

# Social Justice and Social Security Committee

## 2<sup>nd</sup> Meeting, 2024 (Session 6), Thursday, 25 January 2024

### Subordinate Legislation Cover Note

**Title of Instrument:** [The Welfare Foods \(Best Start Foods\) \(Scotland\) Amendment Regulations 2023](#)

**SSI Number:** 2023/371

**Laid Date:** 7 December 2023

**Reporting deadline:** 29 January 2024

**Coming into force:** 26 February 2024

**Type of instrument:** Negative

### Purpose of the regulations

1. As outlined in the [Policy Note](#) and [Explanatory Note](#) (available in the annexe), this instrument makes changes to Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 which make provision for Best Start Foods and set out the rules and eligibility criteria for the scheme.
2. Best Start Foods aims to tackle the impacts of child poverty by improving access to healthy foods and milk for eligible families on a low income. It also provides eligible pregnant women and families with children under the age of three with financial support towards the cost of purchasing healthy foods via a prepaid card.
3. The main changes are:
  - Removal of the income thresholds which apply to some qualifying benefits to widen access to the scheme;
  - Further alignment of the eligibility criteria with Best Start Grant and Scottish Child Payment; and
  - Technical changes to how payments are made to simplify the uprating process and to make clear that Best Start Foods can be paid to individuals where it is not appropriate to provide a prepaid card.

## Parliamentary procedure

4. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament. If that is also agreed to, Scottish Ministers must revoke the instrument.
5. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.
6. Members should note that it is not always possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.

## Delegated Powers and Law Reform Committee consideration

7. The Delegated Powers and Law Reform (DPLR) Committee considered the instrument at its [meeting on 19 December 2023](#) and made no recommendations in relation to this instrument. The Official Report for the meeting is available [here](#).

## For decision

8. **The Committee is invited to consider any issues it wishes to raise regarding this instrument.**

# ANNEXE

## POLICY NOTE

### The Welfare Foods (Best Start Foods) (Scotland) Amendment Regulations 2023

#### SSI 2023/371

The above instrument was made in exercise of the powers conferred by section 13 of the Social Security Act 1988, section 175(4) of the Social Security Contributions and Benefits Act 1992 and all other powers enabling them to do so. The instrument is subject to negative procedure.

#### Summary

These regulations make changes to the Best Start Foods Regulations that set out the rules and eligibility criteria for Best Start Foods. The main changes are removing the income thresholds which apply to some qualifying benefits and further aligning the eligibility criteria with Best Start Grant and Scottish Child Payment. The regulations also make some technical changes to how payments are made to simplify the uprating process and to make clear that Best Start Foods can be paid to individuals where it is not appropriate to provide a prepaid card.

#### Policy Objectives

The Scottish Government is committed to tackling child poverty and has introduced three specific benefits to provide support to low income families – Best Start Foods, Best Start Grant and Scottish Child Payment. These benefits are collectively known as the five family payments. Best Start Foods was introduced in 2019 and aims to tackle the impacts of child poverty by improving access to healthy foods and milk for eligible families on a low income.

BSF provides eligible pregnant people and families with children under the age of three with financial support towards the cost of purchasing healthy foods via a prepaid card. These regulations are needed to make a number of changes to Best Start Foods. These changes will provide more families with access to Best Start Foods, further align the eligibility criteria for Best Start Foods with Best Start Grant and Scottish Child Payment, and make some technical changes to how payments are made. These changes are set out below.

- Ensuring entitlement to Best Start Foods continues for a period of 8 weeks when entitlement to Child Tax Credit, Working Tax Credit, Income Support, Income-based Jobseekers Allowance, Income-related Employment and Support Allowance, Pension Credit or Housing Benefit ends.

