



Scottish Commission on Social Security
c/o Secretariat
Area 1C South (Mail Point 6)
Victoria Quay
Edinburgh
EH6 6QQ

info@socialsecuritycommission.scot

27 September 2023

Colette Stevenson MSP
Convener
Social Justice and Social Security Committee

By email only

Dear Convenor,

We are pleased to provide a copy of the Scottish Commission on Social Security's scrutiny report on the draft Welfare Foods (Best Start Foods) (Scotland) Amendment Regulations 2024, which has been completed after the Commission received the draft regulations from the Cabinet Secretary for Social Justice under section 22(1)(b) of the Social Security (Scotland) Act 2018.

A copy of the report has been submitted to the Cabinet Secretary for Social Justice and will be published on our website.

We hope the Committee find this report helpful and we welcome your feedback.

Yours sincerely,

Judith Paterson
Acting Co-Chair
Scottish Commission
on Social Security

Dr Mark Simpson
Acting Co-Chair
Scottish Commission
on Social Security



Scottish
Commission
on Social
Security

Scottish Commission on Social Security

Scrutiny report on draft Regulations:

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

**Submitted to the Scottish Government and the Scottish Parliament's Social
Security Committee on 27 September 2023.**

Contents

Summary of recommendations and observations	3
Executive summary	4
1. Introduction.....	6
1.1 Overview	6
1.2 The social security principles, human rights and <i>Our Charter</i>.....	6
1.3 Alignment with Best Start Grant and Scottish Child Payment.....	7
2. Qualifying benefits for Best Start Foods.....	8
2.1 Removal of income thresholds	8
2.2 Advance applications for Best Start Foods and backdated awards of qualifying benefits.....	10
2.3 Run-on of Best Start Foods entitlement after qualifying benefit stops	11
2.4 Entitlement without a qualifying benefit.....	11
3. Who can claim and receive payment.....	13
3.1 Eligibility during a pregnancy	13
3.2 Children’s eligibility	14
3.3 Competing claims	14
3.4 Potential for coercive control.....	15
4. Alternative forms of payment	16
5. Rate of payment.....	18
6. Approach to scrutiny	19
Annex A: About the Scottish Commission on Social Security.....	20
The Scottish social security principles	20
Annex B: Summary of key provisions in the draft Regulations	21
B1. Removal of income thresholds	21
B2. Alignment of BSF with BSG and SCP	21
B3. Widening eligibility.....	21
B4. Other provisions.....	23
Annex C: Stakeholder engagement.....	23
Annex D: Scrutiny timeline	23

Summary of recommendations and observations

Observation 1: In the longer term, consideration could be given to aligning both language and processes with the wider Scottish social security system.

Observation 2: SCoSS welcomes the proposed removal of the income thresholds that apply to qualifying benefits for Best Start Foods, which will extend eligibility to previously excluded low-income groups and has potential to improve take-up and efficiency by simplifying eligibility criteria.

Observation 3: SCoSS welcomes the introduction of advance applications for Best Start Foods and of provision for backdated awards of qualifying benefits to confer eligibility for Best Start Foods.

Observation 4: SCoSS welcomes the extension of the eight-week 'run-on' for Best Start Foods awards to qualifying benefits other than Universal Credit.

Observation 5: SCoSS broadly welcomes the changes being made to the rules for eligibility for Best Start Foods, acknowledges the challenge of communicating complex eligibility criteria and notes the importance of clear and unambiguous guidance documentation for applicants, administrators etc.

Observation 6: SCoSS welcomes the prioritisation of Best Start Foods applications from the pregnant person themselves during pregnancy where there are competing claims from eligible applicants, and the commitment to introduce further provisions for adjudicating between competing claims.

Recommendation 1: As part of the continuing updating of the relevant impact assessments, the Scottish Government should work with stakeholders, including those engaged in supporting individuals experiencing domestic or financial abuse, to develop an understanding of the potential for abuse by a partner and what additional mitigations may need to be put in place.

Recommendation 2: The Scottish Government should publish clear, accessible guidance on who is likely to be able to receive an alternative form of payment of Best Start Foods, the process for requesting one and how to challenge decisions. Individuals who receive a pre-paid card should receive guidance on the type of retailers who can accept the card and how to request the addition of their local retailer to the list of approved retailers.

Observation 7: The Scottish Government should continue to consider the case for payment of Best Start Foods by bank credit as the default, with a view to ensuring the scheme respects individuals' dignity as much as possible, without putting at risk the eligibility of those with no recourse to public funds.

Executive summary

Best Start Foods is a Social Security Scotland payment that helps towards the costs of being pregnant or looking after a child. It is part of the 5 family payments, along with the three Best Start Grant payments and Scottish Child Payment.

The draft regulations (the Welfare Foods (Best Start Foods) (Scotland) Amendment Regulations 2024) make various changes to Best Start Foods, in terms of who is eligible, who can claim and receive a payment, what forms of payment are possible and how the rates of payment are defined.

Qualifying benefits for Best Start Foods

Currently certain qualifying benefits which entitle a person to Best Start Foods are subject to income thresholds. These regulations will remove those thresholds.

These regulations will also allow Social Security Scotland to treat applications received no more than ten days prior to the day an individual is entitled to Best Start Foods as having been received on the day they became entitled to Best Start Foods.

If an application for Best Start Foods is turned down because the applicant is not in receipt of a qualifying benefit and that applicant later receives a backdated award of that qualifying benefit, these regulations will allow Social Security Scotland to award Best Start Foods with effect from the date of the initial Best Start Foods application.

Currently Best Start Foods payments to an individual whose qualifying low-income benefit is Universal Credit continue for a period of eight weeks after entitlement to Universal Credit ends. These regulations will extend this eight-week run on so that it applies to all qualifying benefits, not just Universal Credit.

Currently Best Start Foods can be awarded without a qualifying benefit to a pregnant person who was under 18 when they became pregnant, the partner of a pregnant person who was under 18 when they became pregnant, or a child under one year old whose parent or responsible individual was under 18 when the child was born.

These regulations will make the following eligible for Best Start Foods without a qualifying benefit also:

- A pregnant person aged 18 or 19 who is a dependant. This entitlement continues until the child is born, even if the pregnant person is no longer a dependant
- The person upon whom an 18- or 19-year old pregnant person is dependent, or their partner. This entitlement continues until the child is born, even if the pregnant person is no longer a dependant
- An 18- or 19-year old dependant who is the partner of a pregnant person. This entitlement continues until the child is born even if the partner is no longer a dependant
- A child under one year old, whose parent or carer is an 18- or 19-year-old dependant. The child continues to be entitled until their first birthday, even if their parent or carer is no longer a dependant
- A child under one year old whose parent was under 18 or an 18/19-year-old dependant during pregnancy, as long as that parent or their partner is responsible for the child

- A child aged one or two years old, whose parent or carer is under 18 or an 18/19-year-old dependant. Entitlement ends if the parent or carer turns 18 or is no longer a dependant

Many of these provisions serve to align the conditions of entitlement for Best Start Foods to those for Best Start Grant.

