

2024 No.

SOCIAL SECURITY

FOOD

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

<i>Made</i>	- - - - -	***
<i>Laid before the Scottish Parliament</i>		***
<i>Coming into force</i>	-	***

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 13 of the Social Security Act 1988(1), section 175(4) of the Social Security Contributions and Benefits Act 1992(2) 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.

Citation and commencement

1.These Regulations may be cited as the Welfare Foods (Best Start Foods) (Scotland) Amendment Regulations 2024 and come into force on XX February 2024.

Amendments 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 26.

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

4.In regulation 6 (general)—

(1) in paragraph (1) after “regulation 7A” insert “, regulation 7B”.

(2) for paragraph (1A) substitute—

“(1A) Subject to regulation 11(1A)—

(a) an individual entitled to benefit under regulations 7, 7A or 7B is not entitled to be paid benefit where another entitled individual is being paid benefit in respect of the same pregnancy, and

(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) 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).

(3) S.S.I. 2019/193, amended by S.S.I. 2019/232, S.S.I. 2020/6, S.S.I. 2020/399, S.S.I. 2021/221, S.S.I. 2021/320, S.S.I. 2022/108, S.S.I. 2022/129, S.S.I. 2022/167 and S.S.I. 2022/336.

- (b) an individual entitled to benefit under regulation 8 is not entitled to be paid benefit where another individual is being paid benefit on behalf of, and for the benefit of, that individual.”

(3) after paragraph (3) insert—

“(4) A person who is entitled to benefit under these Regulations by virtue of payment of a kind of assistance mentioned in regulation 10(1)(a) to (g) does not cease to be entitled until the expiry of 8 weeks beginning with the day after the day on which the entitlement to that kind of assistance ends.”

5.In regulation 7 (pregnant women)—

(1) in paragraph (1)(a)(iii) omit “or dependant”,

(2) for paragraph (1)(b) substitute—

“(b) a pregnant woman who is—

(i) under 18 years of age, or

(ii) a dependant who is 18 or 19 years of age, and

meets the residence requirement in regulation 9.”,

(3) in paragraph (2) after “years” insert “or is no longer a dependant who is 18 or 19 years of age”.

6. For regulation 7A (partners of pregnant women) substitute—

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

(a) an individual who is—

(i) the partner of a pregnant woman,

(ii) where that pregnant woman is not a pregnant woman as described in regulation 7, in receipt of a kind of assistance mentioned in regulation 10, including a person who has been awarded a kind of assistance but has not yet received payment,

(iii) 18 years of age or over,

(iv) ordinarily resident in Scotland, and

(v) receiving benefit for the use of the pregnant woman mentioned in head (i).

(b) an individual who is—

(i) the partner of a pregnant woman,

(ii) either—

(aa) under 18 years of age, or

(bb) a dependant who is 18 or 19 years of age, and

(iii) receiving benefit for the use of the pregnant woman mentioned in head (i).

(2) The individual described in paragraph (1)(b) must meet the residence requirement in regulation 9.

(3) If an individual mentioned in paragraph (1)(b) reaches the age of 18 years or is no longer a dependant of 18 or 19 years of age before the end of their partner’s pregnancy, the individual remains entitled to benefit until the end of that pregnancy.”

7. After regulation 7A (partners of pregnant women) insert—

“Other entitled individuals

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

(a) the individual a person described by regulation 7(1)(b) is a dependant of, or

(b) the partner of the individual described by head (a),

who meets the residency requirement in regulation 9.

(2) Where, before the end of their pregnancy, the person described in regulation 7(1)(b) is no longer a dependant of the individual described at paragraph (1)(a), that individual or their partner remains entitled to benefit until the end of that pregnancy.”.

8. In regulation 8 (children)—

(1) in paragraph (1)(a)—

(i) in head (iii)—

(aa) for “that other individual” substitute “the individual responsible for the child”,

(bb) omit “or dependant”, and

(cc) for the last occurrence of “or” substitute “and”,

(ii) after head (iii) insert—

“(iv) the individual responsible for the child is ordinarily resident in Scotland, or”.

(2) for paragraph (1)(b) substitute—

“(b) a child—

(i) who is under one year of age,

(ii) for whom another individual is responsible and that other individual—

(aa) is under 18 years of age,

(bb) is a dependant who is 18 or 19 years of age, or

(cc) was previously entitled to benefit by virtue of regulation 7(1)(b) or 7A(1)(b) in respect of a pregnancy which resulted in the birth of the child,

and meets the residency requirement in regulation 9.”.

