlement to BSF and within 12 weeks they can demonstrate that they are entitled again. The provision expands this rule to include a new category of entitled person: the individual the pregnant woman is dependent on or the partner of that individual.</p> <p>We are amending this rule as a consequence of amendment regulation 7.</p>
11(5)	Entitlement	<p>Amends existing rule which ensures that where the entitled person is a child, it is the individual responsible for them who should be paid so that this only applies to entitled</p>



		<p>children under 3 and not to any other category of entitled person. It also ensures that the partner of the individual responsible can be paid.</p> <p>This change is required as “child” is defined in the regulations as anyone who is either under 16 or a dependant. Therefore the current drafting would mean that pregnant women and partners of pregnant women who are under 16 or a dependant could not be paid in their own right. We are currently relying on an interpretive duty in section 3 of the Human Rights Act to pay these individuals, where they have capacity.</p> <p>The change is will also align with BSG and current practice which is that either the individual responsible for the child or the partner of that individual can apply and be paid.</p> <p>Furthermore, it amends the rule so that the individual responsible for an entitled child or the partner of that individual can apply on their behalf.</p>
11(6)	Entitlement	<p>Allows Scottish Ministers to pay whoever they consider appropriate on behalf of an entitled person. Where Scottish Ministers are paying another individual on behalf of an entitled person and they consider it is no longer appropriate to pay that individual they can stop paying them.</p> <p>This provision is required to allow the individual the pregnant woman is dependent upon or the partner of that individual to continue to be paid BSF on behalf of the entitled child, even if they are not the individual responsible for the entitled child.</p>
12	Change of circumstances affecting entitlement to benefit	<p>Amends the existing duty to report a change of circumstances so that the duty is on the individual who is:</p> <ul style="list-style-type: none"> <li>• being paid BSF on behalf of the entitled person, or</li> <li>• the entitled person.</li> </ul> <p>We are amending this rule as a consequence of amendment regulations 11(6) and 13. It will have a similar effect to that of section 56(4) of the Social Security (Scotland) 2018 Act.</p>

13(1)	Appointment of a person to act on behalf of an individual	<p>Amends existing powers for Scottish Ministers to make an appointee for a pregnant woman, partner of a pregnant woman or individual responsible for an entitled child under 3 so that it includes specific circumstances where the individual is under 16.</p> <p>We are amending this as a consequence of amendment regulation 13(2).</p>
13(2)	Appointment of a person to act on behalf of an individual	<p>Provides new powers to make an appointee on behalf an individual who is under 16 and who is an entitled pregnant woman, partner of a pregnant woman or individual responsible for an entitled child under 3. Such an appointee can only be made where there is no person who:</p> <ul style="list-style-type: none"> <li>• has authority to act on behalf of the individual,</li> <li>• resides with the individual, and</li> <li>• is willing and practicably able to act on the individual’s behalf.</li> </ul> <p>This change is required as a consequence of amending regulation 11(5) as pregnant women and partners of pregnant women who are under 16 will be able to be paid in their own right. Where they do not have capacity to apply for or receive BSF, the individual with parental rights and responsibilities would normally apply and be paid. However, if it is not appropriate to pay this individual, then an appointee requires to be made.</p> <p>The approach to appointees for individuals under 16 who lack capacity aligns with the approach taken for Child Disability Payment for all entitled children.</p>
13(3)	Appointment of a person to act on behalf of an individual	<p>Makes clear that existing provisions in relation to the duties of appointees and how Scottish Ministers interact with appointees only relate to where the appointee has been made for an individual who is 16 or over.</p> <p>We are amending this as a consequence of amendment regulation 13(2).</p>
13(4)	Appointment of a person to act on	<p>Sets out where an appointee is made for an individual who is under 16, the appointee can do anything a person with parental rights and responsibilities or other authority, however arising, could do in connection with the individual’s entitlement to benefit.</p>

	behalf of an individual	<p>The appointee may be asked to provide information that would otherwise be requested from the individual and must be given any information that would otherwise be given to the individual.</p> <p>We are making this amendment as a consequence of amendment regulation 13(2).</p> <p>The approach to appointees for individuals under 16 who lack capacity aligns with the approach taken for Child Disability Payment for all entitled children.</p>
13(5)	Appointment of a person to act on behalf of an individual	<p>Sets out that Scottish Ministers must consider making or terminating an appointment for an individual who is under 16 if requested to do so by the individual, a person with parental rights and responsibilities, a person who resides with and has care of the individual or any other person with an interest in the welfare or financial affairs of the individual.</p> <p>We are making this amendment as a consequence of amendment regulation 13(2).</p> <p>The approach to appointees for individuals under 16 who lack capacity aligns with the approach taken for Child Disability Payment for all entitled children.</p>
13(6)	Appointment of a person to act on behalf of an individual	<p>Amends an existing rule so that the considerations that must be made when making or terminating an appointment also apply when making an appointment behalf of an individual who is under 16.</p> <p>We are making this amendment as a consequence of amendment regulation 13(2).</p>
13(7)	Appointment of a person to act on behalf of an individual	<p>Expands the matters which must be taken into account by Scottish Ministers when they are considering making or terminating an appointment so that where an appointment relates to an individual under 16, they must also consider the views of anyone with parental rights and responsibilities for the individual.</p>