Who can claim and receive a payment

During pregnancy, if the pregnant person is eligible, Best Start Foods can currently be awarded to the pregnant person or their partner. These regulations will allow a pregnant person's partner to be eligible if the partner is under 18, or if the partner is an 18- or 19-year old dependant, regardless of whether the pregnant person is eligible themselves. Additionally, these regulations will allow a pregnant person's parent or carer, or that person's partner, to be eligible if the pregnant person is under 18 or an 18- or 19-year old dependant. Applications received from the pregnant person will be prioritised over any other applications.

Once the child has been born, only the child is entitled to Best Start Foods. Currently, only a person responsible for the child can claim on the child's behalf. These regulations will allow the partner of a person responsible for the child to claim on the child's behalf. Should more than one person wish to act and be paid on the child's behalf, Social Security Scotland will consider who is best placed to do so.

Alternative forms of payment

Best Start Foods is normally paid in the form of a pre-paid debit card. These regulations will allow Social Security Scotland to credit an equivalent amount into someone's bank account in exceptional circumstances, e.g. being unable to use a card due to an impairment or being too young to be issued with a card.

Rate of payment

Currently the rates of payment for children under one year and during pregnancy/for children under three years are set separately. These regulations stipulate that the rate of payment for children under one year will be double the rate of payment during pregnancy/for children under three years.

1. Introduction

1.1 Overview

The Scottish Commission on Social Security (SCoSS) is pleased to present its report on the draft Welfare Foods (Best Start Foods) (Scotland) Amendment Regulations 2024 (henceforth referred to as the 'draft Regulations').

The context for scrutiny of the draft Regulations is, in important respects, different from previous pieces of pre-legislative scrutiny work completed by the Commission. All previous regulations on which we have reported have been made by the Scottish Government using powers conferred by the Social Security (Scotland) Act 2018.¹

Best Start Foods (BSF) does not fall within any of the nine categories of social security assistance for which part 2, chapter 2 of the Act provides. Instead, it is a form of Welfare Foods payment, which falls within section 13 of the Social Security Act 1988. This means the special 'super-affirmative' legislative process described in section 97 of the 2018 Act does not apply to the draft Regulations, which therefore fall outside the scope of SCoSS's pre-legislative scrutiny role under section 22(1)(a) of the Act. Instead, we have considered the draft Regulations under section 22(1)(b), which allows the Scottish Government to ask SCoSS to prepare a report on any matter relevant to social security.

1.2 The social security principles, human rights and *Our Charter*

The primary legislative basis for BSF is the Social Security Act 1988. This means that there is some ambiguity around the strict applicability of the social security principles. However, we will consider the alignment of the draft Regulations with the principles as normal.

The social security principles may apply to either 'the Scottish social security system' (principles (d) to (h)) or 'social security' (principles (a) to (c)). 'The Scottish social security system' is defined as referring to social security schemes within the ambit of the Social Security (Scotland) Act 2018 and certain other schemes created by an Act of the Scottish Parliament,² neither of which applies to BSF. However, the different language employed in principles (a) to (c) suggests they might also apply to social security schemes that are not created under devolved legislation, such as those within the ambit of the Social Security Act 1988, which is the primary legislative basis for BSF.

The principle that social security is a human right (principle (b)) is specifically mentioned in the Child Right and Wellbeing impact assessment (p22). More generally, we take the view that if the principles set the required standard against which the Scottish social security system should be judged, they can fairly be regarded as desirable standards for other aspects of social security within devolved competence. According to the legislation, the Social Security Charter ('Our Charter'), "is to set out what should be expected... from the Scottish Ministers when... developing social security policy",³ while the Charter itself states that it exists to tell citizens "what you are entitled to expect from the Scottish Government and Social

¹ [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk)

² Social Security (Scotland) Act 2018 s23

³ Social Security (Scotland) Act 2018 s15(2)(a)(i)

Security Scotland”.⁴ At face value, this is not necessarily limited to the exercise of functions under the Act as there is a separate provision concerning the applicability of the Charter in that context.⁵

Reference to relevant principles, human rights provisions or Charter commitments will be made at appropriate points throughout the remainder of this report. In general terms, we can say that:

BSF represents an investment in the people (specifically the children) of Scotland during the first years of life, when access to adequate nutrition is recognised to be particularly important to longer term outcomes.⁶ The draft Regulations will result in a small increase to the number of children who benefit from BSF. It can therefore contribute to the fulfilment of principle (a).

By reducing obstacles to take-up of BSF, the draft Regulations should make it easier for pregnant people and young children to enjoy their right to social security in practice. We note that there are additional changes that could be made to further increase the contribution to the fulfilment of principle (b), but some of these might be challenging while BSF remains outside the scope of the 2018 Act.

The draft Regulations show respect for the dignity of young parents by making it easier for them to manage their own or their child’s BSF award, in accordance with principle (d). However, stakeholders have highlighted the need for Social Security Scotland to be alive to the potential for financial abuse from a partner (also resulting in infringement of autonomy and dignity) flowing from some of the changes being made.

BSF represents a small amount of financial assistance to a relatively small pool of beneficiaries, but nonetheless makes a contribution to poverty reduction in line with principle (e). The draft Regulations are likely to result in a limited increase in the extent to which BSF protects households from poverty.

Overall, the draft Regulations appear to represent an improvement to BSF’s ability to meet the needs of low-income households, in line with principle (g). We note a possible shortcoming in the equality impact assessment’s consideration of domestic abuse, but some of the changes can be expected to promote equality on behalf of the youngest parents in Scotland and between people who receive different low-income benefits.

Changes made by the draft Regulations include a simplification of eligibility criteria (although these will remain complex), which has potential to contribute to the fulfilment of principle (h) by increasing the efficiency with which the benefit can be delivered.

1.3 Alignment with Best Start Grant and Scottish Child Payment

To a large extent, the draft Regulations are concerned with increasing the alignment of the eligibility criteria for BSF with those for Best Start Grant (BSG). Some responses to the Scottish Government’s initial consultation on the design of BSF

⁴ Social Security Scotland, *Our Charter* (Dundee: Social Security Scotland, 2019) 5

⁵ Social Security (Scotland) Act 2018 s15(2)(a)(ii)

⁶ [Early childhood development \(www.unicef.org\)](http://www.unicef.org)

called for alignment of these criteria from the outset.⁷ Given that the three BSG payments, BSF and the Scottish Child Payment (SCP) are collectively described as the ‘five family payments’, there is a case for them to be awarded on largely the same basis. This should make it easier for individuals to understand their likely entitlements and therefore has potential to increase take-up. Some of the changes to BSF to be made by the draft Regulations will also have the effect of widening eligibility.

