

## **Explanatory Memorandum to the Healthy Start Scheme (Description of Healthy Start Food) (Wales) (Miscellaneous Amendments) Regulations 2020**

This Explanatory Memorandum has been prepared by the Public Health Department and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Healthy Start Scheme (Description of Healthy Start Food) (Wales) (Miscellaneous Amendments) Regulations 2020.

**Vaughan Gething MS**  
**Minister for Health and Social Services**  
15 September 2020

## **PART 1**

### **1. Description**

These Regulations amend the Healthy Start Scheme (Description of Healthy Start Food) (Wales) Regulations 2006 (S.I. 2006/3108) (“the principal Regulations”) and the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004 (S.I. 2004/478) (“the 2004 Regulations”) which:

- remove the restriction that “Healthy Start vitamins” may only be provided in a tablet or drop form;
- amend the definition of “Healthy Start foods” to include canned fruit and vegetables and pulses;
- remove the contractual requirement placed on General Medical Practitioners to provide evidence of pregnancy to individuals when applying for the Healthy Start scheme.

### **2. Matters of special interest to the Legislation, Justice and Constitution Committee**

There are no matters of special interest to the Legislation, Justice and Constitution Committee.

### **3. Legislative background**

These Regulations are made under section 13(1) and (6) of the Social Security Act 1988 (“the 1988 Act”); and sections 47(1) and 203(9) and (10) of the National Health Service (Wales) Act 2006 (“the 2006 Act”).

Section 13 of the 1988 Act relates to benefit schemes to improve nutrition for pregnant women, mothers and children. Section 13(1) provides that Regulations may establish one or more schemes to provide benefits for prescribed descriptions of pregnant women, mothers and children with a view to helping them to access food of a prescribed description. Section 13(6) of the 1988 Act confirms that the power to prescribe descriptions of food is to be exercised, in relation to the operation of a scheme in Wales, by Regulations made by Senedd Cymru. Section 13(11) of the 1988 Act confirms that “food” includes vitamins, minerals and other dietary supplements.

Section 13 of the 1988 Act was substituted by section 185(1) of the Health and Social Care (Community Health and Standards) Act 2003. By virtue of section 162 of and paragraph 30 of Schedule 11 of the Government of Wales Act 2006, functions conferred on Senedd Cymru by section 13(1) and (6) of the 1988 Act are exercisable by the Welsh Ministers.

Section 47(1) of the 2006 Act confirms that General Medical Services Contracts must contain certain provisions or required terms. Section 203 relates to powers under the 2006 Act and the making of Orders, Regulations and Directions.

These Regulations are being made under the negative resolution procedure.

#### **4. Purpose and intended effect of the legislation**

##### ***Policy background***

The Healthy Start scheme is available to pregnant women under 18 years old or who receive certain qualifying benefits, and to families with a child under four years old who receive certain qualifying benefits. The scheme applies to those in England and Wales and is a means-tested scheme. The scheme provides vouchers to help buy some basic foods such as fruit, vegetables, milk and infant formula. Those that qualify can also receive free vitamins. The scheme is not devolved in Wales, although Welsh Ministers have powers to exercise certain functions, such as prescribing Healthy Start foods.

The Department of Health and Social Care (DHSC) has been working with the NHS Business Services Authority to digitise the Healthy Start scheme. Digitisation is intended to make the scheme more straightforward for families to apply for, receive and use Healthy Start benefits. The application process will be online, removing the requirement for countersigning by a healthcare professional and the paper vouchers will be replaced by pre-payment cards, facilitating their use by both recipients and retailers.

As part of this work, the range of Healthy Start foods is also being extended from 1 October 2020. The list currently includes fresh and frozen fruit and vegetables, cow's milk and infant formula suitable for use from birth, and will be extended to include canned fruit and vegetables and pulses. Research has identified that some beneficiaries find it easier to store and prepare canned fruit and vegetables than fresh and frozen ones and these items can also be cheaper.

The purpose of these Regulations is to allow parity in the delivery of the Healthy Start scheme in England and Wales.

##### ***Amendments to the Principal Regulations***

###### ***Vitamins***

These Regulations amend the principal Regulations to remove the requirement that the beneficiaries of the Healthy Start scheme in Wales may only be provided with vitamins that are in tablet or drop form. These Regulations will help ensure consistency with those beneficiaries in England, who have access to a wider and potentially more palatable form of vitamin. These Regulations will reflect those changes made in England by Regulation 2(3) of the Healthy Start Scheme and Welfare Food (Miscellaneous Amendments) Regulations 2017 (S.I. 2017/1032).

