

Explanatory Memorandum to The Healthy Start Scheme (Description of Healthy Start Food) (Wales) (Amendment) Regulations 2011

This Explanatory Memorandum has been prepared by the Food and Physical Activity Branch of Health Improvement Division of the Welsh Assembly Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

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) (Amendment) Regulations 2011 and I am satisfied that the benefits outweigh any costs.

EDWINA HART, MBE, Minister for Health and Social Services

15 February 2011

1. Description

The Healthy Start Scheme (Description of Healthy Start Food) (Wales) (Amendment) Regulations 2011 (“the Regulations”) will amend in Wales the Healthy Start Scheme (Description of Healthy Start Food) (Wales) Regulations 2006 (SI 2006/3108 (W.287)) by adding plain frozen fruit and vegetables to the description of Healthy Start food and clarifying the overall definition of fruit and vegetables included in the Healthy Start scheme.

2. Matters of special interest to the Constitutional Affairs Committee

None.

3. Legislative background

The Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005 (SI 2005/3262, as amended) establish a scheme to provide certain benefits for pregnant women, mothers and children (“the Healthy Start scheme”) and apply to Great Britain; however, the legal power to determine the description of Healthy Start foods has since been devolved to Scotland and Wales. Northern Ireland has its own equivalent to the Healthy Start Scheme and Welfare Food (Amendment) Regulations 2005.

The description of Healthy Start foods in Wales is provided in The Healthy Start Scheme (Description of Healthy Start Food) (Wales) Regulations 2006 (SI 2006/No.3108 (W.287)) (“the principal Regulations”). The principal Regulations were made under section 13(1) and (6) of the Social Security Act 1988 (c.7) as substituted by section 185(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c.43).

These Regulations amend the principal Regulations, and therefore apply to Wales only. Separate but parallel legislation is being made in England, Scotland and Northern Ireland.

Welsh Ministers have the required powers to make the Regulations under sections 13(1) and (6) of the Social Security Act 1988, as substituted by section 185(1) of the Health and Social Care (Community Health and Standards) Act 2003.

The instrument is subject to the negative resolution procedure.

4. Purpose & intended effect of the legislation

The purpose of the Regulations is to increase the effectiveness of the Healthy Start scheme by encouraging greater consumption of fruit and vegetables among Healthy Start beneficiaries. Healthy Start supports low income and disadvantaged pregnant women and families with children under four. Beneficiaries receive fixed value vouchers to spend on fresh fruit and vegetables, milk and/or infant formula milk. The Regulations will amend the

scheme by adding plain frozen fruit and vegetables to the description of Healthy Start foods.

Research shows that low income families still have difficulty providing their children with a healthy, balanced diet including a variety of fruit and vegetables daily. Plain frozen fruit and vegetables are readily available throughout a range of large and small retail outlets and are economical to purchase. Extending the Healthy Start aims to help beneficiaries make best use of Healthy Start vouchers and to encourage them to buy and consume more fruit and vegetables of all kinds.

The Regulations also clarify the overall definition of fruit and vegetables included in the Healthy Start scheme. This amendment aims to reduce the risk that Healthy Start vouchers could be spent on fruit and vegetable products containing added fat, salt and sugar, or on foods or other products not included in the scheme.

All four UK administrations have agreed to make the legislative changes outlined above; this will ensure that the Healthy Start scheme remains consistent across the UK. The Regulations will come into force on 6 April 2011 to coincide with a routine annual exercise to update and re-issue all Healthy Start scheme materials.

5. Consultation

Details of the consultation are included in the Regulatory Impact Assessment below.

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

The following options were actively considered:

- Option 1: Do nothing

The scheme would continue exactly as now. Some beneficiaries would find it difficult to use their vouchers to buy fruit and vegetables, and all would miss out on additional flexibility to get best value for vouchers spent on fruit and vegetables. Retailers would not be able to legally accept Healthy Start vouchers for a wider range of products.

- Option 2: Add plain frozen fruit and vegetables to the foods that vouchers can be spent on

Regulations would be amended in each UK country to allow vouchers to be spent on plain frozen fruit and vegetables as well as the fresh fruit and vegetables, milk and infant formula milk they can be spent on now.

