

EQUALITY IMPACT ASSESSMENT RECORD

Title of policy/ practice/ strategy/ legislation etc.	The Welfare Reform (Consequential Amendments) (Scotland) Regulations 2017	
Minister	Deputy First Minister and Cabinet Secretary for Education and Skills Minister for Childcare and Early Years	
Lead official	Douglas Forrester Hallé Brown	
Officials involved in the EQIA	Name	Team
	Douglas Forrester Fiona Page	Support and Wellbeing Unit
	Hallé Brown Joanna MacKenzie Katherine Tierney	Early Learning and Childcare
	Manu Proemel Lorraine Stirling	Analytical Services Directorate for Legal Services
Directorate: Division: Team	Learning Directorate, Strategy and Performance, Support and Wellbeing Unit Children and Families Directorate, Creating Positive Futures, Early Learning and Childcare Policy Delivery Unit	
Is this new policy or revision to an existing policy?	Free School Meals - Revision to existing policy, to amend The Education (School Lunches) (Scotland) Regulations 2009 NB these were amended further by the 2013 Regulations on school lunches, in light of the introduction of Universal Credit Early Learning and Childcare – Revision to existing policy, to amend The Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014	

	NB – This order has been previously amended by the Provision of Early Learning and Childcare (Specified Children) (Scotland) (Amendment) Order 2015
--	--

Screening

Policy Aim

The aim of these regulations is to amend the qualifying benefits, which allow a child to become eligible for both free school lunches (FSL) and the funded entitlement to early learning and childcare for 2 year olds (ELC).

The Welfare Reform (Consequential Amendments) (Scotland) Regulations 2017 will come into force in August 2017, in time for the start of the 2017-18 academic year. These regulations set an income threshold of £610 per month (based on an equivalent income of £7320 per year) where a child (in the case of FSL) or a child's parent (in the case of both FSL and ELC) is in receipt of Universal Credit.

Both FSL and the funded entitlement to ELC for 2 year old children are 'passport benefits', where the entitlement depends on claimants being in receipt of certain benefits, as set out in The Education (School Lunches) (Scotland) Regulations 2009 (the 2009 Regulations) and The Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014 (the 2014 Order).

The inclusion of all Universal Credit claimants in the qualifying criteria in the 2009 Regulations, as amended and the 2014 Order, was intended to be an interim measure to ensure that no child was disadvantaged during the roll out of Universal Credit. As Universal Credit continues to roll out across Scotland, incorporating a broader range of claimants, an income threshold is required to ensure these passported benefits remain appropriately targeted.

Universal entitlement to FSL for all children in Primaries 1 to 3, as agreed between education authorities and the Scottish Government, will not be affected by this policy.

These regulations will support the following National Outcomes:

- Our [young people](#) are successful learners, confident individuals, effective contributors and responsible citizens
- Our [children](#) have the best start in life and are ready to succeed
- We live longer, [healthier lives](#)
- We have tackled the significant [inequalities](#) in Scottish society
- We have improved the life chances for [children, young people and families](#) at risk

Who will it affect?

In order for the policy to be as close to 'status quo' as possible, the regulations will introduce an annual earned income threshold of £610 pcm (based on an earned income of £7320 per year).

At this threshold we anticipate that the numbers of people eligible to claim both FSL and ELC will remain roughly stable.

FSL is provided as a 'benefit in kind' - received at the point of service. It is received by young people in school education who claim, or whose parents/carers claim, certain prescribed welfare benefits (as well as all children in primaries 1 to 3).

Funded ELC for 2 year old children is claimed by parents in receipt of certain benefits as defined in the 2014 Order. It is received by 2 year old children. It is acknowledged that the receipt of FSL and ELC effectively represents a monetary saving to parents / carers.

Universal Credit is now available to all newly unemployed single people without children across the UK, as well as and some couples without children in certain areas. Throughout 2017-18 DWP's phased roll out will become increasingly available to new claimants from couples and families, with new claims (from couples and families) already being taken at Job Centre Plus locations across Scotland.

Existing benefit claimants are not yet affected, however they will start transitioning on to Universal Credit from July 2019, with the roll out expected to be completed by March 2022.

Once the new monthly income threshold is introduced, there may be a number of families who have qualified for FSL as a result of

receiving UC who lose that entitlement because their monthly earned income exceeds that of the new income threshold (proposed to be set at £610). Broadly the status quo policy position means that we also expect an equal number of families to gain access to FSL as a result of receiving UC.

