



SOCIAL SECURITY COMMITTEE

AGENDA

18th Meeting, 2019 (Session 5)

Thursday 20 June 2019

The Committee will meet at 9.30 am in the Adam Smith Room (CR5).

1. **Decision on taking business in private:** The Committee will decide whether to take item 4 in private.
2. **Universal Credit Consent Provisions:** The Committee will take evidence from—

Richard Gass, Welfare Rights and Money Advice Manager, Glasgow City Council;

Sheila McKandie, Benefits & Welfare Manager, Highland Council;

Richard Baillie, Representing National Association of Welfare Rights Advisers (NAWRA);

Sandra Stewart, Advice Worker, Family Advice and Information Resource (FAIR).

3. **Subordinate legislation:** The Committee will consider the following negative instrument—

The Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 (SSI 2019/193)

4. **Universal Credit Consent Provisions:** The Committee will consider the evidence heard earlier in the meeting.

SSC/S5/19/18/A

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The papers for this meeting are as follows—

Agenda Item 2

SPICe Briefing

SSC/S5/19/18/1

Submission from CPAG

SSC/S5/19/18/2

Agenda Item 3

Note by the Clerk

SSC/S5/19/18/3

Social Security Committee

18th Meeting, 2019 (Session 5), Thursday 20 June 2019

Implicit Consent and Universal Credit

INTRODUCTION

This paper suggests areas of discussion for the Committee's evidence session on the requirement for explicit consent before an adviser or representative can discuss a client's universal credit case with the DWP. This is a change from the system for legacy benefit where implicit consent was sufficient. The social security advisory committee (SSAC) and DWP are currently exploring the issues and a report is due to be published.

This paper summarises the DWP guidance on this issue and current work to try and resolve some of the problems before suggesting possible themes for discussion with witnesses.

The Committee will hear from:

- Richard Gass, welfare rights and money advice manager, Glasgow City Council
- Sheila McKandie, benefits and welfare manager, Highland Council
- Sandra Stewart, advice worker, Family Advice and Information Resource (FAIR)
- Richard Baillie, representing National Association of Welfare Rights Advisers (NAWRA)

None of the witnesses provided submissions, but a submission was received from CPAG in response to the Committee's general call for examples of how this policy affects the provision of advice.

BACKGROUND

DWP Guidance

In summary, the DWP guidance on [Consent for a disclosure \(ver 15\)](#)¹ provides that:

- The claimant must provide explicit consent before information can be disclosed to a representative² (but see below for exceptions)
- Explicit consent is not indefinite, and will have an 'expiry date' – if the issue is not resolved by the expiry date it can be reviewed and extended to the end of the next assessment period
- The consent must state:
 - what personal information the client wants disclosed and why this is needed
 - the name and organisation of the representative
- The representative must be able to provide details that match those provided by the client, such as client and representative's name, client's address or date of

¹ Available as a [deposited paper in the House of Commons library](#), ref: DEP 2018-0759

² A representative is "any person or organisation acting on behalf of or making enquiries for the claimant."

birth, what information is to be disclosed and its purpose. The guidance states that:

“if there is any doubt as to the identity of the representative making the inbound call no information should be disclosed”

Exceptions

Exceptions to the need for explicit consent are:

- Court orders
- MPs acting on behalf of their constituents. This exception does not apply to MSPs or Welsh Assembly members (see below on elected representatives).³
- Legal Gateways: where legislation specifically allows information sharing for specified purposes.⁴
- Public interest: eg. where clients with complex needs or child face a clear and significant risk to their welfare or safety. Examples include risk of injury, neglect or exploitation.

Landlords

Some information related to APAs (alternative payment arrangements) can be shared with landlords without the need for explicit consent.

DWP view on the need for explicit consent

The DWP has set out its view that universal credit required a different approach to consent because of the amount of personal data involved, but is working with the SSAC to explore options for improving explicit consent

“Because Universal Credit is delivered on a different platform to legacy benefits, and it replaces six major benefits, the approach taken to consent needs to be different. The amount of personal data available on Universal Credit is far greater than the individual legacy systems, meaning that any data breach has far reaching consequences for claimants. We therefore need to balance consent against this risk.

Where consent is needed it can be quickly given in different ways. For example, claimants only need to put a note in their journal to give consent, this is a far simpler and more straightforward process than in legacy systems. Once consent is given, advisers will work with the claimant’s representatives.” ([DWP reply to SSAC report on managed migration regulations, November 2018](#))

Social Security Advisory Committee work with DWP

The SSAC is currently working with the DWP to explore the issues and is due to publish a report.

⁴ For example, s.131 of the [Welfare Reform Act 2012](#) allows certain social security information to be shared with qualifying persons (local authorities and those prescribed by the Secretary of State) for various purposes including welfare services which: “includes services which provide accommodation, support, assistance, advice or counselling to individuals with particular needs” It also allows citizens advice to share information in order to provide advice as part of universal credit universal support (see SI 2012/1483 as amended).

In its [report on managed migration](#) (November 2018), the SSAC had recommended that implicit consent be extended to universal credit.

“but with appropriate safeguards in place to ensure that personal data held by the Department are not compromised. This Committee would be willing to work with the Department and other interested parties to identify what those safeguards should be. This work should be completed, and conclusions published, by the end of March 2019.”

In reply the DWP agreed to work with the SSAC to identify how current practices could be improved and to publish a joint conclusion.

“A number of organisations have raised concerns as to whether the implicit consent rules are sufficiently flexible. We therefore, agree to explore options for improving the process of explicit consent in relation to Universal Credit in collaboration with the Social Security Advisory Committee to consider how current practices could be enhanced and to publish a report on our joint conclusions.” ([DWP reply to SSAC report on managed migration regulations, November 2018](#))

A sub-group of DWP and SSAC has met and its conclusions were considered at the SSAC meeting of 22 May.⁵ A report will be published in due course.

Information Commissioner’s Opinion

In April the information commissioner’s office (ICO) issued an opinion that:

“The DWP appears to be taking an unduly restrictive view of the definition of consent under data protection”

The ICO considered that the effect of the policy was:

“likely to mean that people are at risk of significant prejudice as a result of excessive time being spent by DWP staff, representatives and individuals resolving authorities to act; peoples’ legitimately authorised representatives’ contact being refused by the DWP; vulnerable people being unable to obtain necessary assistance from representatives; and in some cases vulnerable people having an appointee established where this is not necessary or appropriate.”

Recommendations included:

- Urgent revision of the time limit restrictions for explicit consent.
- Adding templates and illustrative case studies to the guidance.
- Allowing discussion of specified personal data when this is the direct subject of the matter being raised.

The ICO wrote to the DWP:

“asking it to revise its consent policies and internal guidance [...] and take active steps to ensure the policy works on a practical level.”

A copy of the opinion available as an annex to this paper.

⁵ See [SSAC minutes of the meeting on 30 January 2019](#)

Elected Representatives

A change of policy in 2017 means that MPs do not require explicit consent. However, the requirement does continue to apply to other elected representatives.⁶

In March 2017, Damian Green announced that MPs, but not others, would be able to rely on implied consent. The reason given for the different treatment was:

“We can offer this because of our pre-existing relationships between MPs offices, District Managers and their teams. This is something which cannot pertain for enquiries from other sources.” [Damian Green written statement 13 March 2017](#)

A House of Commons member’s bill seeks to allow implicit consent for MSPs and others. The [Universal Credit \(Application, Advice and Assistance\) Bill 2017-19](#) lodged by Philippa Whitford under the ‘ten minute rule’ in March 2018 has yet to have its second reading.

Examples of impact

The Committee asked for examples of how the above guidance affects representatives’ ability to assist their clients. CPAG⁷ sent examples from their ‘early warning system’ including:

- Difficulties confirming explicit consent due to long delays getting through to the universal credit helpline
- Some advisers store their client’s universal credit log in details and passwords in order to access the online journal if required. This places both the client and the adviser at risk but advisers report that: “they do not have the time to spend navigating the explicit consent requirements.”
- Some clients struggle to remember their log in details – this can be an issue for very vulnerable clients

The SSAC has noted, in its consideration of managed migration, that:

“The design of consent in migration was regularly raised as one of the top three issues in discussions with stakeholders on managed migration.” ([SSAC minutes 30 January 2019](#)).

Previous Committee Consideration

The Social Security Committee raised the issue of implicit consent with the DWP in 2016. In reply, Neil Couling (Director general, universal credit) wrote:

“Because of the data risks, it is not safe to take an implied consent approach. [...] If claimants live in a rural community and can’t keep revisiting agencies for support, they can arrange a three way call between themselves, a representative and the DWP to verify their ID and provide wider consent to discuss their claim. ([Neil Couling to Sandra White, 1 February 2017](#))

The letter also discussed arrangements for appointees for those who cannot act for themselves.