		<p>We are making this amendment as a consequence of amendment regulation 13(2).</p> <p>The approach to appointees for individuals under 16 who lack capacity aligns with the approach taken for Child Disability Payment for all entitled children.</p>
13(8)	Appointment of a person to act on behalf of an individual	<p>This will allow an existing appointee to be recognised where an individual:</p> <ul style="list-style-type: none"> <li>• is under 16, and</li> <li>• is entitled to or is responsible for a child who is entitled to BSF,</li> <li>• lacks capacity to be paid BSF, and</li> <li>• has an existing appointee acting on their behalf in relation to another benefit made under the Social Security (Scotland) 2018 Act to be recognised as an appointee for BSF.</li> </ul> <p>We are making this amendment as a consequence of amendment regulation 13(2).</p> <p>Where the conditions are met, this will reduce the administrative burden for the appointee and for Social Security Scotland as they will be able to recognise the existing appointee.</p>
13(9)	Appointment of a person to act on behalf of an individual	<p>Expands the circumstances when the guidelines for making appointees must be followed by Scottish Ministers to include when an appointee is made on behalf of an individual who is under 16.</p> <p>We are making this amendment as a consequence of amendment regulation 13(2).</p>
14(1)	Value of benefit	<p>Expands categories of entitled persons who should receive the lower payment to include the individual the pregnant woman is dependent on and the partner of that individual.</p> <p>We are amending this rule as a consequence of amendment regulation 7</p> <p>Also defines the lower payment as “the basic payment”.</p>
14(2)	Value of benefit	Where individual responsible for a child under three years old is:

		<ul style="list-style-type: none"> <li>• 18 or over,</li> <li>• receives or is the partner of someone who receives a qualifying benefit, and</li> <li>• is ordinarily resident,</li> </ul> <p>the lower payment should be classed as “the basic rate” and the higher payment as “double the basic rate”.</p> <p>This will ensure that it is clear that the higher payment of BSF made when a child is under one or has not yet reached the first anniversary of its delivery date will always be double the lower payment which is paid during pregnancy and when a child is aged between one and three. It will make any future uprating of BSF simpler as we only uprate the basic payment amount and the ratio between the lower and higher payment will be maintained.</p>
14(3)	Value of benefit	<p>Where individual responsible for a child who is either under one year old or has not reached the first anniversary of its estimated delivery date is:</p> <ul style="list-style-type: none"> <li>• under 18, or</li> <li>• an 18 or 19 year old dependant, and</li> <li>• meets the residency conditions set out in regulation 9,</li> </ul> <p>the payment that the child is entitled to should be classed as “double the basic rate”.</p> <p>This will ensure that it is clear that the higher payment of BSF made when a child is under one year old or has not yet reached the first anniversary of its delivery date will always be double the lower payment which is paid during pregnancy and when a child is aged between one and three. It will make any future uprating of BSF simpler as we only uprate the basic payment amount and the ratio between the lower and higher payment will be maintained.</p>
14(4)	Value of benefit	<p>Where individual responsible for a child who is under three years old and older than one year old or has reached the first anniversary of its estimated delivery date, if that is later, is:</p> <ul style="list-style-type: none"> <li>• under 18, or</li> <li>• an 18 or 19 year old dependant, and</li> <li>• meets the residency conditions set out in regulation 9,</li> </ul> <p>the child is entitled to the basic payment.</p>

		We are amending this rule as a consequence of amendment regulations 8(3) and 14(1).
15(1)	Form in which benefit is to be given	Allows for an exception to be made to the rule that BSF must be paid via a prepaid card.  We are amending this rule as a consequence of amendment regulation 15.
15(2)	Form in which benefit is to be given	Sets out that where the Scottish Ministers consider it is appropriate they can make a payment to the entitled person in a way other than the prepaid card.  This change is being so that in exceptional circumstances payments can be made in a way other than the prepaid card. This will help ensure that very young pregnant women and parents can access the benefit in their own right as there is a lower age threshold which is applied to the prepaid card. It will also help address barriers for some individuals with a disability or long term health condition who find that due to their needs the card is not accessible.
16	When an application is to be treated as made	Allows an application for BSF to be treated as made at a later date where the individual is not eligible on the date that they have applied but will become eligible within 10 days.  This change will more closely align BSF with BSG and SCP which already allow applications to be treated as made at a later date. It will therefore address a current issue where an individual applies for all 3 benefits at the same time but is not eligible on the date that they apply and then has to reapply for BSF whereas for both BSG and SCP an award can still be made by treating the application as having been made at a later date. As a result, the application process will be simplified making it easier to understand, and ensuring that individuals receive their full entitlement.
16	Decision following backdated award of assistance	Allows an individual to receive BSF from the date of their original application where they have previously been denied BSF due to the lack of either a qualifying benefit or child responsibility benefit and they then receive a backdated award covering the date of their original application.

		<p>This will help people who face processing delays for reserved benefits as well as those who receive an incorrect decision. It will more closely align with SCP and BSG which already allow for this via a Determination Without Application rule.</p>
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