For ELC provision, once a child has been assessed as eligible, they retain their eligibility as a 2 year old regardless of their parent's circumstances until they become eligible for universal provision as a 3 year old. The changes to the eligibility criteria will only affect those entering ELC from 1 August 2017 as a child remains eligible, even if their parent ceases to receive a qualifying benefit.

Officials will ensure that the changes to legislation will be publicised to raise awareness of the changes and ensure, as far as possible, that the desired outcomes are achieved. We will also continue to monitor the impact of those changes to ensure that adverse impacts are neutralised as far as possible.

What might prevent the desired outcomes being achieved?

There is a potential risk that families who become eligible may be unaware of their entitlement, whilst those losing eligibility may be adversely impacted if their parents have difficulty in paying for school meals or early learning and childcare.

Stage 1: Framing

Results of framing exercise

The framing exercise has been based on data obtained from the Department for Work and Pensions in May 2017. This data is produced by DWP's policy stimulation tool is based on the Family Resource Survey and linked with DWP's benefit records. For Scotland the sample size comprises around 3,300 households with around 900 children.¹

For each legacy benefit that will be subsumed by Universal Credit we have a breakdown of the headcount of children by age groups and net earned household income. This allows us to establish the number of children who would be eligible for passported benefits at each Universal Credit income threshold.

To arrive at an appropriate income threshold we aim to match the number of currently eligible children with the number of children eligible at the respective threshold.

The current eligibility criteria for FSL and ELC are:

- Income Support
- Job Seekers Allowance (income based)
- Any income related element of Employment and Support Allowance
- Child Tax Credit (CTC), but not Working Tax Credit and your income is less than £16,105
- Both maximum Child Tax Credit and maximum Working Tax Credit and your income is under £6,420
- Universal Credit

ELC eligibility criteria also includes the following:

- Incapacity or Severe Disablement Allowance
- State Pension Credit
- Support under Part VI of the Immigration and Asylum Act 1999

¹ The DWP simulation policy tool is based on a survey of family resources and assumptions on benefit threshold levels in 2020/21. For this reason there is a relatively high degree of uncertainty around these numbers.

As Universal Credit continues to roll out across Scotland, incorporating a broader range of claimants, an income threshold is required to ensure these passported benefits remain appropriately targeted.

The modelling data from the DWP indicates an income threshold of £7320 would result in broadly the same number of families benefitting from FSL and ELC. There will be some families who lose their eligibility and it is likely that these will be families on Child Tax Credit whose earned income is between £7320 (the new threshold for UC) and £16,105 (the current threshold for CTC).

Extent/Level of EQIA required

This policy will have an impact on families who claim UC and whose earned income is over the £7320 annual threshold.

Whilst it will not impact directly upon any of the protected characteristics, an EQIA could not be screened out as there will be families who lose out on eligibility for FSL and ECL as a result of a threshold being introduced.

Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.

Characteristic ²	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
AGE	<p>Schools are exempt from the age characteristic protection under the provisions of section 84(a) of the Equality Act 2010.</p> <p>A breakdown for the uptake of free school meals by age (primary and secondary) is available on the SG's statistical publication: Summary Statistics for Attainment, Leaver Destinations and Healthy Living. This provides a breakdown of uptake in the primary, secondary and special school sectors.</p> <p>Statistics on the number of 2 year old children in ELC are collected annually through the Early Learning and Childcare Census. This is published by the Scottish Government.</p>	<p>Summary Statistics for Attainment, Leaver Destinations and Healthy Living</p> <p>Summary Statistics for Schools in Scotland – Age</p>	<p>As a result of the revised threshold, some children will become entitled for FSL and ELC whilst others will lose entitlement.</p> <p>The FSL policy will affect pupils from Primary 4 upwards after the universal entitlement to free school meals ends - although the policy is unlikely to disproportionately affect any particular age groups within upper primary or secondary.</p> <p>Eligibility for ELC for 2 year olds only affects that age group, and therefore no child will be affected as a result of their age.</p>

² Refer to Definitions of Protected Characteristics document for information on the characteristics