There are areas where SCoSS believes, and Scottish Government officials have acknowledged, that even closer alignment across the five family payments would be desirable, but this is not straightforward. The key obstacle here is that the primary legislative basis for BSF is the Social Security Act 1988, whereas that for most devolved benefits in Scotland, including SCP and BSG, is the Social Security (Scotland) Act 2018. One consequence of this is that processes around BSF can differ from other benefits, including the other family payments. If an individual disagrees with a decision on their entitlement to BSF, they can request an internal review, but there is no provision for redetermination or appeals to tribunal. Arguably, therefore, provisions for access to justice under BSF (required by various human rights provisions)⁸ are not as developed as in other Scottish benefits. Nor can awards be suspended. The different legislative basis might also partly explain the tendency for BSF regulations to use different terminology than is commonly used within the Scottish social security system. Officials have advised SCoSS that there is little scope for bringing BSF within the scope of the 2018 Act in the near future due to the pace of current developments across the Scottish social security system as a whole. Nonetheless, SCoSS believes closer alignment of processes and language should remain a longer-term aspiration.

Observation 1: In the longer term, consideration could be given to aligning both language and processes with the wider Scottish social security system.

2. Qualifying benefits for Best Start Foods

2.1 Removal of income thresholds

To be entitled to BSF, people who fall within the eligible categories⁹ must normally receive, or be the partner or dependant of someone who receives, a qualifying low-income benefit from the Department for Work and Pensions or HM Revenue and Customs. The qualifying benefits are Child Tax Credit (alone or in combination with Working Tax Credit), Housing Benefit, income-based Jobseeker’s Allowance, income-related Employment and Support Allowance, Income Support, State Pension Credit and Universal Credit. At present, certain qualifying benefits are subject to income thresholds, above which there is no entitlement to BSF. The thresholds are:

- £18,725 for Child Tax Credit
- £8,717 for Child Tax Credit in combination with Working Tax Credit

⁷ [Welfare Foods - a consultation on meeting the needs of children and families in Scotland \(consult.gov.scot\)](https://www.consult.gov.scot)

⁸ Notably article 6 of the European Convention on Human Rights; the opportunity to request redetermination or to appeal following a determination of a social security application, and to receive short term assistance in certain circumstances, is also a commitment given by the Charter (Processes that Work commitments 7, 8 and 9).

⁹ That is, a pregnant person, their partner, or a child under three.

- £358 per week for Housing Benefit (equivalent to around £18,600)
- £726 per month for Universal Credit (equivalent to £8,712)

This is one of a number of differences to the rules on qualifying benefits for the five family payments. Eligibility for the three BSG payments is contingent on an award of any of the same qualifying benefits as BSF, or Working Tax Credit, with no income thresholds. Eligibility for SCP is contingent on an award of the same set of qualifying benefits as BSG, except for Housing Benefit, with no income thresholds.

Draft Regulation 10(1) amends Regulation 10 of the BSF regulations to remove these income thresholds. In addition, draft Regulation 10(1)(b) establishes Working Tax Credit as a qualifying benefit in its own right, even if Child Tax Credit is not received.

The Child Rights and Wellbeing Impact Assessment (CRWIA) projects that the removal of income thresholds will extend eligibility for BSF to an additional 20,000 individuals per year. Supporting a greater number of low-income households is in keeping with principle (e), which states that “the Scottish social security system is to contribute to reducing poverty in Scotland”. Even though BSF is awarded in the form of a restricted-use, pre-paid card rather than cash, it is treated as income for the purposes of calculating the number of households or children who experience relative, absolute or persistent poverty (as defined by the Child Poverty (Scotland) Act 2017). It may also reduce the number of households experiencing material deprivation by increasing the overall resources available for essential needs.¹⁰ In doing so, the draft Regulations are likely to increase the contribution of BSF to the realisation of low-income families’ right to an adequate standard of living, including adequate food¹¹ – although only by a limited amount, as they will result in a limited extension of eligibility to quite a low level of support. The Scottish Government does not publish data on the impact of BSF on child poverty rates, only on the cumulative impact of multiple policies.¹²

As well as increasing the pool of eligible households, the removal of income thresholds and establishment of Working Tax Credit as a qualifying benefit in its own right has potential to increase take-up, which is one of the objectives of *Our Charter*.¹³ Eligibility criteria will be simplified and better aligned with the three BSG payments and SCP, so that individuals should be better able to understand that they or their child is likely to be entitled. The CRWIA additionally records reports from stakeholders that individuals who lose entitlement to BSF because they temporarily exceed the income thresholds do not always re-claim when their income drops. Removal of the thresholds will not entirely eliminate this issue – entitlement will still be interrupted when, for example, household income exceeds the maximum for receipt of Universal Credit for longer than eight weeks¹⁴ – but it should become less common and will typically take place at a higher income level. The effect of these changes should be to increase the simplicity and efficiency of BSF, in keeping with principle (h). They will also reduce the extent to which individuals are treated

¹⁰ [Child Poverty \(Scotland\) Act 2017 \(www.legislation.gov.uk\)](http://www.legislation.gov.uk)

¹¹ Protected by article 27 UNCRC and article 11 ICESCR

¹² See [Second Tackling Child Poverty Delivery Plan 2022-2026: Annex 4: Cumulative Impact Assessment \(www.gov.scot\)](http://www.gov.scot)

¹³ ‘A Better Future’, commitment 11

¹⁴ The Island Communities Impact Assessment notes that this may be more common in island and other remote communities with relatively high levels of seasonal employment.

differently depending on what low income benefit(s) their household receives, in keeping with principle (f) and the broad non-discrimination provisions that are common of human rights law.¹⁵ Since most of the qualifying benefits for BSF are in the process of being combined within the umbrella of Universal Credit, it is increasingly difficult to justify applying different income thresholds or run-on rules to different benefits, or the exclusion of households that receive Working Tax Credit only.

On the other hand, there are some possible disadvantages to the removal of income thresholds. The withdrawal of the entirety of a SCP award at the point when household income rises to a level where entitlement to a qualifying benefit ends means a considerable cliff-edge loss of income – £25 per child per week – when this happens. This will increase to almost £30 per child under 3, or £35 per child under 1 (at current rates) as a result of the draft Regulations, which will cause BSF entitlement to end at the same time as SCP.

Representatives of stakeholder organisations who attended the SCoSS roundtable noted that the removal of income thresholds for qualifying benefits was a positive and overdue step. Participants stated that income thresholds are a complicating factor, can hinder take-up and may act as a disincentive to entering or progressing in paid employment due to the risk of losing support through BSF. Overall, SCoSS agrees that the removal of income thresholds is likely to be a positive change.