- Option 3: Add a package of additional safeguards which could include enhanced terms and conditions for retailers accepting vouchers and new monitoring and enforcement measures

The range of foods included in the scheme would not be changed. However, one or more additional measures would be introduced to reduce the risks that vouchers could be spent on foods not included in the scheme and/or to address any misuse that did occur. This could mean – for example - amending the terms and conditions for retailers registered to accept vouchers, perhaps to make it more explicit how they should handle vouchers at the point of sale. Or it could mean introducing additional monitoring or enforcement regimes. The Secretary of State would have to provide for this Option in Wales to the extent that the powers to do so are outside the powers of the Welsh Ministers.

- Option 4: Combine options 2 and 3 (add plain frozen fruit and vegetables to the range of foods that vouchers can be spent on, alongside a package of additional safeguards which could include enhanced terms and conditions for retailers accepting vouchers and new monitoring and enforcement measures)

Regulations would be amended to add plain frozen fruit and vegetables to the scheme. Additional measures would also be put in place to prevent and address risks that vouchers might be spent on products they are not intended for: this could require additional legislation. The Secretary of State would have to provide for the additional measures element of this Option in Wales to the extent that the powers to do so are outside the powers of the Welsh Ministers.

Costs & benefits

Option 1: Costs & Benefits

Nutrition

- An opportunity to encourage low income pregnant women and families to eat more, and a wider variety of, fruit and vegetables would be missed.
- An opportunity to introduce young children to types of frozen fruit and vegetables that families might not purchase fresh (eg peas) would be missed.
- An opportunity to increase access to fruit and vegetables for scheme beneficiaries in rural and other areas not well served by large retailers would be missed.

Economy

- An opportunity to increase the spending power of vouchers in a way that is consistent with the scheme's nutritional aims would be missed.
- Opportunities for smaller retailers selling little fresh produce, such as some convenience stores, to gain business through the scheme would be missed. At the same time, risks that some retailers could lose income as a result of increased competition would be avoided.

Compliance

- Any risks that voucher misuse would increase as a result of adding new foods to the scheme would be avoided.

Option 2: Costs & Benefits

Nutrition

- It would encourage all beneficiaries to include more fruit and vegetables of all kinds into their daily family diet. Variety is a key element of the 5 A DAY healthy eating message.
- It is widely accepted that frozen fruit and vegetables can retain more vitamins and minerals than fresh produce that is stored poorly or too long. So its inclusion would benefit those who cannot access high quality fresh fruit and vegetables locally, or cannot shop as frequently. This could include those in rural and other areas not well served by large retailers, and would make it easier for them to include a variety of fruit and vegetables in their daily diet.

Economy

- Frozen fruit and vegetables are often more economical than their fresh counterparts - especially when fresh produce is out of season. Including them would increase the buying power of vouchers spent wholly or partially on frozen fruit and vegetables. The table below shows that in August 2010 frozen produce was often around 50% cheaper than fresh in a range of popular shops. Price differences at other times of year, when fresh produce is harder to find, could be even greater.

Product		Price per kilogram (August 2010)			
		Tesco	Sainsbury	Asda	Iceland
Broccoli	Fresh	£1.98	£1.98	£1.97	£2.50
	Frozen	£0.84	£1.19	£0.84	£1.00
Green beans	Fresh	£4.17	£4.25	£3.23	£4.58
	Frozen	£0.98	£1.00	£0.98	£1.00
Carrots	Fresh	£0.76	£0.85	£0.50	£1.00
	Frozen	£1.00	£1.00	£1.00	£1.00
Peas	Fresh	£2.99	£3.00	£2.50	---
	Frozen	£0.84	£0.84	£0.84	£1.00
Blueberries	Fresh	£6.67	£8.00	£6.67	£10.00
	Frozen	£4.76	£4.17	£4.29	---
Raspberries	Fresh	£8.84	£8.82	£9.64	---
	Frozen	£4.30	£4.17	£4.29	---

- Being able to spend vouchers on frozen fruit and vegetables could help some beneficiaries reduce food waste, which would also help them get better value from the vouchers. According to the Waste and Resources Action Programme (WRAP)'s report on "The Food We Waste", published in 2009, fresh fruit and vegetables account for about 40% (by weight) of all food thrown away in the UK that could have been eaten.