- Making 18 and 19 year old dependants who are pregnant eligible without the need for a qualifying benefit, as long as they meet the relevant residency conditions. If the pregnant person stops being a dependant before the end of the pregnancy, eligibility will continue until the end of that pregnancy.
- Aligning the eligibility criteria for partners of pregnant persons with that of pregnant persons.
- Making the individual who an eligible pregnant person is dependent on and the partner of that individual, entitled to receive Best Start Foods. If the pregnant person stops being a dependant before the pregnancy has ended, the individual will remain eligible until the end of the pregnancy.
- Amending the eligibility rules for children so that children under 3 are eligible if the individual responsible for them or the partner of that individual:
  - is under 18
  - is a dependant aged 18 or 19 years old, or
  - was eligible to receive Best Start Foods during pregnancy due to being under 18 or dependant aged 18 or 19 years old. If the individual responsible for the child turns 18 or ceases to be a dependant aged 18 or 19 years old before the child turns 1, the child will continue to be eligible up until the child turns 1 or reaches the first anniversary of its estimated delivery date, whichever is later.
- Amending the residency requirements so that the individual responsible for a child under 3 or the partner of that individual must meet the residency conditions set out in regulation 9 in order for the child to be eligible for Best Start Foods.
- Amending the residency requirements so that whomever applies on behalf of an entitled child who is under 3 must meet the residency conditions set out in regulation
- Amending 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).
- Removing the income thresholds which apply to certain qualifying benefits.
- Making Working Tax Credit a qualifying benefit in its own right.
- For Best Start Foods applicants who are in receipt of any qualifying benefit, ensuring that any deductions made from their qualifying benefit award due to sanctions or to pay any liability are disregarded. This will ensure that if an individual has a nil award because of these deductions, they will still be treated as being in receipt of the qualifying benefit and they will, therefore, be eligible for Best Start Foods. In all other circumstances, where the individual has a nil award or where the individual has received a qualifying benefit in error, the individual is not entitled to Best Start Foods.

- Ensuring that where Best Start Foods is being paid to the individual the pregnant person is dependent on or the partner of that individual and an application is received from the pregnant person and they are eligible, the pregnant person's claim will be approved and the claim from the individual the pregnant person is dependent on or the partner of that individual will be ended.
- Where applications are received from two eligible individuals and neither is the pregnant person, allowing Scottish Ministers to decide who should be entitled to Best Start Foods, having regard to the circumstances of the pregnant person.
- Making clear that where they have legal capacity to be paid, entitled young persons can be paid in their own right, and young parents of an entitled child who is under 3 can be paid on behalf of the child.
- Allowing payment on behalf of an entitled child who is under 3 to be made to the partner of the person who is responsible for the child.
- Allowing Scottish Ministers to pay whoever they consider appropriate on behalf of an entitled person.
- Amending the duty to report a change of circumstances so the duty is on the individual who is being paid Best Start Foods on behalf of the entitled person, or the entitled person if they are being paid in their own right.
- Allowing Scottish Ministers to make an appointee for an individual who is under 16 and is an entitled pregnant person, partner of a pregnant person or person responsible for a child under 3. Such an appointee can only be made where there is no person who has authority to act on behalf of the individual, resides with the individual, and is willing and practicably able to act on the individual's behalf.
- Specifying that the higher payment of Best Start Foods paid from the date the child is born until the child turns 1 or reaches the first anniversary of its estimated delivery date, whichever is later, is double the lower payment.
- Allowing payments to be made in a way other than the prepaid card, where appropriate.
- Giving the Scottish Ministers a discretion to treat an application as having been made at a later date where Social Security Scotland can see that the individual who applied will become eligible within 10 days of their application date.
- Allowing a new decision to be made without having to receive a new application or review request where an individual has previously been determined as ineligible due to the lack of a qualifying benefit or child responsibility benefit and they have subsequently received a backdated award of their qualifying benefit or child responsibility benefit which covers the date of their original application.

- Sets out the transitional arrangements which will apply to existing claims and claims which are made prior to the coming into force date but which are processed on or after this date.

These changes are not relevant to the Scottish Government's EU alignment policy.

### **Consultation**

To comply with the requirements of section 13(2) of the Social Security Act 1988, Welsh Ministers have been consulted on the changes to Best Start Foods regulations.

#### The Scottish Commission on Social Security

The Scottish Ministers have consulted the Scottish Commission on Social Security (SCoSS) under section 22(1)(b) of the 2018 Act. SCoSS shared their scrutiny report on 27 September 2023. The Scottish Government's response will accompany these regulations.