⁶ This issue has been raised by Linda Fabiani, MSP – see for example: [Herald 3 November 2018 “outrage as whitehall admits ‘two-tier’ benefits system for MPs and MSPs.](#)

⁷ Submission should be available in Committee papers for the meeting

As well as advisers, landlords may wish to discuss a tenant's universal credit claim. The issue was therefore also raised in evidence to the Committee's inquiry on social security support and housing. For example, it was mentioned in submissions from: [Renfrewshire Council](#), [Clydesdale Housing Association](#), [Home Group](#), [Scottish Federation of Housing Associations](#), [Marble Properties](#) and [Perth and Kinross Council](#). Marble Properties consider that the DWP is:

"taking GDPR to extremes to the point where most things cannot function or operate."

Scottish Government view

In response to a question from Linda Fabiani, the Cabinet Secretary, Shirley-Anne Somerville said that the Scottish Government has raised concerns about the explicit consent policy with the DWP:

The Scottish Government has previously raised its concerns with DWP about the lack of implicit consent for MSP's at both a Ministerial and official level and continues to be frustrated by the DWP's lack of action. [...] The Scottish Government will continue to press the UK Government to put in place the changes necessary to make Universal Credit fit for purpose. ([S5W-20045, answered 29 November 2018](#))

SUGGESTED THEMES FOR DISCUSSION

The following suggests seven themes for discussion.

Theme 1: Balancing consent against risk of data breach and fraud

The DWP has said:

"The amount of personal data available on Universal Credit is far greater than the individual legacy systems, meaning that any data breach has far reaching consequences for claimants. We therefore need to balance consent against this risk."

In a letter to the advice sector in 2017, Neil Couling set out the reasoning:

"I realise, that as bona fide advisers this may seem unduly cautious, but we face regular attempts by unscrupulous organisations and individuals to access information from us and we need to take all reasonable steps to protect the position of claimants and their data which we hold"

However, the information commissioner's office opinion is that:

"The DWP appears to be taking an unduly restrictive view of the definition of consent under data protection" (see case opinion in annex)

The Committee may wish to discuss:

- **The opinion of the DWP that: "because of the data risks, it is not safe to take an implied consent approach"**
- **The opinion of the information commissioner that the DWP's approach is unduly restrictive.**
- **The extent to which the existing rules on consent protect against fraud**

- **Witnesses' assessment of the risk of fraud if the rules around consent were to be relaxed**

Theme 2: Ease of gaining consent

The DWP has said in its reply to the SSAC:

"Where consent is needed it can be quickly given in different ways. For example, claimants only need to put a note in their journal to give consent, this is a far simpler and more straightforward process than in legacy systems."

The Committee may wish to discuss:

- **witnesses' views and experiences of how easy it is (or isn't) to get explicit consent.**

Theme 3: Rural communities

In a letter to the Committee in February 2017, Neil Couling set out the policy of requiring explicit consent. This included recognition of difficulties for those living in remote areas.

"In situation where it is neither straightforward nor affordable for customers to keep revisiting advice offices in person for support, the claimant can make/arrange a three way call between themselves, a representative and the DWP to verify their ID and provide wider consent to discuss their claim.

We are also exploring other technologies that may assist claimants and their advisers in remote or rural areas, such as Skype for Business, which is being trialled in the Highlands of Scotland where claimants may be over 100 miles from their nearest office." ([Neil Couling to Sandra White, February 2017](#))

The Committee may wish to discuss:

- **whether witnesses are aware of any of the above measures being taken, and if so, whether they made the process of gaining explicit consent easier**

Theme 4: Exceptions linked to vulnerability

The DWP has noted that, while universal credit

"begins from a position of explicit consent, it is very clear that there are exceptions to this, especially when it is in the best interests of the public of where it is clear that a claimant with complex needs, for example, faces clear and significant risks to their welfare or safety"⁸

The Committee may wish to discuss:

- **whether the exceptions provide sufficient safeguards for vulnerable clients**
- **whether witnesses have applied or tried to apply the exceptions to the need for explicit consent**
- **if so, the type of circumstance in which an exception was accepted**
- **whether there have been circumstances where there was a difference of opinion between the representative and the DWP about whether an exception could be applied**
- **whether DWP is consistent in its approach to allowing exceptions**

⁸ Letter from Amber Rudd, MP to Emma Cotton (equity trade union) dated 6 June 2019,

Theme 5: Exceptions: Local authorities and ‘legal gateways’

There are statutory provisions for sharing information between DWP and local authorities related to their provision of, for example, housing benefit, council tax reduction and various local welfare services.

There are therefore legal gateways for local authorities that are not available to other advice services. However, information can only be shared for specified purposes.

The Committee may wish to discuss:

- **whether local authorities can use any existing ‘legal gateways’ to more easily assist people with their universal credit awards**
- **whether or not it might be desirable or advisable to extend or increase the number of legal gateways**

Theme 6: Exception for members of parliament

There is an exception made for MPs, but not for other elected representatives. In March 2017 Damian Green explained that:

“We can offer this because of our pre-existing relationships between MPs offices, District Managers and their teams. This is something which cannot pertain for enquiries from other sources.” [Damian Green written statement 13 March 2017](#)

Linda Fabiani MSP has raised this issue in parliament and the Scottish Government has also made representations to the DWP.

Members may wish to discuss

- **whether the distinction between the MPs and other elected representatives is justified**
- **whether the distinction between MPs and non-elected representatives, such as welfare rights advisers, is justified**
- **witnesses’ links with local MPs and how these links can be used to assist a client**

Theme 7: Improve explicit consent or reinstate implicit consent?

A number of organisations have called for implicit consent to be available for universal credit. The DWP is working with the SSAC to: “consider how current practices could be enhanced.”

The Committee may wish to discuss:

- **whether there are practical improvements that could be made to the explicit consent procedures, not already mentioned, which could resolve the difficulties currently encountered,**
- **alternatively, whether explicit consent cannot be made ‘workable’**

Camilla Kidner,
SPICe Research,
12 June 2019

Annex 1: Information Commissioner's Office case reference RFAO715409, 10 April 2019⁹

We write in relation to the concerns that you wrote to us about in relation to the DWP's approach to explicit consent for Universal Credit (UC) customers. As you are aware, we approached the DWP for information about its policies in relation to representatives and appointees. It responded to me on 12 March 2019 providing us with the following public documents reflecting its approach:

<https://www.gov.uk/government/publications/universal-credit-detailed-information-forclaimants/universal-credit-consent-and-disclosure-of-information#consent>

http://data.parliament.uk/DepositedPapers/Files/DEP2018-0759/Consent_disclosure_v14_0.pdf

<https://www.gov.uk/government/publications/universal-credit-detailed-information-forclaimants/universal-credit-consent-and-disclosure-of-information#appointees>

http://data.parliament.uk/DepositedPapers/Files/DEP2018-0759/Appointees_PABs_and_CABs_v6.0.pdf

Due to some absence from the office, it has taken me a month to properly assess the DWP's response and write to you and the DWP with my views.

We have formed the opinion that the DWP appears to be taking an unduly restrictive view of the definition of consent under data protection in relation to consent for authorised representatives to act on behalf of UC customers. The DWP has reported that it is the fundamental of its own design of the online digital account that is its reason for taking its restrictive approach to 'authority to act on behalf'. We have made clear that we feel the DWP's approach to consent for representatives is unduly restrictive and that we are not satisfied that the DWP's current approach constitutes data protection by design and by default.

The effect of this overly restrictive approach by the DWP is, in our opinion, likely to mean that appropriate.

We have observed that the DWP's 'consent' policy and guidance includes no preamble, or statement of intentions, highlighting the importance of ensuring that vulnerable persons are not prejudiced as a result of the interpretation of the DWP's policy on this topic.

We have advised the DWP that there ought to be room for flexibility when interpreting consent based the circumstances of the specific case, including causal links between the original matter for which consent was obtained and the matter then being raised, and any agreed reasonable adjustments required by that individual from the DWP. We have also observed that the DWP's policy omits any provisions for it to approach, or initiate contact with, an individual to clarify the extent of their consent where a matter for which consent has previously been obtained has expanded, or progressed, to a boundary of the scope of the previously obtained consent.

⁹ The opinion follows a complaint raised by a group of advice agencies and charities in December 2017. ICO opinion originally posted on [rightsnet](#) discussion forum, and reproduced here with permission)

We have informed the DWP that the extremely short time limits prescribed for representative permission (seemingly 5-8 weeks normal maximum, but potentially limited to only a single 'query') advocated by the DWP's guidance leaves a high likelihood of valid authorities routinely expiring multiple occasions during the course of a single dispute or query between individual and DWP. We consider the short time limits imposed by the DWP's policy to be disproportionately restrictive, likely to be prejudicial to both vulnerable people and the representative process as a whole, and have recommended that these time limit restrictions to consent be revised urgently.