Compliance

- Extending the scheme to plain frozen fruit and vegetables, if not managed carefully, could increase risks that vouchers may be spent on fruit and vegetable products containing added fat, salt and sugar (eg oven chips, battered onion rings, or seasoned stir fry vegetables).

Option 3: Costs & Benefits

Nutrition

- There could be a small positive impact on consumption of Healthy Start foods if the risk that vouchers could be spent on less healthy products

were reduced.

- However, there could be a negative impact if any additional measures to ensure compliance with scheme rules led to retailers embarrassing beneficiaries at the point of sale or to a reduction in the number of retailers willing to accept vouchers.

Economy

- The costs to retailers of additional measures could range from negligible to substantial, depending on the measures chosen. If there were additional costs, retailers would be less willing to participate, and beneficiaries would have less choice about where to spend their vouchers and less ability to seek best value for them.
- However, a package of additional safeguards could reduce any current voucher misuse so that more vouchers were spent on Healthy Start foods.

Compliance

- Proportionate new measures to increase compliance with scheme rules at point of sale could deter voucher misuse.

Option 4: Costs & Benefits

Nutrition

- As for option 2. New measures to reduce risks that vouchers could be spent on less healthy foods could enhance any positive nutritional impact of adding frozen fruit and vegetables.
- However, measures that were stringent or costly for retailers to implement could reduce the number of retailers willing to accept vouchers for Healthy Start foods.

Economy

- As for options 2 and 3. The cost of new measures could, however, balance the negative impact of any increase in the number of vouchers that might be spent on products they should not be as a direct result of adding frozen fruit and vegetables to the scheme. New measures could also reduce risks associated with adding more foods over time.

Compliance

- As for option 3.

The public consultation exercise demonstrated overwhelming support for the addition of plain frozen fruit and vegetables to the description of Healthy Start foods. However, there was little evidence supplied by respondents to support the introduction of additional measures to monitor and enforce the scheme. Therefore, Option 2 is being taken forward and the costs and benefits of implementing this option have been considered and are given below.

Costs and Benefits: Implementing Option 2

There will be a one-off transitional cost to UK Government arising from voucher redesign, and revision of scheme guidance for beneficiaries, retailers, and health professionals. This will be carried out as part of a routine annual exercise to update and re-issue scheme materials for the new financial year (6 April 2011). This will prove significantly more cost effective than a bespoke communications exercise and minimise implementation costs to an estimated £37,000. This cost will be borne by the Department of Health. If implementation were not timed to coincide with a routine guidance updating exercise, then the costs could increase significantly and so is flagged as an avoidable risk.

Retailers already have arrangements in place to keep point of sale staff up to date with developments that affect them. Information about the new products that retailers will be able to accept vouchers for can be easily included in these arrangements, based on the revised guidance. Those retailers that do not sell frozen fruit and vegetables would need to do nothing to inform staff about the change. The costs to retailers of informing staff about the change, where this is necessary, are therefore considered to be negligible.

Most respondents to the public consultation did not consider that the addition of plain frozen fruit and vegetables to the Healthy Start scheme would increase the risks of voucher misuse and we have therefore not made allowance for this possibility in the cost/benefit analysis.

Option 2 would not create any new demand on health, public health or social care services. Health visitors and midwives already promote Healthy Start, countersign applications, and offer information and advice on breastfeeding and healthy diet when doing so. This will not change.

There could be an estimated annual £25m monetised benefit for beneficiaries of Healthy Start arising from an increase in the spending power of vouchers spent wholly or partially on plain frozen fruit and vegetables. This assumes that 25% of vouchers will be spent on frozen fruit and vegetables and that frozen produce is 50% cheaper than fresh. Many beneficiaries responding to the consultation commented that the low cost of frozen fruit and vegetables was an important reason to include them in the scheme, and some said they would purchase more fruit and vegetables than they do now if this change was made.

The specific contribution to individual low income families' overall health and financial circumstances is, however, likely to be extremely small because the vouchers make only a very small contribution to the weekly food costs of beneficiaries. Based on the average number of vouchers issued to Healthy Start families across the UK now, and assuming 52 x £3.10 vouchers per person per year, if 25% of these vouchers are spent on frozen fruit and vegetables it would equate to an increase in voucher spending power of £40 in Healthy Start foods per person annually.