Draft Regulation 10(2) and (3) makes some further changes to the rules on qualifying benefits for BSF. The BSF regulations will be amended to clarify that an individual is not to be regarded as in receipt of a qualifying benefit in any week when the benefit is awarded in error or when the award is £0. The exception to this is when an award is reduced to £0 because of a sanction (when a benefit is reduced for non-compliance with conditions set by the DWP) or a deduction for repayment of a debt. These provisions appear uncontroversial and mean the BSF regulations will reflect how the scheme is already administered in practice.

Observation 2: SCoSS welcomes the proposed removal of the income thresholds that apply to qualifying benefits for Best Start Foods, which will extend eligibility to previously excluded low-income groups and has potential to improve take-up and efficiency by simplifying eligibility criteria.

2.2 Advance applications for Best Start Foods and backdated awards of qualifying benefits

The draft Regulations establish two new procedural provisions for BSF claims.¹⁶ The first allows for advance applications. If an individual applies for BSF at a time when they are not entitled, but becomes entitled no more than 10 days later, Social Security Scotland will be able to treat the applications as if it had been made on the day when the individual became entitled.

The second new provision concerns situations where a BSF application is initially turned down because the applicant does not receive a qualifying benefit or is not responsible for a child under three years old. If their qualifying benefit or a child responsibility benefit is awarded later – for example after a claim or appeal – and the

¹⁵ For example, article 2 of the Convention on the Rights of the Child and article 2 of the International Covenant on Economic, Social and Cultural Rights.

¹⁶ Draft Regulation 16 inserting new BSF regulations 22 and 23

award covers the date of the original BSF application, Social Security Scotland can then award BSF with effect from the date of application.

Similar provisions apply to both BSG and SCP (although in the case of SCP the period for an advance application is 14 days),¹⁷ and can be found in other Scottish benefits.¹⁸ These changes are positive, bringing further alignment across the five family payments, reducing the administrative burden on applicants and potentially improving take-up as fewer people should miss out on awards because their initial application is unsuccessful and they fail to submit a new application when they meet the conditions of entitlement. Consequently, the new provisions should improve the operation of BSF so that processes become more efficient from the applicant's point of view and could bring about increases in take-up and in BSF's contribution to poverty alleviation, in keeping with principles (g), (h) and (e) and the Charter commitment.

Observation 3: SCoSS welcomes the introduction of advance applications for Best Start Foods and of provision for backdated awards of qualifying benefits to confer eligibility for Best Start Foods.

2.3 Run-on of Best Start Foods entitlement after qualifying benefit stops

BSF payments to an individual whose qualifying low-income benefit is Universal Credit continue for a period of eight weeks after entitlement to UC ends.¹⁹ Draft Regulation 4(3) extends this eight-week run on so that it applies to all qualifying benefits, not just Universal Credit.²⁰ While it may be more common for Universal Credit entitlement to stop and start,²¹ it is fairer to remove this unequal treatment and provide a run on for all children and families who get BSF, irrespective of which qualifying benefit they receive. Most of the qualifying benefits are 'legacy benefits' which are being replaced by Universal Credit. In September 2023, the Department for Work and Pensions started the process of moving families in Scotland who get tax credits or other legacy benefits onto Universal Credit through 'managed migration'. Under managed migration, families who do not claim Universal Credit in time will have their legacy benefit payments terminated. It is timely to introduce an 8-week run on for these families to allow their BSF payments to continue if this occurs.

Observation 4: SCoSS welcomes the extension of the eight-week 'run-on' for Best Start Foods awards to qualifying benefits other than Universal Credit.

2.4 Entitlement without a qualifying benefit

An award of BSF can already be made in the absence of a qualifying low-income benefit in very limited circumstances. The following individuals are covered by the exception:²²

¹⁷ SSI 2020/351, Schedule paras 1(2) and 8; SSI 2018/370 Regulation 4 and schedule 1 para 5

¹⁸ For example, SSI 2020/352 Regulation 8 (backdated awards of Child Winter Heating Assistance); SSI 2021/174 Regulation 24 (prospective applications for Child Disability Payment – up to 13 weeks in advance).

¹⁹ BSF Regulation 6(3)

²⁰ Draft Regulation 4(3)

²¹ For example, because Universal Credit's monthly assessment does not adjust for weekly paid wages, it can stop when there are five weekly payments in the month.

²² This is set out in BSF regulations 7, 7A and 8.

- A pregnant person under 18 years old, or who was under 18 when they became pregnant
- The partner of a pregnant person under 18 years old, or who was under 18 when they became pregnant
- A child under one year old, whose parent or responsible individual is under 18, or was under 18 when the child was born

The draft Regulations expand the pool of individuals who are entitled to BSF without receipt of a qualifying low-income benefit, to include:

- A pregnant person aged 18 or 19 who is a dependant.²³ This entitlement continues until the child is born, even if the pregnant person is no longer a dependant ²⁴
- The person upon whom an 18- or 19-year old pregnant person is dependent, or their partner. This entitlement continues until the child is born, even if the pregnant person is no longer a dependant ²⁵
- An 18- or 19-year old dependant who is the partner of a pregnant person. This entitlement continues until the child is born even if the partner is no longer a dependant ²⁶
- A child under one year old, whose parent or carer is an 18- or 19-year-old dependant. The child continues to be entitled until their first birthday, even if their parent or carer is no longer a dependant ²⁷
- A child under one year old whose parent was under 18 or an 18/19-year-old dependant during pregnancy, as long as that parent or their partner is responsible for the child ²⁸
- A child aged one or two years old, whose parent or carer is under 18 or an 18/19-year-old dependant. Entitlement ends if the parent or carer turns 18 or is no longer a dependant ²⁹

Many of these provisions serve to align the conditions of entitlement for BSF to those for BSG. There are some exceptions, reflecting the different nature of BSF as an ongoing payment as opposed to a one-off grant. The draft Regulations affecting awards where the pregnant person or parent is under 18 or an 18/19-year-old dependant have no equivalent in the SCP regulations as SCP is only payable to individuals in receipt of a qualifying low-income benefit.

SCoSS welcomes the greater alignment between BSF and BSG due to its potential to help people understand their families' entitlements and consequently improve take-up. The CRWIA indicates that around 700 parents in Scotland aged 18 or 19 are responsible for a child aged one or two. Some of these children would probably

²³ Draft Regulation 5(2), replacing the current text of BSF Regulation 7(1)(b). The pregnant person is a dependant if another person receives Child Benefit, Child Tax Credit, the child element of Universal Credit or the child responsibility addition to State Pension Credit on their behalf, or they are in kinship care.