We have observed that none of the DWP's guidance for its staff, or for the public, involved in this case includes any templates, illustrative case studies, or other examples, to aid with the consistent practical interpretation of the guidance. We have expressed the opinion that the current guidance requires supplementation with practical examples in order to ensure a reasonable degree of consistency in how it is interpreted, in practice, by DWP officials. We have recommended that the DWP publish a ready-to-use template form, for explicit consent for a representative to act on behalf of an individual, alongside its published policy in this area.

We have indicated to the DWP that its absolute ban on the discussion of specified personal data with representatives is likely to require caveat for occasions when the specified personal data (that is banned from disclosure to representatives) is the direct subject of the matter being raised by the representative.

We, finally, observed in passing that the DWP policies that we have examined in the course of this case made no reference to the DWP's duties in relation to in protected characteristic information arising from the Gender Recognition Act 2004 (GRA). It seems that the design of the online digital account may not be readily compatible with the DWP's duty to protect protected characteristic information under the GRA.

We have today written to the DWP asking it to revise its consent policies and internal guidance in consultation with its Data Protection Officer Team, and with reference to its legacy policies in this area. We have asked the DWP to take active steps to ensure that its policy works on a practical level for the individuals, their authorised representatives, and the DWP staff that need to enforce the DWP's consent policy consistently.

We have suggested that the DWP consider consulting with a sample, or representative, of representative bodies once it has completed this requested revision of its policy and guidance on consent.

It is now up to the DWP to take account of the advice it has been given and improve its information rights practices. Although we are closing our case file for this matter, and have not actively sought the DWP's written response, we will keep the concerns raised on file to help build up a fuller picture of the DWP's information rights practices and to allow us to monitor the DWP's progress in this area over time.

Thank you for bringing this matter to our attention. I apologise for the time we have taken to properly consider and form conclusions in relation to this matter. If you are dissatisfied with the service you have received from us, or would like to provide us with feedback of any kind, please let me know.

CPAG briefing in response to Social Security Committee's request for information on explicit consent – June 2019

Child Poverty Action Group works for the one in four children in Scotland growing up in poverty. It doesn't have to be like this. We use our understanding of what causes poverty and the impact it has on children's lives to campaign for policies that will prevent and solve poverty – for good.

The Early Warning System monitors the impact of changes in the benefit system on children, their families and the communities that support them. The case studies obtained in this briefing were submitted to the Early Warning System.

In the past, the DWP's policy was to work with claimants' representatives wherever express consent had been provided or where implicit consent could be established (i.e. where it was clear to DWP staff that a representative was legitimately working on a client's behalf despite the absence of that client, or of a clear written or verbal statement).

Under universal credit, DWP staff will only work with clients' representatives where unequivocal consent has been given on a specific matter, for a specific duration of time.

Explicit consent can be granted

- Over the phone
- In the client's journal
- In writing

Providing consent over the phone is reliant on the adviser being able to get through to the helpline during an appointment slot. Advisers report that long delays getting through to the UC helpline often prevents this from happening and can impede other appointments.

Access to a claimant's journal is dependent on the client remembering their login details and an adviser being present with the client. This is particularly problematic for clients who struggle to engage due to mental health problems, clients with transient or chaotic lives, for example rough sleepers, or people who are in hospital.

A lone parent is suffering from stress and depression and her baby has been admitted to hospital for failure to thrive. The family are at serious risk of eviction and client would like payments to be made to her rent arrears by direct deduction from her UC but she is just not able to engage with DWP due to everything going on in her life and the solicitor trying to aver the eviction has been unable to converse with DWP on her behalf as they will not accept implicit consent.

CPAG in Scotland are increasing hearing of frontline advisers storing their client's UC login details and passwords, so that they can access their client's journal if required. This places both the client and the frontline adviser at risk, but advisers report that they are already under considerable pressure due to the roll out of UC and that they simply do not have the time to spend navigating explicit consent requirements, every time there is an issue, for every one of their clients.

We have received examples where it would also have been in the DWP's interest, as well as the client's, to accept implicit consent, for example to prevent an overpayment occurring.

A client was over 100 miles from home supporting her husband while he was having a brain tumour removed in hospital. She was unable to notify DWP that she was being overpaid UC because she did not have her UC account login details with her. The client's adviser was not able to resolve the issue with the DWP on the client's behalf as she did not have explicit consent to act on the client's behalf in relation to this matter.

For further information, please contact:

Kirsty McKechnie, welfare rights worker (Early Warning System)

Social Security Committee

18th Meeting, 2019 (Session 5), Thursday 20 June 2019

Subordinate Legislation

Overview

1. There is one negative instrument for consideration at today's meeting.

[Welfare Foods \(Best Start Foods\) \(Scotland\) Regulations 2019 \(SSI.No.193/2019\)](#)

2. This Committee is the designated lead and the Policy Note and Instrument are attached.

Purpose

3. Best Start Foods will replace the UK Healthy Start vouchers in Scotland. It will provide pregnant women and families with children under the age of three, on qualifying benefits, with a minimum of £4.25 a week to purchase healthy foods.
4. Two key differences between the schemes are:
 - Best Start Foods will only be available until the age of three rather than four, but
 - It will be worth £4.25 per week rather than £3.10 per week (both schemes provide double credits for children under the age of 1).
5. Further information on the Best Start Foods regulations and a comparison with the UK Healthy Start voucher scheme is provided in the attached SPICe paper.

Delegated Powers and Law Reform Committee consideration

6. A [letter from the Minister for Public Health, Sport and Wellbeing](#) advised that in order to meet the SG's commencement date of 12 August 2019, it had not been possible to lay this instrument 40 days before.
7. The DPLR Committee will consider the instrument at its meeting on 18 June and Members will be provided with DPLR Committee's report as soon as it is available.

For Decision

8. **The Committee is invited to consider the instrument and note it.**

Social Security Committee

18th Meeting, 2019 (Session 5), Thursday 20 June 2019

Best Start Foods

Introduction

The [Welfare Foods \(Best Start Foods\) \(Scotland\) Regulations 2019 \(SSI.No.193/2019\)](#) provide for best start foods (BSF) to replace the UK healthy start voucher scheme (HSV). It is due to start on 12 August.

This is a negative SSI, so only requires the Parliament not to object to its introduction.

These regulations have not been considered by the Scottish Commission for Social Security.

This paper provides an overview of what the regulations do, how BSF compares to the HSV scheme it replaces, the forecast take up and costs and issues raised in consultation.

Overview

In summary, BSF is a weekly food credit of:

- £4.25 for those who are pregnant and, either
 - on a qualifying benefit, or
 - aged under 18
- £8.50 for those with a baby under 1 who are either,
 - on a qualifying benefit,
 - or aged under 18
- £4.25 for those with a one or two year old child and who are on a qualifying benefit

The qualifying benefits are listed in table 1 below.

The BSF is the first Scottish social security benefit that is made as a regular payment.

People who are already receiving vouchers under the UK scheme will be invited to apply for the Scottish scheme between August and December.¹ They will not be transferred automatically.

There is transitional protection for 3 year olds who lose eligibility under the Scottish scheme compared to the UK scheme.

The Scottish Fiscal Commission (SFC) forecast² that in 'steady state' BSF will cost £4m per year and assist around 15,000 people.³ However, due to transitional protection it will cost £6m in 2020/21 and assist 21,000 people.

¹ SPICe personal communication with Scottish Government

Legislative route

BSF is being created under the Social Security Act 1988 not the Social Security (Scotland) Act 2018. This means that BSF is:

- not scrutinised by the Scottish Commission for Social Security
- not subject to the 'super affirmative' procedure
- not covered by the Charter
- not subject to appeal to the First-tier Tribunal
- not covered by the Scottish Government's 'take-up' strategy

The policy was consulted on between April and June 2018, but the consultation document did not include the text of draft regulations and the consultation was not considered by the Social Security Committee.

How best start foods differs from healthy start vouchers

The main difference between best start foods and healthy start vouchers is that best start foods is:

- only available until the age of three rather than until the age of four, but
- worth £4.25 per week rather than £3.10 per week (both schemes provide double credits for children under the age of 1).

The table below compares the two schemes.

² SFC [Scotland's Economic and Fiscal Forecasts May 2019](#)

³ These are figures from 2021/22 onwards. 2019/20 is a part year and both 19/20 and 20/21 include transitional protection which increases cost and caseload.