(3) after paragraph (1)(b) insert—

“(c) a child—

(i) who is over one year of age and not more than three years of age,

(ii) for whom another individual is responsible and that other individual—

(aa) is under 18 years of age, or

(bb) is a dependant who is 18 or 19 years of age,

and meets the residency requirement in regulation 9.”.

(4) for paragraph (2) substitute—

“(2) A child described in paragraph (1)(b) remains entitled to benefit until the later of —

(a) the day the child is one year of age, or

(b) the first anniversary of their estimated date of delivery,

including where the individual responsible for them has turned 18 years of age or is no longer a dependant before the child’s first birthday.

(3) Except where paragraph (4) applies, a child described in paragraph (1)(c) remains entitled to benefit until the later of—

(a) the day the individual responsible for the child turns 18 years of age, or

(b) the day the individual responsible for the child is no longer a dependant.

(4) Where a child described in paragraph (1)(c) turns 3 years of age before the day described in head (a) or (b), the child remains entitled to benefit until the day the child is 3 years of age.”.

9. In regulation 9(1)(b) (residence requirement) for “the individual, the individual’s partner nor the person on whom the individual is dependent” substitute “the individual nor the individual’s partner”.

10. In regulation 10 (kinds of assistance)—

(1) in paragraph (1)—

(a) in sub-paragraph (a) omit from “where” to “per annum,”,

- (b) for sub-paragraph (b) substitute—
 - “(b) working tax credit,”
 - (c) in sub-paragraph (c) omit from “where” to “£328,” and
 - (d) for sub-paragraph (h) substitute—
 - “(h) universal credit,”
 - (2) for paragraph (2) substitute—

“(2) An individual is not to be regarded as having been awarded a kind of assistance for a day or a period if—

 - (a) the award was made in error (whether or not induced by the individual), or
 - (b) the sum awarded to the individual for the day or period is £0.”
 - (3) after paragraph (2) insert—

“(2A) In paragraph (2)(b), the reference to “the sum awarded” means, in a case where a deduction has been made—

 - (a) in respect of any liability the individual has to another person, or
 - (b) by way of sanction,

the sum that would have been awarded had the deduction not been made.”, and
 - (4) in paragraph (3) omit the definitions of “earned income” and “relevant income”.
- 11. In regulation 11 (entitlement)—**
- (1) in paragraph (1) after “(2)” insert “and regulation 23”,
 - (2) in paragraph (1A) for each occurrence of “regulation 7A” substitute “regulations 7A or 7B”,
 - (3) in paragraph (2) for “regulation 7, or 7A” substitute “regulations 7, 7A or 7B”,
 - (4) in paragraph (3) after “7A” insert “7B,”,
 - (5) in paragraph (4) —
 - (a) after “done” insert “by or”,
 - (b) after “child” where it first appears insert “as described in regulation 8”,
 - (c) after “responsible for that child” insert “or the partner of the individual responsible for the child”.
 - (6) after paragraph (4) insert—

“(5) Where a beneficiary is entitled to benefit under these Regulations, the Scottish Ministers may, where they consider it appropriate, give the benefit to another person (“person B”) to be used for the benefit of the beneficiary.

(6) Where the Scottish Ministers consider, for any reason, that it is no longer appropriate for a person B to continue to receive the benefit, they may cease giving the benefit to that person.”.
- 12. For regulation 12 (change of circumstances affecting entitlement to benefit) substitute—**
- “**12.**—(1) The persons mentioned in paragraph (2) must inform the Scottish Ministers of a change of circumstances affecting a beneficiary’s entitlement to benefit under these Regulations.
- (2) The persons are—
- (a) where the benefit is given to a person other than the beneficiary in accordance with regulations 11(5) or 12A(1)(b), the person to whom the benefit is given, or
 - (b) in any other case, the beneficiary.”.