²⁴ Draft Regulation 5(3), amending BSF Regulation 7(2)

²⁵ Draft Regulation 7, inserting new BSF Regulation 7B

²⁶ Draft Regulation 6, amending BSF Regulation 7A

²⁷ Draft Regulation 8(2), replacing the current text of BSF Regulation 8(1)(b), and draft Regulation 8(4), replacing the current text of BSF Regulation 8(2)

²⁸ Draft Regulation 8(2), replacing the current text of BSF Regulation 8(1)(b)

²⁹ Draft Regulation 8(3), inserting new BSF Regulation 8(1)(c), and draft Regulation 8(4), inserting new BSF Regulation 8(3) and (4)

have been entitled to BSF anyway because their parent, or the person upon whom their parent is dependent, receives a qualifying benefit, so the additional number of eligible individuals is likely to be very low. Nonetheless, even a limited extension of eligibility in combination with increased take-up would mean additional resources being available to teenage parents, pregnant teenagers and their families, who are more vulnerable than average to various negative outcomes.³⁰

Enabling more children to qualify for SCP on the basis of their parent's circumstances, rather than relying on the circumstances of the person upon whom the parent or pregnant person depends (typically a grandparent), is also in keeping with articles 5 and 18 UNCRC. These emphasise the parent's primary responsibility for supporting the realisation of their children's rights. Similarly, enabling more pregnant teenagers to qualify in their own right will support their autonomy (protected by article 8 ECHR) and, where the pregnant person is legally a child themselves,³¹ their ability to manage their own affairs in line with their developing capabilities, again in keeping with article 5 UNCRC.

At the same time, the eligibility criteria for BSF are complex and this will remain the case after the draft Regulations have been made.

Observation 5: SCoSS broadly welcomes the changes being made to the rules for eligibility for Best Start Foods, acknowledges the challenge of communicating complex eligibility criteria and notes the importance of clear and unambiguous guidance documentation for applicants, administrators etc.

3. Who can claim and receive payment

A range of different people are able to claim BSF or receive payments on behalf of the child or pregnant person the food is intended for, depending on the family's circumstances. The draft Regulations make some changes to the rules in this area.

3.1 Eligibility during a pregnancy

During pregnancy, BSF can currently be awarded to any of the following individuals, as long as the pregnant person is otherwise eligible:³²

- The pregnant person
- The partner of the pregnant person, as long as the BSF award is used for the benefit of the pregnant person³³

The draft Regulations widen these criteria so that the partner of the pregnant person can qualify on the basis that they are aged under 18 or are an 18- or 19-year old dependant, if the pregnant person does not – as long as the BSF award is used for the benefit of the pregnant person.³⁴ This means that some additional pregnant

³⁰ [Public Health England, 'A framework for supporting teenage mothers and young fathers' \(London: PHA/LGA, 2019\) \(assets.publishing.service.gov.uk\)](#)

³¹ Draft Regulation 11(5) clarifies that, in the context of BSF, the term 'child' only applies to a child under three years old, aligning the BSF regulations with the BSG rules and current practice for BSF.

³² Currently this means that if a pregnant person is eligible for BSF because they are under 18, their partner is too; following amendment (as noted above), the pregnant person or their partner will also be eligible if the pregnant person is aged 18 or 19 and a dependant.

³³ BSF regulations 7 and 7A

³⁴ Draft Regulation 6, amending BSF Regulation 7A

people will be able to benefit from BSF, because their partner becomes eligible whereas the pregnant person was not.

In addition, where the pregnant person is under 18, or an 18/19-year-old dependant, the draft Regulations extend eligibility for BSF to the pregnant person's parent or carer, or that person's partner.³⁵ The parent or carer will retain eligibility until the end of the pregnancy, even if the pregnant person is no longer a dependant.

Finally, the draft Regulations clarify that, where the Regulation refers to the need for a responsible person to act on behalf of a 'child', this only means a child under 3 who is entitled to BSF.³⁶ This puts beyond doubt that a pregnant person aged under 16 or who is a dependant can claim BSF in their own right.

3.2 Children's eligibility

Once the child has been born, only the child is entitled to BSF. While the child is the award holder, the expectation is that applications will be completed, claims managed and payments received by the person responsible for the child. Following the draft Regulations, the person responsible for the child *or their partner* will be equally capable of acting on behalf of the child.³⁷

There is much to commend in these provisions. They will allow couples and families greater flexibility to determine who is the best person to claim BSF or manage a claim on behalf of a child. They will mean BSF operates in a way that better respects the autonomy of pregnant under-16s.³⁸ However, widening the pool of potential award holders and payees also increases the likelihood that Social Security Scotland will have to adjudicate between competing claims in respect of the same pregnancy or between two people who want to be paid BSF on behalf of the same child. New opportunities might also be created for financial abuse or coercive control and it will be important to ensure safeguards against this eventuality are in place.

3.3 Competing claims

Once the draft Regulations have been made, during pregnancy BSF might be claimed by the pregnant person, their partner or their parent or carer. Helpfully, the draft Regulations will ensure that an application from the pregnant person takes precedence over an application from their partner or the person upon whom they are dependent. If an individual in one of the other categories is already receiving BSF in respect of the pregnancy, then that award will terminate when the pregnant person successfully applies for BSF themselves.³⁹ What is currently missing is a statutory provision on competing claims from eligible individuals when neither applicant is the pregnant person. Scottish Government officials have advised SCoSS that they plan to make a further amendment to the effect that, in such cases, Social Security Scotland will decide which application should prevail, 'taking into account the circumstances of the pregnant person'.

³⁵ Draft Regulation 7, inserting new BSF Regulation 7B

³⁶ Draft Regulation 11(5), amending BSF Regulation 11(4)

³⁷ Draft Regulation 11(5), amending BSF Regulation 11(4); BSF Regulation 4 defines what is meant by responsibility for a child.

³⁸ This is in keeping with article 8 ECHR.

³⁹ Draft Regulation 11(2), amending BSF Regulation 11(1A)

Observation 6: SCoSS welcomes the prioritisation of Best Start Foods applications from the pregnant person themselves during pregnancy where there are competing claims from eligible applicants, and the commitment to introduce further provisions for adjudicating between competing claims.

The position is more complicated once the child has been born. As noted above, once the draft Regulations have been made the person with responsibility for the child or their partner will be expected to act on behalf of the child in respect of BSF, including making applications and receiving payments. Multiple individuals could fall within these categories: either parent, grandparents, an alternative carer, and their respective partners. In response to a question from SCoSS, Scottish Government officials explained that, where more than one person wishes to act and be paid on behalf of the child, Social Security Scotland will consider who is best placed to do so. These decisions will be informed by the competing claims hierarchy used for SCP and BSG. Under this hierarchy, if the child is named on someone's Universal Credit, Child Tax Credit or Pension Credit claim, or has a kinship carer, that person takes precedence over someone who claims Child Benefit in respect of the child, who in turn takes precedence over anyone else.⁴⁰

However, the hierarchy cannot provide a clear answer in every case and will not have any statutory status in respect of BSF. Instead, the draft Regulations confer considerable discretion upon Social Security Scotland to pay the person it deems most appropriate, regardless of who receives what benefits on behalf of the child. Correspondingly, Social Security Scotland will be able to cease payments to an individual if the agency no longer considers the arrangement 'appropriate' – for example, if it appears the recipient is not actually using the BSF award for the benefit of the child.⁴¹ This should enable the agency to establish payment arrangements that it deems reflect the best interests of the child.⁴² Someone who disagrees with the decision would have the option of requesting an internal review.