Table 1: Comparing healthy start vouchers and best start foods⁴

Healthy Start Vouchers	Best Start Foods
Amount: £3.10 (£6.20 for child's first year)	£4.25 (£8.50 in child's first year)
Age: pregnant women ⁵ and children up to age 4	Pregnant mothers and children up to age 3
Under 18: All pregnant mothers under 18	Also all those under 18 with a child under one
Qualifying benefits: <ul style="list-style-type: none"> • UC with income under £408, (£4,896 pa), • income support, ib JSA, ib ESA, • pension credit • child tax credit but not working tax credit with income below £16,190⁶ 	<i>In addition:</i> <ul style="list-style-type: none"> • UC with income under £610 (£7,320 pa), • housing benefit with income below £16,172, • on both working tax credit and child tax credit with income under £7,320,
Foods: <ul style="list-style-type: none"> • cow's milk and infant formula, • fresh or frozen fruit and vegetables 	<i>In addition:</i> <ul style="list-style-type: none"> • fresh or tinned pulses • eggs, • tinned fruit and vegetables
Claims must be in writing and a health professional's signature is required	No such requirements. Regulations do not specify the form of claim.
Retailers required to register	No requirement to register
Provision for payment is voucher lost or stolen or no retailer nearby	No statutory provision for this

Policy rationale for reduced age range

The policy rationale for reducing the upper age limit from 4 years to 3 years is linked to the provision of early learning and childcare⁷ (ELC) at the term following the child's 3rd birthday. The business and regulatory impact assessment (BRIA) explains:

"This is to align with broader policies, including the increased number of hours for universal Early Learning and Childcare (ELC) provision for children aged 3 to 4, which will include a free meal, drink of milk and a healthy snack."

The higher weekly provision means that in total, each child:

"will have received £1,011.50 over their first three years of life which is £112.50 more than they would receive, over their first four years of life."

However, there are a number of 'gaps' between BSF and ELC provision, which mean that some children may stop getting BSF before they get ELC.

BSF is available all year round, whereas ELC is generally only provided in term time.

⁴ Compares provisions in The Welfare Foods (Best Start Foods)(Scotland) Regulation 2019 SSI 2019/193 with the Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005 SI 2005 no. 3262 (as amended).

⁵ HSV available from 10th week of pregnancy. BSF available from when someone knows they are pregnant. Information will be verified at 24 weeks using the baby box application.

⁶ The Scottish regulations are not explicit that this income threshold only applies where someone is not also getting working tax credit. (regulation 10(1)(a)) although that is the policy intention (Scottish Government personal communication to SPICe).

⁷ Background on the expansion from 600 to 1,140 hours per year is provided in [Wane, K. "Expansion of early learning and childcare" SPICe Briefing SB 19-20](#)

BSF stops when the child turns three. Many (but not all⁸) of those eligible for BSF will also be eligible for ELC from the term following the child's 2nd birthday (see comparison of eligibility in annex). ELC is only universally available from the school term after the child's third birthday. Where someone is eligible for BSF but not ELC for two year olds, there will be a gap in provision from the child's third birthday until the following school term.

BSF will be available from August 2019. Expanded ELC will not be available everywhere until August 2020. At that point, all children will get a free meal when they attend funded ELC. Until then free school meals in ELC are only available to those who get qualifying benefits and who are in ELC over lunch time.

Links to best start grant

The best start grant (BSG) and BSF will be applied for on the same form although the eligibility criteria are different.

The BSG is a one-off payment and the BSF is a weekly payment. Someone may gain eligibility for the BSF after having received their BSG. They would then need to make a new application.

A person can be eligible for BSF from when they know they are pregnant but someone is only eligible for the BSG if they are more than 24 weeks pregnant on the day the application is made.⁹ If they apply for the BSF and BSG on the same form, before the 24th week, then the BSG payment might get turned down.¹⁰

The Scottish Government secured agreement from the Home Office that the BSG would not be added to the list of public funds, meaning that asylum seekers under the age of 18 would be able to receive the BSG. There is no such agreement for BSF.

Transitional protection

Transitional protection is provided for those families with three year olds who are entitled to HSV but who will not be entitled to BSF because of the change in age limit.

Regulation 20 provides that people whose BSF applications are received before 31st March 2020

- and who have children aged between 2 and 4
- and who either get HSV, (or did so in the last three months)

will get BSF until their child's 4th birthday rather than only until their 3rd birthday.

The 'date of application' is the date the application is received by Scottish Ministers (i.e by the Agency). There is no provision for flexibility set out in the regulations if, for example, someone has difficulty verifying that they are on a qualifying benefit. This may be relevant where someone is trying to meet the 31st March deadline. However, the regulations do

⁸ Parents with two year olds eligible for BSF but not ELC include: someone under the age of 18 who is not on a qualifying benefit for ELC, families on working tax credit with relevant income of between £6,900 and £7,310, families on housing benefit but no other qualifying benefit and with an income under £16,172

⁹ Early years assistance (best start grants) (Scotland) regulations 2018 regulation 1 (d)(i)

¹⁰ An application must be decided on the eligibility on the date the application is made. There is provision to 'treat as made' if eligibility would be satisfied within 10 working days. See [staff guidance on best start grant](#)

allow someone to qualify for transitional protection if they have been awarded a qualifying benefit but not yet received it.

SFC have costed this transitional protection at £1m each year in 2019/20 and 2020/21. This increases the cost of the scheme from £4m to £5m in 2019/10 and from £5m to £6m in 2020/21.

Review and appeal

There is no appeal mechanism for the BSF. Because the BSF is not made under the Social Security (Scotland) Act 2018, the redetermination and appeal provisions in that Act do not apply. Instead there is provision for review. The BRIA states:

“All applicants to Best Start Foods will have the ability to request a review of any decision made on their claim and details of this will be laid out in Social Security Scotland operational guidance. This will not be included in our legislation and should have no further impact on Legal Aid.”

BSF will be paid using a smart card rather than vouchers. The current regulations for the UK scheme include provision for issuing payment or a replacement voucher when someone fails to receive a voucher, or it is lost or stolen or there isn't a nearby retailer that accepts vouchers. This provision is not replicated in the regulations for the BSF.¹¹

Overpayments

The BRIA notes the policy of not pursuing unintentional over payments:

“In situations of overpayment due to infant loss or pregnancy ending in anything but a live birth, miscalculation or genuine error, we have no intention to pursue any recovery.”

Offences

Regulations 17 and 18 of this negative SSI apply existing UK criminal offences¹² to the BSF scheme and create two new offences. These offences can lead to a fine or, in the case of making ‘dishonest representations’, imprisonment. The BRIA sets out the policy:

policy on fraud and overpayments will be set out in operational guidance.

Offences include:

- a) an offence of failure to notify a change in circumstances which affects eligibility for Best Start Foods; and
- b) an offence of making dishonest representations for obtaining Best Start Foods.
- c) an offence of failing to comply with regulation 16, which provides that the payment card remains the property of Scottish Ministers and any individual in possession of the card should produce or deliver it to Scottish Ministers within such a time as they may direct.

The offences will mirror the UK penalties, for a) and c), the penalty is a fine not exceeding level 3 on the standard scale (currently £1,000) and for b) the penalty is

¹¹ Regulation 10 of the Healthy Start Scheme and Welfare Food (Amendment) regulations 2005/3262 is revoked.

¹² S112 (false representation for obtaining benefit) and s.113 (breach of regulations) of the Social Security Administration Act 1992, and

a fine not exceeding level 5 on the standard scale (currently £5,000) or imprisonment for a term not exceeding 3 months, or both.

Cost and forecast take-up

The SFC have costed BSF at £6m in 2020/21 which includes £1m transitional protection. Forecast costs then fall to £4m in each of the years 2021 to 2024. This decrease is due to:

- Transitional protection ending in 2021/22
- Assumption that fewer people will be eligible as incomes increase and eligibility criteria remain static

The 2019/20 'part year' forecast cost of £5m is based on a start date of 1 June. The regulations are due to commence on 12 August and this will reduce the costs in the first year.

The SFC forecast¹³ take-up of 68% after the first year, which is the same as HSV. They describe take-up as being: "the main uncertainty." The BSG achieved much higher take-up than had been forecast. It is unclear whether this may also be the case for the BSF. Any take-up above what is forecast will increase the cost of providing the BSF.

Healthy start vitamins

[Healthy start vitamins](#) provide vitamin C, vitamin D and folic acid to people on qualifying benefits who are pregnant or have children under four years old. They are distributed by community pharmacies, dispensing practices, midwives and health visitors.

The regulations for BSF do not provide a replacement for healthy start vitamins although they do prevent new claims being made after August this year and provide for the regulations governing the existing scheme to be revoked in March 2020.¹⁴

The welfare foods consultation proposed providing vitamins on the same basis as BSF – i.e up to the age of three to those on qualifying benefits. This was opposed by 50% of the consultation respondents. Most of those disagreeing thought that vitamins should be provided universally up to age three, although some proposed age five.