<p>DISABILITY</p>	<p>Information of the number of pupils assessed as or declared as having a disability is recorded within the annual pupil census as part of the national statistics collection.</p> <p>The percentage of pupils registered for free school meals in the special schools sector is higher than the primary and secondary sectors (55.7% of registered pupils in special schools were eligible in 2016), although eligibility for free school meals is not determined by whether a child has a disability or not.</p> <p>The proportion of pupils registered for free school meals in 2016 was 54.1% in Primary (100% in P1-3 and 17.9% in P4-7) and 14.2% in Secondary.</p> <p>Information on the number of children accessing ELC who are assessed as having additional support needs is collected as part of the annual pupil census.</p>	<p>Pupil Census 2016: supplementary data</p> <p>Summary Statistics for Schools in Scotland – ASN</p>	<p>Disability Living Allowance (DLA) will not be subsumed by UC, and therefore claimants of DLA will continue to be eligible for FSL and ELC</p>
--------------------------	--	--	--

<p>SEX</p>	<p>There is information collected through the annual pupil census on the number of male and female pupils in Scotland. We do not collect information on the numbers of male and female children in ELC.</p> <p>Scottish Government Education Analytical Services advised that, in mainstream local authority schools, the proportion of male and female pupils registered for free school meals is almost identical - 14.8% and 14.9% respectively.</p> <p>We are aware that the people who are likely to lose eligibility in relation to the new threshold are likely to be those who are currently claiming Child Tax Credit (CTC) whose earned income is more than the new £7320 threshold and less than the current CTC threshold of £16,105. We understand that HMRC data shows that 87% of in work CTC claimants and 97% of out of work CTC claimants are female (this group will not be affected as they will not have income over the threshold if unemployed).</p>	<p>Pupil Census 2016: supplementary data</p>	<p>While we understand that HMRC data shows that 87% of in work CTC claimants and 97% of out of work CTC claimants are female, there is no evidence to suggest that anyone is being disadvantaged by the new threshold as a result of their gender.</p>
<p>PREGNANCY AND MATERNITY</p>	<p>This information is not available in respect of pupils or children in ELC.</p>		<p>Not applicable.</p>

GENDER REASSIGNMENT	Information is not collected on the gender reassignment of pupils, nor would it be appropriate to do so.		Not applicable.
SEXUAL ORIENTATION	Information is not collected on the sexual orientation of pupils, nor would it be appropriate to do so.		Not applicable.
RACE	<p>Information on pupils' ethnic origin is recorded as part of the annual pupil census as part of the national statistics collection.</p> <p>Data on eligibility for FSL and ELC by ethnic origin is not collected.</p> <p>As with gender above, colleagues in Educational Analytical Services have provided us with data on the proportion of pupils registered for free school meals by ethnic origin.</p> <p>The highest proportion registered for free school meals are among the white gypsy/traveller group, (43% are registered); those identifying themselves as 'other - Arab', (38.8% registered) and those stating their origin as African.</p>	<p>Pupil Census 2016: supplementary data</p>	Not applicable.

	<p>The lowest rate of registration is among white Polish (6.2%) and the Asian community (8.3% of those identifying as Indian and 11% among Bangladeshis). By comparison 14.8% of white Scottish and white Irish are registered for free school meals.</p> <p>It should be noted these figures are based on registered pupils, rather than eligibility.</p> <p>Note: The research undertaken by St Mary's University in Twickenham commented on the Tamil community among whom state intervention is "frowned upon". This may suggest that lower take-up among some ethnic minorities may be for cultural reasons.</p>		
<p>RELIGION OR BELIEF</p>	<p>Information is not collected on the religious affiliation of pupils or children in ELC.</p> <p>St Mary's University in Twickenham published research on the take-up of free school meals in Catholic schools in England and Wales. This publication concluded that take-up of free school meals in denominational schools was lower than the national average. This is in contrast to Scotland, where take-up in denominational schools is comparatively higher.</p>		<p>Not applicable.</p>

<p>MARRIAGE AND CIVIL PARTNERSHIP (the Scottish Government does not require assessment against this protected</p>	<p>It should be noted that denominational schools do not select pupils according to faith, so the policy does not impact directly upon religion or belief.</p> <p>In Scotland the reason for higher uptake is more likely to be the higher concentration of denominational schools is found in Glasgow City and neighbouring local authority areas, where deprivation levels are comparatively higher than in other parts of Scotland.</p> <p>With this in mind, there is a greater likelihood that children in such schools will have parents in receipt of Universal Credit and could therefore lose their entitlement to free school meals where their parents are in work and just above the £500 monthly threshold. However this is due to socio-economic reasons rather than religious affiliations.</p>		
	<p>Schools are exempted from this protected characteristic under the provisions of section 84(b) of the Equalities Act 2010.</p>		<p>Not applicable.</p>

characteristic unless
the policy or practice
relates to work, for
example HR policies
and practices - refer
to Definitions of
Protected
Characteristics
document for details)