Consultation

A full public 12 week consultation was jointly carried out by the Department of Health, the Scottish Government, the Welsh Assembly Government, and the Department of Health, Social Services and Public Safety (DHSSPS) in Northern Ireland on proposed changes to the Healthy Start scheme. The consultation ran from 8 October to 31 December 2010.

The consultation particularly targeted scheme beneficiaries, health and public health professionals, retailers and their representative groups. It asked whether Healthy Start beneficiaries should be able to choose to spend their vouchers on plain frozen fruit and vegetables as well as the foods already allowed. It also asked whether further measures may be needed to reduce the risk of vouchers being spent on products that are not included in the scheme. A copy of the UK Government's response to the consultation will be published on the Welsh Assembly Government's website www.wales.gsi.gov.uk.

In total, 143 separate responses to the UK consultation were received, including 8 responses from organisations in Wales. In addition, 2,226 responses (including 78 responses in Wales) to a simpler online survey that was targeted at scheme beneficiaries, health professionals and retailers were received.

Approximately 90% of those who responded agreed that plain frozen fruit and vegetables should be added to the scheme. In addition, 70% of the beneficiaries who responded said that they would buy and eat more fruit and vegetables if this change was implemented. Almost 75% of health professionals said that it would make it easier for them to encourage pregnant women and families to eat more fruit and vegetables.

In relation to risks of vouchers being spent on products not included in the scheme, 71% did not believe these would increase if plain frozen fruit and vegetables were added. Around 17% said that the risks would, or might, increase and reasons given included that there could be confusion about which frozen products were included and which were not, though a number commented that this could be mitigated by simple, clear and comprehensive guidance for scheme beneficiaries and retailers.

Due to the strength of the support for adding plain frozen fruit and vegetables to the scheme, the UK Government have committed to make this change as quickly as possible. At the same time, UK Government is taking the opportunity to clarify the definition of fruit and vegetables in the Regulations; this is in response to comments about the need to ensure that the guidance for beneficiaries and retailers is fit for purpose. These changes will ensure that explanations given in the Healthy Start scheme guidance is fully aligned with the wording in the Regulations and make clear that any products with added fat, salt and sugar are excluded.

Competition Assessment

The impact on business, charities or voluntary bodies is negligible. The instrument extends, rather than restricts, the range of products that retailers can legally accept Healthy Start vouchers for. Some retailers will benefit from the opportunity to accept the vouchers for a wider range of products. Those that do not can continue to accept them for other Healthy Start foods. No formal competition assessment is therefore warranted.

Extending the scheme to include plain frozen fruit and vegetables will increase choice for beneficiaries and so will slightly broaden the scope for competition between Healthy Start retailers.

Healthy Start retailers selling frozen fruit and vegetables may reap a small positive benefit if beneficiaries choose to spend more of their vouchers with them. However, small and specialist retailers that do not sell frozen fruit and vegetables - such as greengrocers, doorstep milk deliverers and pharmacies - will not benefit from this new opportunity to compete with other retailers. In response to the consultation exercise, Dairy UK commented that its members believe that dairy businesses of all sizes could lose up to 5%, but more likely 2-3%, of their total Healthy Start voucher sales as a result of customers choosing instead to spend vouchers with retailers that sell both frozen produce and milk. Across the UK, approximately 3,700 doorstep milk deliveries accounted for just over 5% (£5.1m worth) of Healthy Start vouchers in 2009/10. Three percent of this would be £153,000, or an average of £41 in lost voucher sales per business. It is therefore considered that the overall impact on small and micro retailers accepting Healthy Start vouchers is small.

Equality Assessment

Responses to the consultation support the Welsh Assembly Government's view that Option 2 does not have any significant impact on equality. This option increases choice and flexibility for all those supported by Healthy Start, without imposing any new restrictions on either beneficiaries or the retailers they use. A detailed equality impact assessment has therefore not been carried out but an Inclusive Policy Making screening template has been completed and published at www.wales.gov.uk. This impact on equality will be reviewed in April 2012; the existing evidence will be reviewed along with any new evidence and emerging findings from the monitoring of the implementation of the Regulations.

Post Implementation Review

Policy on Healthy Start is kept under review on the basis of developing scientific evidence on the nutritional requirements of low income pregnant women, new mothers, and very young children. The impact of this change will be reviewed by the Department of Health on behalf of each UK country by 31 March 2016, within the context of an overall review of Healthy Start scheme.