The Scottish Government is currently considering policy options for a vitamins scheme¹⁵, although in order to avoid gaps in provision, a policy would need to be in place from August. The equalities impact assessment to the regulations stated:

"We have already delivered a separate vitamin scheme (free vitamins for all pregnant women) and this will continue to evolve separately from the Best Start Foods scheme."

Issues raised in consultation

A formal public consultation on Welfare Foods ran from 5 April 2018 to 28 June 2018, attracting 147 responses. (BRIA). A [consultation analysis](#) was published in October 2018.

¹³ [SFC Scotland's Economic and Fiscal Outlook, May 2019](#). Chapter 5.

¹⁴ Schedule 2 revokes a number of regulations, including regulation 8A of the Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005/3262 which requires NHS boards to provide healthy start vitamins. Regulation 19 prevents new claims under the 2005 regulations to be made after 12 August 2019.

¹⁵ Scottish Government personal communication with SPICe

Reflecting the questions asked, most of the issues raised in the consultation reflected administrative issues (such as application methods) or broader policy on improving healthy eating. Suggestions of direct relevant to the regulations included additional eligibility criteria including:

- Women with insecure immigration status
- Women aged under 20
- Single women in receipt of maternity allowance
- Families in receipt of council tax reduction
- Low income families who only marginally exceed the income limit or have fluctuating incomes

A few respondents argued that BSG and BSF should have the same eligibility criteria and others that £4.25 was too low. In relation to the foods available, there was some comment that tinned food with added sugar or salt should not be included (this is specified in the regulations).

The main change to the policy that appears to reflect the published consultation analysis is the exclusion of tinned fruit and vegetables where these are in salt or syrup.

**Camilla Kidner,
SPICe Research,
04 June 2019**

Annex: Comparing eligibility for best start foods, funded ELC for two year olds, funded meals in ELC and best start foods

n.b for BSF if there is less than a 12 week gap in entitlement, then parents will retain eligibility (reg 11). For ELC for two year olds if someone is entitled at the start of the year they remain entitled for the whole year.

Best start foods	ELC for two year olds¹⁶ (600 hours a year expanding to 1,140 hours in August 2020)	Free ELC meals¹⁷ , (until August 2020 after which it will universal)	Best start grant¹⁸
In receipt of benefit listed			
UC (with income not more than £610 net per month) (£7,320 per year)	UC (with income not more than £610 per month)	UC (with income not more than £610 per month)	UC
WTC and CTC income under £7,320 ¹⁹ gross p.a	WTC and CTC with income under £6,420 p.a (an increase to mirror free meal entitlement change is expected)	WTC and CTC with income under £6,420 ²⁰ p.a (£6,900 from August 2019)	WTC
CTC not exceeding £16,105 p.a	CTC if not on WTC and income under £16,105 pa	CTC if not on WTC, and income under £16,105 pa	CTC
Pension credit	Pension credit	n/a	Pension credit
Ib JSA	Ib -JSA	Ib JSA	Ib JSA
Ib ESA	Ib ESA	Ib ESA	Ib ESA
IS	IS	IS	IS
HB if income is not more than £311 per week (£16,172 pa).	n/a	n/a	HB
	Support under Part VI Immigration and Asylum Act 1999	Support under Part VI Immigration and Asylum Act 1999	
	Incapacity benefit		
	SDA		
	Child is looked after or had a kinship care or guardianship order		
A parent under the age of 18			
No need to be on qualifying benefit while child is under one year	n/a	n/a	No need to be on qualifying benefit
No exception from 'public funds'			Not listed as 'public funds' for immigration law
A parent aged 19 or 20 whose own parents get benefits for her			
Family must be on a qualifying benefit	n/a	n/a	No need to be on qualifying benefit

¹⁶ [Provision of Early Learning and Childcare \(Specified Children\) Order 2014. No.196](#) (as amended by [SSI 2015/268](#)) and s.47 Children and Young People (Scotland) Act 2014 (for looked after child eligibility)

¹⁷ [S.53 Education \(Scotland\) Act 1980 as amended by s.22 Education \(Scotland\) Act 2016](#) and SSI 2009/178 (specifying tax credit eligibility) and (from August 2019) 2019/179 (extending eligibility for those on tax credits).

¹⁸ [Early Years Assistance \(Best Start Grant\) Regulations SSI 2018 no. 370 \(as amended\)](#)

¹⁹ Similar to income threshold for those on UC except that UC is based on net monthly income at assessment date whereas tax credits are normally based on previous year's gross income.

²⁰ Due to be increased to from August 2019 by [SSI 2019/179](#) to annual income of £6,900. This is to take account of changes to the minimum wage.

SCOTTISH STATUTORY INSTRUMENTS

2019 No. 193

FOOD

**The Welfare Foods (Best Start Foods) (Scotland) Regulations
2019**

Made - - - - *30th May 2019*

Laid before the Scottish Parliament *31st May 2019*

Coming into force in accordance with regulation 1(2)

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

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019.

(2) These Regulations come into force on 12 August 2019, except regulation 21 and schedule 2 which come into force on 31 March 2020.

(3) These Regulations extend to Scotland only.

PART 2

General interpretation

General interpretation

2. In these Regulations—

-
- (a) 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.
- (b) 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).

“assessment period” is to be construed in accordance with regulation 21 of the Universal Credit Regulations 2013(a),

“beneficiary” means an individual entitled to benefit as described in regulation 7 or 8,

“Best Start Foods” means the types of food described in column 2 of the table in schedule 1,

“child” means a person under 16 years of age or a person who is a dependant within the meaning of regulation 5,

“child tax credit” means the tax credit provided for by section 1(1)(a) of the Tax Credits Act 2002(b),

“kinship carer” means an individual who cares for a child if—

- (a) the individual is a qualifying person in relation to the child within the meaning of section 72(2) of the Children and Young People (Scotland) Act 2014(c), and
- (b) the child is living with the individual (exclusively or predominantly) under the terms of—
 - (i) a kinship care order as defined in section 72(1) of the Children and Young People (Scotland) Act 2014, or
 - (ii) an agreement between the individual, the individual’s partner or both of them and—
 - (aa) a local authority in Scotland by which the child is looked after within the meaning of section 17(6) of the Children (Scotland) Act 1995(d),
 - (bb) a local authority in England or Wales by which the child is looked after within the meaning of section 105(4) of the Children Act 1989(e), or
 - (cc) an authority in Northern Ireland by which the child is looked after within the meaning of article 25(1) of the Children (Northern Ireland) Order 1995(f), and

“the 2005 Regulations” means the Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005(g),

“universal credit” means universal credit payable under Part 1 of the Welfare Reform Act 2012(h).

PART 3

Meaning of certain expressions concerning interpersonal relationships

Meaning of “partner”

3. For the purposes of these Regulations, an individual is regarded as the partner of another individual if those two individuals would be regarded as a couple for the purposes of Part 1 of the Welfare Reform Act 2012 (see section 39 of that Act(i)).

Meaning of being “responsible” for a child

4.—(1) An individual is to be regarded as responsible for a child only if at least one of sub-paragraphs (a) to (g) applies—

- (a) the child is a dependant of the individual,

(a) S.I. 2013/376, as amended by S.I. 2014/2887, S.I. 2015/1362 and S.I. 2018/65.
 (b) 2002 c.21. Part 1 of the Tax Credits Act 2002 is repealed by schedule 14 of the Welfare Reform Act 2012, subject to the savings provided for by article 3 of S.I. 2019/167.
 (c) 2014 asp 8.
 (d) 1995 c.36. Section 17(6) was amended by paragraph 9(4) of schedule 2 of the Adoption and Children (Scotland) Act 2007 (asp 4), by paragraph 2(4) of schedule 5 of the Children’s Hearings (Scotland) Act 2011 and by S.S.I. 2013/211.
 (e) 1989 c.41. Section 105(4) was substituted by S.I. 2016/413.
 (f) S.I. 1995/755 (N.I.2).
 (g) S.I. 2005/3262.
 (h) 2012 c.5.
 (i) Section 39 is amended by S.I. 2014/3229.