Stage 3: Assessing the impacts and identifying opportunities to promote equality

Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	Section 84(a) of the Equality Act 2010 states that the protected characteristic of age does not apply to schools.
Advancing equality of opportunity	X	X		Some children not currently eligible for FSL and ELC will become eligible whilst others currently receiving them will lose their entitlement. It is therefore assessed this has both positive and negative impacts.
Promoting good relations among and between different age groups			X	This policy is unlikely to impact upon relationships between different age groups.

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			X	There is no evidence to suggest this policy will disproportionately discriminate against people with disabilities.
Advancing equality of opportunity			X	This policy will not impact of equality of opportunity as a result of disability.
Promoting good relations among and between disabled and non-disabled people			X	This policy is unlikely to impact upon relations between disabled and non-disabled people.

Do you think that the policy impacts on men and women in different ways?

Sex	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	There is no evidence to suggest this policy will disproportionately discriminate on either gender.
Advancing equality of opportunity			X	Although we understand that more CTC claimants are female, there is no evidence that this policy will impact of anyone as a direct result of their gender.
Promoting good relations between men and women			X	This policy is unlikely to impact on relations between gender.

Do you think that the policy impacts on women because of pregnancy and maternity?

Pregnancy and Maternity	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	Not applicable
Advancing equality of opportunity			X	Not applicable
Promoting good relations			X	Not applicable

Do you think your policy impacts on transsexual people?

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	Not applicable
Advancing equality of opportunity			X	Not applicable
Promoting good relations			X	Not applicable

Do you think that the policy impacts on people because of their sexual orientation?

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	Not applicable
Advancing equality of opportunity			X	Not applicable
Promoting good relations			X	Not applicable

Do you think the policy impacts on people on the grounds of their race?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	There is no evidence to suggest this policy will disproportionately discriminate on any particular race group.
Advancing equality of opportunity			X	There is no evidence to suggest this policy will disproportionately discriminate on any particular race group.
Promoting good race relations			X	This policy is unlikely to have any impact on race relations.

Do you think the policy impacts on people because of their religion or belief?

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	There is no evidence to suggest this policy will disproportionately discriminate on people of any particular faith (or none).
Advancing equality of opportunity			X	The religious data of pupils and children in ELC is not collected
Promoting good relations			X	The religious data of pupils is not collected. This policy is likely to have a similar impact among people of all religious affiliations (and none).

Do you think the policy impacts on people because of their marriage or civil partnership?

Marriage and Civil Partnership³	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	Not applicable

³ In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

Have positive or negative impacts been identified for any of the equality groups?	We have not identified any specific positive or negative impacts for any of the equality groups – across all groups we expect some families to become eligible for FSL and ELC, and others to lose their eligibility.
Is the policy directly or indirectly discriminatory under the Equality Act 2010 ⁴ ?	We recognise some families may be adversely impacted by this policy, due to the introduction of an income threshold. However, we do not believe this policy discriminates against any of the protected characteristics above, either directly or indirectly.
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	N/A
If not justified, what mitigating action will be undertaken?	N/A

Describing how Equality Impact analysis has shaped the policy making process

- ◆ There are no changes to the original policy as a result of this EQIA, as no negative impacts were identified on any of the protected characteristics as a direct result of this policy.

⁴ See EQIA – Setting the Scene for further information on the legislation.

Monitoring and Review

We will continue to assess the impact of Universal Credit roll out, and revisit the threshold when necessary.

Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes No

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:

- Eliminating unlawful discrimination, harassment, victimisation;
- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people's different needs;
- Encouraging participation (e.g. in public life)
- Fostering good relations, tackling prejudice and promoting understanding.

Yes No

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:

Yes No Not applicable

Declaration

I am satisfied with the equality impact assessment that has been undertaken for The Welfare Reform (Consequential Amendments) (Scotland) Regulations 2017 and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: Joe Griffin

Position: Deputy Director, Children and Families

Authorisation date: 31 May 2017