

EXECUTIVE NOTE

THE EDUCATION (SCHOOL LUNCHES) (SCOTLAND) REGULATIONS 2009 SSI 2009/178

1. The above Instrument is made in exercise of the powers conferred by section 53(3)(a)(iv) and (b)(iii) of the Education (Scotland) Act 1980 (“the 1980 Act”). The Instrument is subject to negative resolution procedure.

Policy objectives

2. The Scottish Government has a jointly agreed commitment in the Concordat with COSLA to extend entitlement to free school lunches from August 2009, subject to the necessary legislation being approved by the Scottish Parliament. The commitment is to extend this entitlement to pupils whose parents or carers are in receipt of awards of both Child Tax Credit and Working Tax Credit where both awards are based on the recipient’s income not exceeding the income threshold set for the tax credits. Based on 2007/08 data, this will benefit approximately 44,000 pupils each year. This Instrument will extend entitlement to free school lunches to these pupils.

3. This Instrument will also bring the eligibility criteria for free school lunches into line with current working practices of Her Majesty’s Revenue and Customs (HMRC) in relation to persons ceasing their employment so as to ensure that the children of these persons who would previously have been entitled to claim free school lunches retain that entitlement.

Background

4. Section 53(3AA) of the Education (Scotland) Act 1980 (“the 1980 Act”) provides that, where an education authority provides school lunches, it must do so free of charge to a pupil to whom section 53(3) of the 1980 Act applies. Section 53(3) of the 1980 Act applies to a pupil who is in receipt of, or whose parents are in receipt of certain benefits, allowances or tax credits. Regulations under section 53(3) are therefore required to extend entitlement as agreed in the Concordat.

5. The Education (School Meals) (Scotland) Regulations 2003 (“the 2003 Regulations”), which this Instrument revokes and replaces, currently provide that section 53(3) shall apply to a pupil who is in receipt of, or whose parent is in receipt of, an award of Child Tax Credit, but not Working Tax Credit, where that person’s income is less than the income threshold for Child Tax Credit set through section 7(1)(a) of the Tax Credits Act 2002 (“the 2002 Act”) (currently £16,040).

6. This Instrument extends the criteria used by the 2003 Regulations to fulfil the Scottish Government’s commitment in the Concordat with COSLA. A pupil who is in receipt of, or whose parent is in receipt of Working Tax Credit (in addition to an award of Child Tax Credit based on an income not exceeding the income threshold) will now be entitled to free school lunches (where school lunches are provided) unless the award of Working Tax Credit is based on an annual income which exceeds the amount determined for the purposes of section 7(1)(a) of the 2002 Act (currently £6,420).

7. HMRC has made changes to the way a person who is working and receiving Working Tax Credit receives further benefit on cessation of their employment. Previously, on cessation of their employment, a person would no longer be entitled to receive Working Tax Credit and instead would be entitled to receive other benefits such as Income Support or Jobseeker's Allowance. Pupils who are in receipt of, or whose parents are in receipt of Income Support or Jobseeker's Allowance are entitled to free school lunches where they are provided by virtue of section 53(3)(a)(i) and (ii) and (b)(i) and (ii). The changes made by HMRC mean that, on cessation of employment, a person will now be paid Working Tax Credit for a further 4 weeks in anticipation of them taking up further employment during that time instead of Income Support or Jobseeker's Allowance. Such persons are treated as being engaged in qualifying remunerative work for the purposes of regulation 7D of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002.

8. This instrument also extends the criteria used by the 2003 Regulations to account for the changes in HMRC's working practices. A pupil who is treated, or whose parent is treated as being engaged in qualifying remunerative work and is in receipt of Working Tax Credit (in addition to an award of Child Tax Credit based on an income not exceeding the income threshold) will now be entitled to free school lunches where school lunches are provided.

Consultation

9. The issue of free school lunches has been extensively debated and consulted on by the Scottish Parliament.

Financial effects

10. Resources to accommodate these additional numbers are included in the local government financial settlement.

11. Changing the regulations to bring the eligibility criteria for free school lunches into line with current HMRC working practices will not add any costs for local authorities as the persons affected would have been entitled to free school lunches under the previous HMRC procedure for payment of WTC.

12. There are no significant financial effects on Scottish business and, therefore, a Regulatory Impact Assessment has not been prepared. It is possible that some Scottish food producers could benefit financially if they provide for any Scottish schools or local authorities.

Scottish Government Schools Directorate
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