- (b) the individual is one of the child's parents and—
 - (i) normally lives with the child,
 - (ii) is under 20 years of age, and
 - (iii) is a dependant of another individual,
 - (c) the child is treated in law as the child of the individual by virtue of an order under section 54 of the Human Fertilisation and Embryology Act 2008(a),
 - (d) the child is treated in law as the child of the individual by reason of an adoption either—
 - (i) effected under the law of Scotland, or
 - (ii) effected under the law of another country or jurisdiction and recognised by the law of Scotland,
 - (e) the child is placed with the individual by an adoption agency,
 - (f) the individual is a guardian of the child appointed by deed, will or by a court,
 - (g) the individual is a kinship carer for the child.
- (2) In paragraph (1)(e), “adoption agency” means—
- (a) a local authority acting in its capacity as an adoption service provider under section 1 of the Adoption and Children (Scotland) Act 2007(b),
 - (b) an adoption service provided as mentioned in paragraph 8(1)(b) of schedule 12 of the Public Services Reform (Scotland) Act 2010(c) and registered under Part 5 of that Act,
 - (c) an adoption agency within the meaning of section 2(1) of the Adoption and Children Act 2002(d),
 - (d) an adoption agency within the meaning of article 3 of the Adoption (Northern Ireland) Order 1987(e).

Meaning of “dependant”

5.—(1) In respect of any given week, an individual (“person A”) is to be regarded as the dependant of another individual (“person B”) only if—

- (a) paragraph (2) applies, or
 - (b) in that week person B is a kinship carer for person A.
- (2) This paragraph applies where—
- (a) person B has been awarded—
 - (i) child tax credit, child benefit or state pension credit in respect of the week in question (or for a period that includes that week), or
 - (ii) universal credit for—
 - (aa) an assessment period that includes the week in question, or
 - (bb) an assessment period that ended immediately before the assessment period mentioned in paragraph (aa) started, and
 - (b) person A is recognised to be a child for whom person B has responsibility in terms of that award of assistance.

(3) It is immaterial for the purpose of this regulation that the award of assistance to person B referred to paragraph (2) does not include any amount in respect of person A due to a rule that

(a) 2008 c.22. Section 54 was amended by paragraph 206 of schedule 11 of the Crime and Courts Act 2013 (c.22), Part 1 of schedule 9 of the Justice Act (Northern Ireland) 2015 (c.9) and S.I. 2018/1413.

(b) 2007 asp 4.

(c) 2010 asp 8.

(d) 2002 c.38.

(e) S.I. 1987/2203 (N.I.22). Article 3 was amended by section 7 of the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001 (c.11), paragraph 1(1)(d) of schedule 6 of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c.1), S.I. 1994/429 and S.I. 2003/431.

restricts the number of dependants in respect of whom person B can be given that type of assistance.

PART 4

Entitlement

General

6.—(1) An individual described in regulation 7 or regulation 8 is entitled to be paid benefit in accordance with the provisions of Part 5 of these Regulations.

(2) An individual is not entitled to be paid benefit under these Regulations in respect of any week in which they received, or are due to receive, benefit under the 2005 Regulations.

(3) A person who is entitled to benefit under these Regulations only by virtue of payment of a kind of assistance mentioned in regulation 10(1)(h) does not cease to be so entitled until expiry of 8 weeks beginning with the day after the last day of the most recent completed assessment period for that kind of assistance.

Pregnant women

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

- (a) a pregnant woman who—
 - (i) is ordinarily resident in Scotland,
 - (ii) is 18 years of age or older, and
 - (iii) is, or is the partner or dependant of an individual who is, in receipt of a kind of assistance mentioned in regulation 10, including an individual who has been awarded a kind of assistance but has not yet received payment, or
- (b) a pregnant woman under 18 years of age, provided that she meets the residence requirement in regulation 9.

(2) If an individual described in paragraph (1)(b) reaches the age of 18 years before the end of her pregnancy she remains entitled to benefit until the end of that pregnancy.

Children

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

- (a) a child who is—
 - (i) under 3 years of age,
 - (ii) for whom another individual is responsible, and
 - (iii) that other individual is, or is the partner or dependant of another individual who is, in receipt of a kind of assistance mentioned in regulation 10, including an individual who has been awarded a kind of assistance but has not yet received payment, or
- (b) a child who is—
 - (i) under one year of age, or whose first anniversary of their estimated date of delivery has not yet passed,
 - (ii) for whom another individual is responsible, and
 - (iii) that other individual is under 18 years of age and meets the residence requirement set out in regulation 9.

(2) A child described in paragraph (1)(b) remains entitled to benefit until they are one year of age, including where the individual responsible for them has turned 18 years of age before the child's first birthday.

Residence requirement

9.—(1) The residence requirement is—

- (a) the individual is ordinarily resident in Scotland, and
- (b) where neither the individual, the individual's partner nor the person on whom the individual is dependent has been awarded a kind of assistance mentioned in regulation 10, the condition set out in paragraph (2) is also met.

(2) The condition is that the individual is—

- (a) habitually resident in the United Kingdom, the Channel Islands, the Isle of Man, the European Economic Area or Switzerland,
- (b) a refugee within the definition in Article 1 of the Convention relating to the status of refugees done at Geneva on 28 July 1951, as extended by article 1(2) of the protocol relating to the status of refugees done at New York on 31 January 1967,
- (c) a person who has been granted, or who is deemed to have been granted, leave outside the rules made under section 3(2) of the Immigration Act 1971^(a), where that leave is—
 - (i) discretionary leave to enter or remain in the United Kingdom,
 - (ii) leave to remain under the destitution domestic violence concession, or
 - (iii) leave deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005^(b),
- (d) a person who has humanitarian protection granted under rules made under section 3(2) of the Immigration Act 1971, or
- (e) a person who—
 - (i) is not a person who is subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999 (exclusion from benefits)^(c), and
 - (ii) is in the United Kingdom as a result of deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom.

Kinds of assistance

10.—(1) The kinds of assistance referred to in regulations 7 to 9 and 20 are—

- (a) child tax credit, where the relevant income of the individual or individuals to whom the award of child tax credit is made is determined at the time of the award not to exceed £16,190 per annum,
- (b) child tax credit and working tax credit, where—
 - (i) the relevant income if the person or persons to whom the award of tax credit is made is determined at the time of the award not to exceed £7,320, or
 - (ii) the person or persons entitled to the award is or are being treated as engaged in qualifying remunerative work by virtue of regulation 7D of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002^(d),
- (c) housing benefit, where the weekly income calculated under regulation 27 of the Housing Benefit Regulations 2006^(e) of the person or persons to whom the award of housing benefit is made does not exceed £311,
- (d) income-based jobseeker's allowance,
- (e) income-related employment and support allowance,

^(a) 1971 c.77.

^(b) S.I. 2005/1379, which is prospectively revoked by regulation 52 of the Immigration, Nationality and Asylum (EU Exit) Regulations 2019 (S.I. 2019/745).

^(c) 1999 c.33.

^(d) S.I. 2002/2005. Regulation 7D was inserted by S.I. 2009/1829 and amended by S.I. 2012/848.

^(e) S.I. 2006/213.

- (f) income support,
- (g) state pension credit,
- (h) universal credit, where—
 - (i) the person is a single claimant of universal credit and has an earned income of £610 or less, or
 - (ii) the person is one of joint claimants of universal credit and the joint claimants have combined earned income of £610 or less in the period specified in paragraph (2).

(2) The period is—

- (a) the most recent complete assessment period, or
- (b) the assessment period immediately preceding that assessment period.

(3) In this regulation—

“earned income” means a person’s earned income calculated in accordance with Chapter 2 of Part 6 of the Universal Credit Regulations 2013^(a),

“housing benefit” means housing benefit provided by virtue of a scheme under section 123(1) of the Social Security Contributions and Benefits Act 1992^(b),

“relevant income” has the same meaning as in section 7(3) of the Tax Credits Act 2002^(c),

“state pension credit” means state pension credit provided for by the State Pension Credit Act 2002^(d), and

“working tax credit” means the tax credit provided for by section 1(1)(b) of the Tax Credits Act 2002.

Entitlement – further provision

11.—(1) Subject to paragraph (2), no beneficiary is entitled to benefit under these Regulations unless an application for such benefit has been approved by the Scottish Ministers.

(2) Where an individual described in regulation 7, who has responsibility for a child described in regulation 8 and that child is under 4 months of age, notifies the Scottish Ministers of the date of birth of the child, that child is entitled to benefit payable from the date of their birth.

(3) If an individual described in regulations 7, 8 or 20—

- (a) has ceased to be entitled to benefit,
- (b) less than 12 weeks have elapsed since they ceased to be so entitled, and
- (c) can demonstrate to the reasonable satisfaction of the Scottish Ministers that they are once again entitled,

then the Scottish Ministers may renew their entitlement without further process.

(4) Where any provision of these Regulations requires or enables anything to be done in respect of a beneficiary and that beneficiary is a child, the provision is deemed to refer to an individual who is responsible for that child.

Change of circumstances affecting entitlement to benefit

12. An individual who is no longer entitled to benefit under these Regulations due to a change in circumstances must inform the Scottish Ministers of that change without delay.

(a) S.I. 2013/376.