3.4 Potential for coercive control

The partner of a pregnant person can already claim BSF if the pregnant person is eligible. The draft Regulations will allow for partners to do so in circumstances where the pregnant person would not be eligible themselves, although (as noted above) they would be required to use the award for the benefit of the pregnant person. They also make it possible for the person upon whom a young pregnant person is dependent to claim on their behalf.

Discussion at SCoSS's roundtable on the draft Regulations raised concerns about the potential for coercive control/ financial or economic abuse arising from these new provisions. Stakeholders also noted that social security rules should not enable abuse or make it harder for the pregnant person to subsequently challenge the decision to pay their partner.

States have obligations to protect people from inhuman and degrading treatment and to respect their private and family life and autonomy,⁴³ all of which imply a need to be

⁴⁰ Early Years Assistance (Best Start Grants) (Scotland) Regulations 2018 schedule 1 para 6; see also [Double claims for Scottish Child Payment \(www.socialsecurity.gov.scot\)](http://www.socialsecurity.gov.scot)

⁴¹ Draft Regulation 11(4), inserting new BSF Regulation 11(5) and (6)

⁴² In keeping with article 3(1) of the UNCRC.

⁴³ These are grounded in articles 3 and 8 ECHR.

alert to and minimise risk of domestic abuse in any form.⁴⁴ Further, if financial abuse means someone else is benefitting from assistance that is intended to provide nutrition for a pregnant person or infant, then the purpose of BSF is not being achieved and that person is not entitled to receive payment.⁴⁵

Draft impact assessments consider the potential for coercive control from a family member (such as the pregnant person's own parent).⁴⁶ However, the potential for abuse from a partner was not explicitly considered in the drafts submitted to SCoSS. There is evidence that pregnancy can be a trigger for domestic abuse, or worsen existing abuse, with some risk factors associated with higher risks of abuse (such as younger age and poverty).⁴⁷ Potentially, this provision could increase the vulnerability to abuse of people with one or multiple protected characteristics (notably, pregnancy, sex and age). Scottish Government officials have advised SCoSS that this is because the only new circumstances in which a pregnant person's partner would be able to claim BSF are when the pregnant person is not eligible in their own right. Nonetheless, stakeholders considered – and SCoSS agrees – that this matter could merit further attention as the draft impact assessments, especially the Equality Impact Assessment, are finalised.

The partner of a pregnant person or the person upon whom they are dependent may already claim a Best Start Pregnancy and Baby Grant. Scottish Government officials have advised SCoSS that where a BSG or any other claim raises concerns about coercive control, Social Security Scotland staff should make a referral to the agency's safeguarding team, which may recommend further steps including a referral to a local authority under adult or child protection legislation. Further exploring the issue through the equality impact might enable useful consideration of how these processes might be refined or supplemented.

Recommendation 1: As part of the continuing updating of the relevant impact assessments, the Scottish Government should work with stakeholders, including those engaged in supporting individuals experiencing domestic or financial abuse, to develop an understanding of the potential for abuse by a partner and what additional mitigations may need to be put in place.

4. Alternative forms of payment

Best Start Foods is normally paid in the form of a pre-paid debit card. This card can only be used to purchase healthy foods and milk, and cannot be redeemed in all retail outlets. While this will remain the default position, at least for the time being, the draft Regulations will allow Social Security Scotland to credit an equivalent amount into someone's bank account in exceptional circumstances.⁴⁸ These

⁴⁴ As with other provisions, e.g. UNCRC Article 19 protection from violence, abuse and neglect.

⁴⁵ Section 13 of the Social Security Act 1998 defines welfare food schemes as “schemes to provide benefits for prescribed descriptions of (a) pregnant women, (b) mothers, and (c) children, with a view to helping and encouraging them to have access to... food of a prescribed description,” therefore prohibiting use of the funds on the prepaid card for any other purpose.

⁴⁶ Including the Equality, Island Communities and Child Rights & Wellbeing Impact Assessments.

⁴⁷ See [Pain, R \(2012\) *Everyday Terrorism: How fear works in Domestic Abuse*. Edinburgh: Scottish Women's Aid \(womensaid.scot\)](#); [Scottish Government \(2013\) *Scottish Government Equality Outcomes: Pregnancy and Maternity Evidence Review* \(www.gov.scot\)](#); Alhusen, J.L et al (2015) 'Intimate Partner Violence During Pregnancy: Maternal and Neonatal Outcomes'. *Journal of Women's Health* 24(1): 100-106.

⁴⁸ Draft Regulation 15, amending BSF Regulation 14

circumstances will include being unable to use a card, or an additional card, due to an impairment or being too young to be issued with a card (the minimum age is 14, so this will apply to a very small number of people).⁴⁹

Stakeholders who contributed to the Island Communities Impact Assessment and SCoSS's scrutiny noted that residents of remote communities might also face particular issues with using the pre-paid card – for example, if they live in a village or on an island where no local retailer is approved to accept it. However, the Scottish Government has not specifically identified this group as being among the likely beneficiaries of alternative forms of payment.⁵⁰ We understand that applicants can ask for a local retailer to be included on a list of approved retailers, which could be particularly useful for island and remote communities.

The BSF evaluation notes that the information provided with the card does not contain a full list of retailers who accept, or information on how to use the card online,⁵¹ both of which would be helpful to people in remote communities. However, the Scottish Government has advised SCoSS that for technical reasons it is unable to identify a high proportion of the participating retailers,⁵² so cannot produce a definitive list.

Providing for payment by bank credit when necessary appears to be a positive change with potential to enhance equality and autonomy, reduce discrimination and lower barriers to the enjoyment of the right to social security among certain groups – disabled people and very young parents/pregnant people. This is in keeping with principles (g) and (b). Members of these groups are not strictly excluded from BSF by the use of pre-paid cards, as the card could be issued to another person where one eligible individual cannot use it or is too young to receive one. However, making cash payments available in these circumstances is likely to enable more pregnant people and parents to receive BSF themselves.

Recommendation 2: The Scottish Government should publish clear, accessible guidance on who is likely to be able to receive an alternative form of payment of Best Start Foods, the process for requesting one and how to challenge decisions. Individuals who receive a pre-paid card should receive guidance on the type of retailers who can accept the card and how to request the addition of their local retailer to the list of approved retailers.