As a result of that consultation the following *general themes emerged*:

- the need to consider the potential for abuse by a partner and additional mitigations which may need to be put in place
- the need to have clear, accessible guidance on the changes being introduced and what they mean for potential applicants

*and as a result:*

- we have ensured that where applications are received from two eligible individuals and neither is the pregnant person, Scottish Ministers will have the power to decide who should be entitled to Best Start Foods, having regard to the circumstances of the pregnant person.
- content explaining the changes that have been made will be produced by Social Security Scotland.

#### Stakeholder engagement

Extensive stakeholder engagement was undertaken as part of the development of the initial regulations establishing Best Start Foods.

Ahead of drafting these regulations we consulted with members of the Five Family Payments Reference Group, which comprises third sector, NHS and local government representation. We also consulted several organisations that represent groups with different protected characteristics. This consultation has helped to inform our assessment of the impact of the changes.

### **Impact Assessments**

The following impact assessments have been completed on the draft SSI:

- A Children's Rights and Wellbeing Impact Assessment
- An Equalities Impact Assessment
- A Business and Regulatory Impact Assessment

- An Islands Screening Assessment
- A Fairer Scotland Duty Impact Assessment

**Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) has been completed and the impact of these policies on business is limited.

The Scottish Fiscal Commission’s May 2023 forecasts included estimated costs for the removal of the income thresholds. These are £3 million in 2024-25 and annual costs of £6 million for 2025-26 onwards. These estimates will be updated when the Commission publishes new forecasts on 19 December 2023 to accompany the 2024-25 Scottish Budget.

The Commission’s view is that the annual cost of the other changes in these regulations will be below the negligibility threshold of £2 million.

Scottish Government  
Social Security Directorate  
5 December 2023

## 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.

Regulation 2(2)(b) adds a definition of “state pension credit” to regulation 2 of the principal Regulations and regulation 2(10)(c)(i) omits the definition from regulation 10(3) of the principal Regulations.

Regulation 2(3) corrects minor drafting errors in regulation 5 of the principal Regulations and adds a definition of “child benefit” for the purposes of that regulation.

Regulation 2(4)(c) inserts a new regulation 6(4) into the principal Regulations. Regulation 6(4) makes provision for an individual’s entitlement to benefit where the individual is entitled by virtue of a kind of assistance mentioned in regulation 10(1)(a) to (g) of the principal Regulations, and entitlement to that assistance ends.

Regulation 2(5) amends regulation 7 of the principal Regulations, to provide that a pregnant woman, who is an 18 or 19 year old dependant (within the meaning of regulation 5 of the principal Regulations), is entitled to benefit provided they meet the residence requirement in regulation 9.

Regulation 2(6) substitutes a new regulation 7A into the principal Regulations. Regulation 7A makes provision for entitlement to benefit for the partner of a pregnant woman. The individual is only entitled if the payment is to be used for the benefit of the pregnant woman.

Regulation 2(7) inserts a new regulation 7B into the principal Regulations. Regulation 7B makes provision for entitlement to benefit for the individual responsible, or their partner, of a pregnant woman who is entitled to benefit by virtue of regulation 7 of the principal Regulations, provided the payment is to be used for the benefit of the pregnant woman. Consequential amendments in connection with regulation 2(7) are made in paragraphs (3), (4)(a), (4)(b), (11)(d) and (14)(a)(i) of regulation 2.

Regulation 2(8) amends regulation 8 of the principal Regulations to make provision for entitlement of children under 3, where the individual responsible for the child is either a dependant who is 18 or 19 years of age, or was entitled to benefit as either a pregnant woman or the partner of a pregnant woman and who was under 18 years old or a dependant at the time of the pregnancy.

Regulation 2(9)(a) amends regulation 9(1)(b) of the principal Regulations to provide that an individual who is a dependant must meet the residence requirement in regulation 9(2), where neither the individual nor their partner has been awarded a kind of assistance mentioned in regulation 10. Regulation 2(9)(b) makes consequential



amendment to regulation 9(2)(aa) of the principal Regulations following the revocation of the Immigration (European Economic Area) Regulations 2016.