These Regulations are necessary to ensure that Healthy Start vitamins are legislated for in Wales and futureproofed. At present, the form of Healthy Start vitamins provided for through the scheme in Wales is consistent with what is stipulated in the principal Regulations i.e. drops for children and tablet form for women. However, it is DHSC who contract out the manufacture of the vitamins. In the future when the contract is re-tendered, DHSC will look to maximise the ease of use of vitamins, which the market indicates is increasingly in alternate forms such as gel capsules, gummies etc. The take-up of vitamins by recipients is currently very low. It is therefore anticipated that any change could increase uptake and ultimately be beneficial for recipients in Wales.

#### *Healthy Start foods*

These Regulations amend the principal Regulations to expand the definition of “Healthy Start foods” to include canned fruit and vegetables and pulses. These Regulations will help ensure beneficiaries in Wales have access to the same range of Healthy Start foods as beneficiaries in England. These Regulations will reflect Regulation 17 of the Healthy Start Scheme and Welfare Food (Miscellaneous Amendments) Regulations 2020 (“the 2020 Regulations”) (S.I. 2020/267) which comes into force on 1 October 2020. It is proposed that these Regulations will come into force on 1 October 2020.

The effect of these Regulations means that Healthy Start recipients in Wales will have access to a wider range of Healthy Start foods, including canned fruit and vegetables, that research has shown some recipients find easier to incorporate into their diets. Improving fruit and vegetable intake is one of the main aims of the Healthy Start scheme, which looks to support pregnant women and children under four in low income families in accessing a healthy balance diet.

#### ***Amendments to the 2004 Regulations***

These Regulations also amend the 2004 Regulations to remove the requirement for General Medical Practitioners to provide evidence of pregnancy for the purpose of the Healthy Start scheme. This is because the Healthy Start scheme will become digitised and paper certificates will no longer be used.

Previously, Schedule 2 of the Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005 (“the 2005 Regulations”) (S.I. 2005/3262), which is applicable to both England and Wales, related to information required for an application to the Healthy Start scheme. Paragraph 2 of Schedule 2 of the 2005 Regulations stated that a claim in respect of a pregnant woman shall be accompanied by evidence in writing of the estimated date of delivery of the pregnant woman signed by a health professional. This paragraph has been repealed by Regulation 16(b) of the 2020 Regulations and its effect is applicable in both England and Wales. This means those who are pregnant can apply for the Healthy Start scheme and provide information in respect of their estimated date of delivery. A health professional will not be required to counter-sign a claim being made.

Regulation 29 of the 2020 Regulations has removed the contractual requirement on General Medical Practitioners in England to provide evidence of pregnancy for the purpose of the Healthy Start scheme. These Regulations are required to

remove this contractual requirement on General Medical Practitioners in Wales. It has not been possible to think of any circumstances in which General Medical Practitioners in Wales will be required to meet their contractual obligation to produce a certificate evidencing pregnancy. However these Regulations are necessary to avoid any uncertainty in the future, and to provide clarity to General Medical Practitioners in Wales that they will not be required as part of their contract, to provide a certificate evidencing pregnancy for the Healthy Start scheme.

## **5. Consultation**

There has been no formal consultation in respect of these Regulations. However the Welsh Government have been in regular contact with the UK Government (in particular DHSC) who have introduced similar provisions. DHSC has carried out extensive research across England, Wales and Northern Ireland with Healthy Start beneficiaries and pregnant women and families eligible for, but not claiming, Healthy Start benefits. Research was also conducted with retailers and healthcare professionals. This research and the discussions held with DHSC have informed the content of these Regulations.

## **6. Regulatory Impact Assessment (RIA)**

A full regulatory impact assessment has not been carried out for these Regulations. The Healthy Start scheme, with the exception of certain functions, is not devolved in Wales, and revisions to the scheme in England and Wales have already been made by the Secretary of State for Health. These Regulations will ensure the Healthy Start scheme can be delivered consistently in England and Wales. The impact on businesses, charities or voluntary bodies is expected to be minimal, and would in any event be positive.

The Healthy Start Scheme (Description of Healthy Start Food) (Wales) (Miscellaneous Amendments) Regulations 2020 have no impact on the statutory duties or statutory partners of the Government of Wales Act 2006.