(b) 1992 c.4. Section 123(1) was relevantly amended by paragraph 1(1) of schedule 9 of the Local Government Finance Act 1992 (c. 14).

(c) 2002 c.21. Part 1 of the Tax Credits Act 2002 is repealed by schedule 14 of the Welfare Reform Act 2012, subject to the savings provided for by article 3 of S.I. 2019/167.

(d) 2002 c.16.

PART 5

Benefit to be given

Value of benefit

13.—(1) The benefit to which an individual described in regulation 7 is entitled is credit for Best Start Foods to the value of £4.25 for each week that the individual is so entitled.

(2) The benefit to which a child described in regulation 8(1)(a) is entitled is credit for Best Start Foods to the value of—

- (a) £8.50 for each week that the child is so entitled until the child has reached the age of one year, or has reached the first anniversary of their estimated date of delivery, whichever occurs later,
- (b) £4.25 for each week thereafter that the child is so entitled until the child has reached the age of 3 years.

(3) The benefit to which a child described in regulation 8(1)(b) is entitled is credit for Best Start Foods to the value of £8.50 for each week that the child is so entitled.

(4) A child who is entitled to Best Start Foods is entitled to the full amount of credit for the week in which they reach the age of 3 years.

Form in which benefit is given

14. The credit mentioned in regulation 13 is to be given in the form of a payment card.

Supporting breastfeeding

15. Credit issued to a beneficiary who is a breastfed child may be used by the breastfeeding mother to purchase Best Start Foods for consumption by her.

Property in payment card

16.—(1) Every payment card is the property of the Scottish Ministers.

(2) Any person in possession of a payment card must, if requested to do so by the Scottish Ministers, produce or deliver the card within such time and to such place as the Scottish Ministers may specify.

PART 6

Application of enactments and offences

Application of enactments - offences

17.—(1) Section 112 (false representation for obtaining benefit) and section 113 (breach of regulations) of the Social Security Administration Act 1992(a) (“the 1992 Act”) have effect, for the purposes of the administration of the scheme provided for by these Regulations, subject to the modifications in paragraph (2).

(a) 1992 c.5. Section 112 was relevantly amended by paragraph 4 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). Section 113 was relevantly amended by paragraph 7(2) of schedule 6 of the 2000 Act and Part 1 of schedule 2 of the National Insurance Contributions and Statutory Payments Act 2004 (c.3).

(2) The modifications are—

- (a) section 112(1) of the 1992 Act is to be read as if—
 - (i) in subsection (1)—
 - (aa) “or other payment” were omitted,
 - (bb) “the relevant social security legislation” were substituted by “a scheme made under section 13 of the Social Security Act 1988”,
 - (cc) “that legislation” were a reference to “such a scheme”, and
 - (ii) subsections (1A) to (1F) were omitted.
- (b) section 113 is to be read as if, after subsection (1A)(a) there is inserted—
 - “(aa) section 13 of the Social Security Act 1988;”.

Further offences

18. A person who fails to comply with regulations 12 or 16(2) is guilty of an offence under section 13 of the Social Security Act 1988 and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PART 7

Amendments, transitional arrangements and revocations

Amendment to the Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005

19.—(1) The Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005(a) are amended as follows.

- (2) In regulation 4 (claim for benefit), after paragraph (1) insert—
 - “(1A) No application for a claim for benefit under this regulation may be made on or after 12 August 2019.”.

Transitional arrangements

20.—(1) The benefit to which a child described in this regulation is entitled is credit for Best Start Foods.

- (2) For the purposes of this regulation a child so described is a child—
 - (a) who is under 4 years of age,
 - (b) who was 2 years of age or over at the date of application,
 - (c) who was in receipt of benefit under the 2005 Regulations, as they apply to Scotland, either—
 - (i) at the date of application, or
 - (ii) less than 12 weeks prior to the date of application, and
 - (d) for whom an individual described in paragraph (3) is responsible.
- (3) For the purposes of paragraph (2) the individual—
 - (a) is, or is the partner or dependant of an individual who is, in receipt a kind of assistance mentioned in regulation 10, including an individual who has been awarded a kind of assistance but has not yet received payment, and
 - (b) made an application under these Regulations on or before the 31 March 2020.

(a) S.I. 2005/3262.

(4) The benefit to which a child described in this regulation is entitled is credit for Best Start Foods to the value of £4.25 per week for each week that the child is entitled until the child has reached 4 years of age.

(5) For the purposes of this regulation, “date of application” means the date on which an application made under these Regulations is received by the Scottish Ministers.

Revocations

21. The instruments listed in column 1 of the table in schedule 2 are revoked to the extent specified in the corresponding entry in column 3 of that table.

JOE FITZPATRICK

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
30th May 2019

SCHEDULE 1

BEST START FOODS

Regulation 2

<i>Column 1</i>	<i>Column 2</i>
<i>Category of food</i>	<i>Type of food</i>
Milk	Plain liquid cow's milk, including long life, pasteurised or ultra-heat treated varieties of milk, but not milk to or from which chemicals, vitamins, flavours or colours have been added or removed.
First infant formula milk	Infant formula based on cow's or goat's milk intended for particular nutritional use from birth by infants in good health, which meets the requirements of the Infant Formula and Follow-on Formula (Scotland) Regulations 2007 ^(a) or the Infant Formula and Follow-on Formula (England) Regulations 2007 ^(b) .
Fruit and vegetables	Fresh, frozen or canned fruit or vegetables, including loose, pre-packed, whole, sliced, chopped, or mixed fruit or vegetables, but not fruit or vegetables to which fat, salt, sugar, flavouring or any other ingredient has been added.
Pulses	Fresh, dried or canned pulses, including but not limited to lentils, beans, peas and barley, but not those to which fat, salt, sugar, flavouring or any other ingredient has been added.
Eggs	Fresh eggs

(a) S.S.I. 2007/549.

(b) S.I. 2007/3521.

SCHEDULE 2

REVOCATIONS

Regulation 21

<i>Column 1</i> <i>Instrument revoked</i>	<i>Column 2</i> <i>Reference</i>	<i>Column 3</i> <i>Extent of revocation</i>
The Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005	S.I. 2005/3262	Regulations 3, 4, 5(2), 5A, 6, 7, 7A, 8, 8A, 9(4)(c), 10, 17, 18 and schedule 2
The Healthy Start Scheme and Welfare Food (Amendment No. 2) Regulations 2006	S.I. 2006/2818	Regulations 4, 5, 6, 7 and 8
The Healthy Start Scheme and Welfare Food (Amendment) Regulations 2008	S.I. 2008/408	The whole Regulations
The Employment and Support Allowance (Consequential Provisions) (No. 3) Regulations 2008	S.I. 2008/1879	Regulation 10(3) and 10(4)
The Healthy Start Scheme and Welfare Food (Amendment) Regulations 2009	S.I. 2009/295	The whole Regulations
The Healthy Start Scheme and Welfare Food (Amendment) Regulations 2010	S.I. 2010/434	The whole Regulations
The National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Saving Provisions) Order 2013	S.I. 2013/235	Paragraph 91(3) of schedule 2
The Healthy Start Scheme and Welfare Food (Amendment) Regulations 2016	S.I. 2016/985	The whole Regulations
The Healthy Start Scheme and Welfare Food (Miscellaneous Amendments) Regulations 2017	S.I. 2017/1032	Regulation 2

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for a scheme to provide benefits for pregnant women and children.

Part 1 deals with citation, commencement and extent. These Regulations extend to Scotland only.

Part 2 provides for general interpretation.

Part 3 of the Regulations provides for the interpretation of certain expressions used in the Regulations concerning interpersonal relationships.

Part 4 sets out who is eligible to receive the benefit and procedural matters relating to the application for benefit and change of circumstances.

Part 5 is concerned with the value and form of the benefit to be given under the Regulations.

Part 6 makes provision for application of certain enactments and offences.

Part 7 makes consequential amendments and revocations to various secondary legislation. Regulation 19 makes a consequential amendment to the Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005 (“the 2005 Regulations”) to prevent new applications for benefit under the 2005 Regulations in Scotland following the coming into force of these Regulations. Regulation 20 makes provision for transitional arrangements. Regulation 21 revokes certain provisions of the 2005 Regulations and secondary legislation that amended those Regulations. The revocations made by regulation 21 take effect on 31 March 2020.

POLICY NOTE

The Welfare Foods (Best Start Foods) (Scotland) Regulations 2019

SSI 2019/193

The above instrument was made in exercise of the powers conferred by section 13 of the Social Security Act 1988 (“the 1988 Act). The instrument is subject to negative procedure.