13. In regulation 12A (appointment of a person to act on behalf of an individual)—

- (1) in paragraph (2) for “(3) or (4)” substitute “(3), (4) or (4A)”,
- (2) after paragraph (4) insert—

“(4A) This paragraph applies if—

 - (a) the individual is under 16 years of age, and

- (b) it appears to the Scottish Ministers that there is no person who—
 - (i) has authority to act on behalf of the individual,
 - (ii) resides with, and has care of, the individual, and
 - (iii) is willing, and practicably able, to act on the individual’s behalf in relation to the matters mentioned in paragraph (1).”.
- (3) in paragraph (6) after “individual” where it first appears insert “who is 16 years of age or over”,
- (4) after paragraph (6) insert—

“(6A) Where an appointee is appointed under paragraph (1) to act on behalf of an individual who is under 16 years of age—

 - (a) the appointee can do anything that a person with authority (however arising) to act on behalf of the individual in relation to the determination of the individual’s entitlement to benefit 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 might 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.”,
- (5) after paragraph (9) insert—

“(9A) The Scottish Ministers must consider whether to make an appointment by virtue of paragraph (4A), or to terminate such appointment, if requested to do so by—

 - (a) the individual, or
 - (b) anyone else who appears to Ministers to—
 - (i) have authority to act on behalf of the individual,
 - (ii) reside with, and have care of the individual, or
 - (iii) have an interest in the welfare of financial affairs of the individual.”,
- (6) in paragraph (10) after “(4)” insert “or (4A)”,
- (7) In paragraph (11)
 - (a) in sub-paragraph (a) omit “and”, and
 - (b) after sub-paragraph (b) insert—

“(c) where the individual is under 16 years of age, anyone who is a relevant person in relation to the individual within the meaning of section 200 of the Children’s Hearings (Scotland) Act 2011i.”,
- (8) after paragraph (12) insert—

“(12A) A person appointed by the Scottish Ministers under and in accordance with section 85A(4) of the 2018 Act may be treated by them as an appointee of an individual under 16 years of age in connection with the determination of the individual’s entitlement to benefit under these Regulations.
”,
- (9) in paragraph (13) for “to appointments under section 85B of that Act” substitute “to appointments under that Act”.

14. In regulation 13 (value of benefit)—

- (1) in paragraph (1)—
 - (a) for “regulation 7 or regulation 7A” substitute “regulations 7, 7A or 7B”,
 - (b) after “£4.95” insert “(the basic rate)”,
- (2) in paragraph (2)—

(4) Section 85A was inserted by sections 1(2) of the 2020 Act.

- (a) in head (a) for “£9.90” substitute “double the basic rate”,
- (b) in head (b) for “£4.95” substitute “the basic rate”
- (3) in paragraph (3) for “£9.90” substitute “double the basic rate”
- (4) after paragraph (3) insert—

“(3A) The benefit to which a child described in regulation 8(1)(c) is entitled is credit for Best Start Foods to the value of the basic rate for each week that the child is so entitled.”

15. For regulation 14 (form in which benefit is given) substitute—

“Form in which benefit is given

14.—(1) Subject to paragraph (2), the credit mentioned in regulation 13 is to be given in the form of a payment card.

(2) Where the Scottish Ministers consider it appropriate, they may credit the beneficiary an amount equal to the value on the payment card mentioned in paragraph (1).”.

16. After regulation 21 (revocations) insert—

“PART 8

Procedural matters

When an application is to be treated as made

22.—(1) An application is to be treated as made—

- (a) on the day it is received by the Scottish Ministers; or
- (b) the day chosen by the Scottish Ministers in accordance with paragraph (2).

(2) If, before making a decision on the basis of an application, the Scottish Ministers consider that applicant—

- (a) would not be entitled to benefit under these Regulations if the application were treated as made on the day they received it, and
 - (b) would be entitled to benefit under these Regulations if the application were treated as made on a day falling within a period of 10 days beginning with the day they received it,
- the Scottish Ministers may choose the day within that 10 day period on which the application is to be treated as made.

Decision following backdated award of assistance

23.—(1) The Scottish Ministers are to make a decision on an individual’s entitlement to benefit under these Regulations (without receiving an application) where the circumstances in paragraphs (2) to (5) apply.

(2) The Scottish Ministers have previously made a decision that the individual is not entitled to benefit under these Regulations (“the original decision”).

(3) The Scottish Ministers establish that a backdated award of assistance of a kind specified in—

- (a) regulation 5(2)(a) is made in circumstances in which regulation 5(2)(b) applies, or
- (b) regulation 10 is made.

(4) The award referred to in paragraph (3) (“the backdated award”) is backdated to a day, or a period that begins on a day, that falls no later than the day on which the original decision was made.

(5) Had the backdated award been made before the original decision, a decision that the individual is entitled to benefit under Regulations would have been made.

(6) For the purposes of this regulation, an award is backdated if it relates to a day, or a period that begins on a day, that falls before the day the decision to make the award was taken.