The prospect that payment by bank credit will be an option for some groups does raise the question of whether a cash-first approach should be the default for all BSF awards. The pre-paid card for BSF was initially introduced as a means of reducing stigma, as the paper vouchers previously issued under Healthy Foods scheme (now also replaced with a pre-paid card) immediately marked out the user as being in receipt of a low-income benefit.

The delivery of social security using any form of restricted-use payment, though, speaks to negative characterisations of claimants as likely to spend cash benefits on

⁴⁹ The CRWIA states that only around 100 children per year are born to parents aged 16 or younger in Scotland.

⁵⁰ See Equality Impact Assessment and Island Communities Impact Assessment.

⁵¹ See pages 5, 8, 21-22, 31: [Evaluation of Best Start Foods \(www.gov.scot\)](http://www.gov.scot).

⁵² In essence, retailers who primarily sell groceries are automatically identified as such by their electronic point of sale equipment, so there is no need for their names and locations to appear on a central database.

frivolous purchases⁵³ and sits uneasily alongside commitments to respect individuals' dignity (principle d) and "challenge... myths and stereotypes about social security".⁵⁴ Payment by bank credit by default would arguably better match the ethos of the Scottish social security system by enhancing the autonomy of all recipients, a point made by various participants in SCoSS's stakeholder roundtable, held as part of our scrutiny process.

There are also more practical advantages to bank credit payments. In the three and a half years following the launch of BSF, almost 150,000 awards have been made.⁵⁵ 7,000 pre-paid cards were issued but never activated, 3,000 were activated but never used and the total unspent balance was £2.3 million. In February 2023, Social Security Scotland launched a campaign to encourage people to use their BSF awards.⁵⁶ Scottish Government officials have told SCoSS that this has had an impact: "Between 28th February and 21st August, 2408 clients who were not actively using their card have reduced their balance by at least £100. Of those, 31 clients have reduced their balance by over £1000." However, payments might be less likely to go unspent in the first place if money were paid directly into individuals' bank accounts.

Scottish Government officials have told the Commission that in the long term they are committed to moving towards cash payments of BSF. We broadly welcome this, but with one important caveat. Currently BSF awards are not classed as 'public funds'. BSF is therefore one of the few non-contributory social security benefits available to individuals who have 'no recourse to public funds' due to their immigration status.⁵⁷ Since most of the qualifying low-income and child responsibility benefits are public funds, BSF will normally only be payable in respect of pregnant people who are under 18 or (once the draft Regulations take effect) 18/19 year old dependants. Nonetheless, this group will include some of the poorest families in Scotland and would be particularly hard hit if a move to cash payments meant BSF were more likely to be treated as public funds by the Home Office.

Observation 7: The Scottish Government should continue to consider the case for payment of Best Start Foods by bank credit as the default, with a view to ensuring the scheme respects individuals' dignity as much as possible, without putting at risk the eligibility of those with no recourse to public funds.

5. Rate of payment

BSF Regulation 13 currently sets the value of a BSF award at £4.95 per week during pregnancy and for one- and two-year old children, and £9.90 for children under one year old. Draft Regulation 14 amends this so that the payment of £4.95 is now defined as the 'basic rate'. Children under one year old will receive double the basic rate under the amended Regulation. This makes no difference to the BSF payment

⁵³ K Garthwaite, 'Stigma, shame and 'people like us': an ethnographic study of foodbank use in the UK' (2016) 24(3) *Journal of Poverty and Social Justice* 277

⁵⁴ *Our Charter*, 'A better future', commitment 6

⁵⁵ [Best Start Grant and Best Start Foods: high level statistics to 31 March 2023 \(www.socialsecurity.gov.scot\)](https://www.socialsecurity.gov.scot/best-start-grant-and-best-start-foods-high-level-statistics-to-31-march-2023)

⁵⁶ [£2.3 million on Best Start Foods still to be spent \(www.socialsecurity.gov.scot\)](https://www.socialsecurity.gov.scot/2.3-million-on-best-start-foods-still-to-be-spent)

⁵⁷ For information on the NRPF rules, see Home Office, *Public funds: migrant access to public funds, including social housing, homelessness assistance and social care* (London: Home Office, 2021) and [UK Visas and Immigration, 'Guidance: public funds' \(London: Home Office, 2014\) \(www.gov.uk\)](https://www.gov.uk/guidance/public-funds).

to which anyone is entitled for the time being, but may serve to lock in the double payment during the first year of life more effectively than the current regulations. If children under one receive double the basic rate, it will only be necessary to consider the level of the basic rate during the annual uprating process. This will prevent the under-one rate being whittled away by differential uprating at different ages, although it also prevents the under-one rate being increased to more than double the basic rate through uprating. Either type of change would remain possible by further amending the BSF regulations.

Representatives from stakeholder organisations who attended the SCoSS roundtable noted that food inflation has, in recent years, far exceeded the CPI inflationary measure used as the basis for the up rating of Scottish social security payments, particularly for healthier foods, and further noted that this has reduced the potential impact of BSF. This is primarily a matter for the uprating process rather than the present draft Regulations – as previous SCoSS reports have noted, the Scottish Government continues to monitor work on the development of alternative measures of inflation to CPI, but is unlikely to adopt any measure that does not have ‘national statistic’ status.⁵⁸

6. Approach to scrutiny

In keeping with our role to scrutinise social security regulations, this report provides commentary in connection with human rights and the social security principles set out in Section 1 of the Social Security (Scotland) Act 2018,⁵⁹ as operationalised via Our Charter.⁶⁰

The Cabinet Secretary for Social Justice referred the draft Regulations to SCoSS⁶¹ on 11 August 2023. The draft Regulations were accompanied by a full set of draft impact assessments, which were of great assistance in the scrutiny process. We were given a deadline for reporting of 27 September 2023.

Scottish Government officials helpfully provided a briefing on issues related to the draft Regulations at our Board meeting of 28 June 2023. This report reflects information they provided. We are grateful for the efforts made by officials to keep us apprised of developments.

SCoSS held a roundtable discussion of the draft Regulations with representatives from a number of stakeholder organisations on 16 August. We are grateful for the informative contributions which were made, which have informed this report in a number of respects. The discussion also included information and views relating to the wider context of how BSF is operating; we are grateful for these and will take them into account in future work relating to the issues raised.

⁵⁸ [Annual Uprating of Devolved Social Security Assistance \(www.gov.scot\)](http://www.gov.scot)

⁵⁹ [Social Security \(Scotland\) Act 2018 \(www.legislation.gov.uk\)](http://www.legislation.gov.uk)

⁶⁰ [Social Security Scotland - Our Charter \(www.socialsecurity.gov.scot\)](http://www.socialsecurity.gov.scot)

⁶¹ [Referral – Welfare Foods \(Best Start Foods\) \(Scotland\) Amendment Regulations 2024 \(socialsecuritycommission.scot\)](http://socialsecuritycommission.scot)

Annex A: About the Scottish Commission on Social Security

The Scottish Commission on Social Security (SCoSS) plays an essential role in the development and delivery of a Scottish Social Security system based on fairness, dignity and respect.