Purpose

This instrument will provide for a new scheme called Best Start Foods. Best Start Foods will replace the UK Healthy Start Vouchers in Scotland. It will provide pregnant women and families with children under the age of three, on certain benefits, with a minimum of £4.25 a week, via a payment card, to purchase healthy foods.

Policy Objectives

Section 27 of the Scotland Act 2016 came into force on 8 February 2019, devolving all functions relating to the subject-matter of section 13 of the 1988 Act. This instrument uses the powers in section 13 of the 1988 Act to establish a new scheme, which helps and encourages pregnant women and children under 3 to have access to healthy foods. This new scheme, that will replace Healthy Start vouchers in Scotland, is called Best Start Foods.

Best Start Foods will provide low income pregnant women and families with children under the age of three on certain benefits with financial support to purchase healthy foods. More specifically Best Start Foods will:

- Increase the weekly payments to cover the costs of ensuring children can receive a healthy and balanced diet from £3.10 per week, the current value of weekly payment in UK Healthy Start Voucher scheme, to £4.25 a week. Payments will be made up to when a child turns three, which is a change from the UK scheme, where it pays up until a child turns four. This is to align with broader policies, including the increased number of hours for universal Early Learning and Childcare (ELC) provision for children aged 3 to 4, which will include a free meal, drink of milk and a healthy snack. Across the duration of Best Start Foods payments, the amount recipients will receive for each child will increase by £112 (from £899 on the UK scheme to £1,011 for Best Start Foods). This instrument also provides transitional protection for children aged two or over, who are Scottish recipients of Healthy Start Vouchers at the time of transition, to receive Best Start Foods up until the age of four.

- Expand the range of foods to include not only fresh/frozen fruit and vegetables, cow's milk and first infant formula milk, but also tinned fruit and vegetables, fresh/frozen/dried/tinned pulses and eggs to give families greater choice.
- Reduce the stigma associated with the current paper voucher system by introducing a pre-loaded payment card that works like a regular bank card. The payment card can be used in shops that sell food. It also removes the need for a retailer registration and reimbursement, as retailers will receive payment at point of sale.
- Expand the range of qualifying benefits to more closely align eligibility with wider policies supporting the early years, i.e. Early Learning and Childcare eligibility for two year olds and Best Start Grant.
- Continue to provide a double payment for the first year of a child's life to support breastfeeding mothers or the costs of providing first infant formula milk. The double-payment will be £8.50 per week for the first year of a child's life in comparison to £6.20 per week for the UK Healthy Start Vouchers.
- We will expand the universal eligibility for under 18s (which currently applies to pregnant women in the UK Scheme) to continue into the first year of the child's life, so under 18 parents can benefit from the double-payments in the first year of their child's life.

Best Start Foods will be administered by Social Security Scotland. It will be integrated into the same application process as Best Start Grant. Best Start Grant provides eligible families with a one-off payment at three significant life events (pregnancy, early learning and school age). Service users will only be required to complete one application form to apply for both Best Start Foods and Best Start Grant. This joint application form aims to make it easier for applicants and to support income maximisation by enabling them to apply for two benefits at the same time on the same application form.

With a joint application form for Best Start Foods and Best Start Grant, this instrument aims to bring closer alignment between the two benefits. For example, this instrument mirrors the responsibility test and dependency test of the Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018. This ensures consistency across the two benefits and ensures that the person responsible for the child is the person who is able to receive payment of the benefit when applying for both Best Start Foods and Best Start Grant.

Consultation

As part of the policy development work for Best Start Foods, the Scottish Government has consulted and engaged with a range of stakeholders. This includes:

- Establishing a Short-Term Working group comprised of health practitioners, welfare rights experts, Local Government representation (both COSLA and SLGP) and third sector organisations. This group has been able to offer insight into the current Healthy Start Voucher scheme and helped shape the proposals for Best Start Foods as set out in the public consultation.
- Retailers – Retailers are a key part of the delivery of the current Healthy Start Voucher scheme and will continue to be essential to the delivery of the Best Start Foods scheme. The Scottish Government has had a range of discussions with retailers representative groups and direct engagement with individual retailers. Retailers have welcomed the introduction of a payment card, which removes the need for a registration/reimbursement system and that pays the retailer at the point of sale.
- Healthy Start Voucher (HSV) recipients – the Scottish Government has undertaken a range of engagement with HSV recipients, pre and post consultation and continues to undertake user research. Feedback has helped to shape the Best Start Foods scheme, including increasing the value of the payment to cover the costs of buying food, introducing a prepaid payment card to help make the scheme simpler for users and to reduce the stigma associated with the current paper vouchers. Users have fed ideas into the design of the payment card and application process and we are running a small scale pilot exercise, to look at the use of the payment card and to highlight any unforeseen issues prior to BSFs going live. This is to help ensure that applicants are aware of how the payment card works in practice and to help ensure communications are clear and fit for purpose.
- UK Government and their contractors – the Scottish Government has had continuous engagement with the Scotland Office and the UK Government’s Department of Health and Social Care, including their contractor Serco, who currently deliver the Healthy Start Voucher scheme. The UK Government will continue to deliver the functions of the Healthy Start Voucher scheme until Scottish recipients are transferred across to the Best Start Foods scheme. This is enabled by the Scotland Act 1998 (Agency Arrangements) (Specification) (No. 2) Order 2018, which allows for the functions of the Scottish Ministers relating to the Welfare Food Regulations 1996 (“the 1996 Regulations”) and the Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005 (“the 2005 Regulations”) to be exercised by a Minister of the Crown. Executive competence for Welfare Foods transferred to Scottish Ministers on 8 February 2019.
- Public consultation – the Scottish Government undertook a public consultation between 5 April to 28 June 2018 on the proposals for Best Start Foods as part of the wider consultation on the Scottish Government’s approach to Welfare Foods: [Welfare Foods: a consultation on meeting the needs of children and families in Scotland](#). The consultation received 147 responses. The Scottish Government commissioned

independent analysis of the consultation responses: <https://consult.gov.scot/health-protection/welfare-foods/>.

Key findings in relation to Best Start Foods were as follows:

- Respondents suggested a variety of ways to help raise awareness of Best Start Foods – these suggestions are helping to inform the communications around Best Start Foods.
- The majority of respondents felt that the application process should be as straightforward as possible to encourage uptake – Social Security Scotland has been undertaking user research to ensure the application is easy to use and navigate for users.
- For the new payment card system to work, there needed to be choice about the retail establishments that would accept the card and the need to involve retailers. Removing the need for retailers to register would also help increase choice.
- Many respondents valued the proposed increase in weekly value from £3.10 to £4.25 and widening the range of eligible foods.
- Creating a positive image around Best Start Foods and removing any stigma was deemed important to improving uptake. Respondents welcomed the move away from the paper vouchers to the payment card. The design of the payment card was important in this respect. The Scottish Government has engaged users around the design of the payment card to ensure it removes stigma.
- To establish healthy eating patterns the Scottish Government should run activities such as a nationwide campaign, education programme and the need to work on the affordability and easy access to healthier foods which can be prohibitively expensive.

A number of further suggestions/questions were made:

- How to include retailers without card payment facilities. We have engaged further with retailers on this, who have advised that replacing the voucher scheme with a payment card will have a positive impact on them as they do not need to claim reimbursement. Also, it means more retailers can take part in Best Start Foods as they don't have to register for the scheme and they will be paid at the point of sale.
- Concerns that tinned fruit/vegetables should not be included in sugar syrup or brine – the list of foods in this instrument therefore specifies that the tinned products (fruit, vegetables, pulses) should not have fat, salt, sugar or other ingredients added.

Impact Assessments

The following impact assessments have been completed and are available:

- Business Regulatory Impact Assessment (BRIA)
- Equalities Impact Assessment (EQIA)
- Islands Impact Assessment (IIA)
- Child Rights and Wellbeing Impact Assessment (CRWIA)

Financial Effects

In comparison to the UK Healthy Start Voucher scheme, the Scottish Government is widening the list of qualifying benefits for Best Start Foods and increasing the payment value from £3.10 to £4.25 per week. Across the duration of Best Start Foods payments, the amount recipients will receive for each child will increase by £112 (from £899 to £1,011), even with payments stopping at three instead of four.

The Scottish Fiscal Commission (SFC) is responsible for producing independent forecasts for devolved social security expenditure, which includes Best Start Foods. The budget responsibility for Best Start Foods does, however, sit within Health budgets.

The SFC will be publishing forecasts on 30 May 2019. Based on these forecasts the SFC has set out that:

- The expenditure for Best Start Foods (and Healthy Start Vouchers) during the 2019-20 transition year is likely to be around £5 million, rising to £6 million in 2020-21.
- Take-up rates are difficult to gauge, but are likely to be around 62% in 2019-20 rising to 68% in 2020-21.

Scottish Government

Children and Families Directorate

31 May 2019