Regulation 2(10)(a) amends regulation 10 of the principal Regulations to remove the income thresholds that applied to certain forms of assistance and to add working tax credit as a form of assistance. Regulation 2(10)(c)(i) is a consequential amendment connected to regulation 2(10)(a). Regulation 2(10)(c)(ii) inserts definitions for income-based jobseeker's allowance, income-related employment and support allowance and income support.

Regulation 2(10)(b) inserts new paragraphs (2A) and (2B) into regulation 10 of the principal Regulations. Paragraph (2A) provides that an individual is not to be regarded as having been awarded a kind of assistance where the award was made in error, or the sum awarded to the individual is £0. Paragraph (2B) provides that liabilities and sanctions are to be disregarded when determining the sum awarded.

Regulation 2(11)(b) substitutes a new regulation 11(1A) and inserts a new regulation 11(1B) into the principal Regulations to provide that where there is a competing claim to benefit between a pregnant woman and her partner and/or the person responsible for the pregnant woman (or their partner), the pregnant woman is to receive the benefit. Regulation 2(11)(b) also inserts new paragraph (1C) into regulation 11 of the principal Regulations. Paragraph (1C) provides that, where two or more individuals described in regulation 7A or 7B apply to benefit in respect of the same pregnancy, the Scottish Ministers must decide which of the individuals is entitled by having regard to the circumstances of the pregnant woman, and stop any payment to the individual the Scottish Ministers decide is not entitled.

Regulation 2(11)(c) substitutes a new paragraph (2) and inserts a new paragraph (2A) into regulation 11 of the principal Regulations. Paragraphs (2) and (2A) provide that a child described in regulation 8 and who is under 4 months of age is entitled to benefit payable from the date of their birth where the individual responsible for them notifies the Scottish Ministers of their date of birth, and that individual was entitled to benefit by virtue of regulation 7, 7A or 7B, before the child's birth.

Regulation 2(11)(e) substitutes a new regulation 11(4) into the principal Regulations, to provide that the individual responsible for a child described in regulation 8, or their partner, may act on behalf of the child for the purpose of the principal Regulations.

Regulation 2(11)(f) inserts new paragraphs (5) and (6) into regulation 11 of the principal Regulations. Paragraph (5) provides that where the Scottish Ministers consider it appropriate, they may give the benefit to another individual to be used for the benefit of the beneficiary. Paragraph (6) provides that where the Scottish Ministers consider it no longer appropriate, for any reason, they may stop giving the benefit to that person.

Regulation 2(12) substitutes a new regulation 12 into the principal Regulations to provide which persons are under the duty to report a change of circumstances in accordance with regulation 12(1).

Regulation 2(13) amends regulation 12A of the principal Regulations to expand the Scottish Ministers' power to appoint a person to act on behalf of an individual, in certain circumstances, in accordance with regulation 12A(1), to include where the individual described in regulation 12A(1) is an individual under 16 years old. This power does not prevent an individual under 16 years of age from acting on their behalf.

Regulation 2(14)(a) and (b) make technical amendments to regulation 13 of the principal Regulations to provide the value of the benefit to which an individual is entitled. Regulation 2(14)(c) substitutes a new paragraph (3) to provide the rate of entitlement for a child entitled by virtue of regulation 8(1)(b) of the principal Regulations.

Regulation 2(15) amends regulation 14 of the principal Regulations to provide an exception to the rule that the credit mentioned in regulation 13 is to be given in the form of a payment card.

Regulation 2(16) inserts Part 6A (procedural matters) into the principal Regulations, which comprises regulations 18A and 18B. Regulation 18A provides when an application is to be treated as made by the Scottish Ministers. Regulation 18B imposes a duty on the Scottish Ministers to make a decision, without having received an application, in the circumstances in which they establish that a backdated award of assistance of the kind specified in regulation 5(2)(a) and regulation 10 is made. Regulation 2(11)(a) of these Regulations is a consequential amendment connected to regulation 16.

Regulation 3 makes transitional provision in respect of applications that were made before these Regulations come into force, but have not been decided by the Scottish Ministers.

Regulation 4 makes transitional provision in respect of the treatment of individuals who are entitled to benefit in respect of an application made before these Regulations come into force.