We provide independent scrutiny of the Scottish social security system and our full functions are set out in section 22 of the Social Security (Scotland) Act 2018.⁶²

We provide detailed analysis of proposed social security regulations which are referred to us by Ministers, making recommendations for improvement where necessary.

Our role is also to scrutinise the Scottish Government's delivery of the commitments set out in the Social Security Charter.⁶³

We are separate from the Scottish Government, and we carry out our work independently of both Scottish Ministers and the Scottish Parliament.

The Scottish social security principles

SCoSS takes the Scottish social security principles, as laid out in the Social Security (Scotland) Act 2018, into consideration when scrutinising proposed social security legislation and regulations. The Scottish social security principles are:

- (a) social security is an investment in the people of Scotland,
- (b) social security is itself a human right and essential to the realisation of other human rights,
- (c) the delivery of social security is a public service,
- (d) respect for the dignity of individuals is to be at the heart of the Scottish social security system,
- (e) the Scottish social security system is to contribute to reducing poverty in Scotland,
- (f) the Scottish social security system is to be designed with the people of Scotland on the basis of evidence,
- (g) opportunities are to be sought to continuously improve the Scottish social security system in ways which—
 - (i) put the needs of those who require assistance first, and
 - (ii) advance equality and non-discrimination,
- (h) the Scottish social security system is to be efficient and deliver value for money.

⁶² [Social Security \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

⁶³ [Social Security Scotland - Our Charter \(www.socialsecurity.gov.scot\)](http://www.socialsecurity.gov.scot)

Annex B: Summary of key provisions in the draft Regulations

B1. Removal of income thresholds

- The income threshold for Child Tax Credit will be removed.
- The income threshold for Housing Benefit will be removed.
- The income threshold for Universal Credit will be removed.

B2. Alignment of BSF with BSG and SCP

- Working Tax Credit will become a qualifying benefit in its own right.
- Deductions made from a qualifying award due to sanctions or to pay any liability will be disregarded for the purposes of BSF awards.
- An individual who has received a qualifying benefit in error or the amount they have received is £0 will not be entitled to a BSF award.
- Where an application for BSF is made by an individual no more than 10 days before they would become eligible, that application can be treated as having been made on the day on which they become eligible.
- If a BSF application was unsuccessful due to a lack of a qualifying low-income benefit or child responsibility benefit and the applicant then receives a backdated award of the low-income or child responsibility benefit that includes the date of their original BSF application, they will be able to receive BSF effective from the date of their original application.
- A new application will not be required in such circumstances.

B3. Widening eligibility

- A pregnant person who is 18 or 19 and a dependant and who meets the residency requirements will be eligible for a BSF award without the need to receive a qualifying benefit.
- If a pregnant person who is 18 or 19 and a dependant is receiving a BSF award stops being a dependant they will continue to be eligible for a BSF award until the child is born.
- The partner of a pregnant person will be subject to the same eligibility criteria as the pregnant person.
- The person a pregnant person is dependent upon or the partner of that person who meets the residency requirements will be eligible for a BSF award. If the pregnant person stops being a dependent before the pregnancy has ended, the individual will remain eligible until the end of the pregnancy.
- Where BSF is being paid to the individual the pregnant person is dependent on or the partner of that individual and an application is received from the pregnant person and they are eligible, the pregnant person's claim will be approved and the claim from the individual the

pregnant person is dependent on or the partner of that individual will be ended.

- Where an individual responsible for a child is under 18, or 18 or 19 and a dependant, they will automatically qualify for BSF without a requirement for a qualifying benefit (as long as they meet the residency requirements).
- Where the entitled person is a child under 3, the individual responsible for that person or the partner of that individual can be paid a BSF award.
- SSS will be able to pay an appropriate person on behalf of an entitled person, and can stop that payment if they no longer feel it is appropriate to pay that person.
- SSS will be able to make an appointee on behalf of an individual who is under 16 and who is an entitled pregnant person or their partner, or an individual responsible for an entitled child under three, where there is no person who has authority to act on behalf of the individual, resides with the individual and is willing and practicably able to act on the individual's behalf.
- Existing provisions in relation to the duties of appointees and how SSS interacts with appointees will only relate to where the appointee has been made for an individual who is 16 or over.
- The appointee made on behalf of an individual under 16 can do anything a person with parental rights and responsibilities or other authority, however arising, could do in connection with the individual's entitlement to benefit. They may be asked to provide information that would otherwise be requested from the individual and must give any information that would otherwise be given to the individual.
- SSS will be required to consider making or terminating an appointment on behalf of an individual who is under 16 if requested to do so by the individual, a person with parental rights and responsibilities, a person who resides with and has care of the individual or any other person with an interest in the welfare or financial affairs of the individual.
- The existing rules regarding matters which must be taken into account when making or terminating an appointment on an individual's behalf will be required to be taken into account when making or terminating an appointment on behalf of an individual who is under 16.
- When making or terminating an appointment on an individual who is under 16's behalf the views of anyone with parental rights and responsibilities for that individual will be required to be taken into account.
- It will be possible for an existing appointee for an individual who is under 16 in relation to another Scottish Social Security to be recognised as an appointee for that individual in relation to BSF.
- The individual a pregnant person is dependent on and the partner of that individual will be eligible to receive a BSF award.

B4. Other provisions

- A person in receipt of BSF who stops receiving any qualifying low-income benefit will remain entitled to BSF for a further eight weeks (at present this run-on only applies to Universal Credit).
- Individuals who are 18 or 19 and a dependant will be required to meet the usual residency requirements in order to be eligible for BSF.
- The definitions of “earned income” and “relevant income” will no longer be required and will be removed.
- The lower rate of BSF will be defined as “the basic rate”.
- The higher rate of BSF will be defined as “double the basic rate”.
- BSF can, in certain circumstances, be provided as a cash award.
- The duty to report a change of circumstances is on the individual who is being paid BSF on behalf of the entitled person, or the on the entitled person if no individual is being paid on their behalf.

Annex C: Stakeholder engagement

SCoSS held a roundtable discussion with representatives from the following stakeholder organisations:

- Child Poverty Action Group Scotland
- Children in Scotland
- Diabetes Scotland
- Obesity Action Scotland
- Poverty Alliance
- Poverty & Inequality Commission
- Voluntary Health Scotland

SCoSS express their thanks for these organisations’ contributions and expertise.

Annex D: Scrutiny timeline

28 June 2023	Presentation to the Board on BSF from officials.
11 August 2023	Draft Regulations formally referred to SCoSS by the Cabinet Secretary for Social Justice.
16 August 2023	Stakeholder organisations roundtable.
27 September 2023	SCoSS report signed off and sent to Cabinet Secretary for Social Justice.