

**EXPLANATORY MEMORANDUM TO**  
**THE EDUCATION (FREE SCHOOL LUNCHES) (CHILD TAX CREDIT)**  
**(WOLVERHAMPTON CITY COUNCIL) ORDER 2009**

**2009 No. 2300**

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 Eligibility for free school meals is dependent upon receipt of certain benefits or tax credits, as set out in legislation.
  - 2.2 This order enables Wolverhampton City Council to pilot an extension to the free school meal eligibility criteria by allowing parents who receive both Child Tax Credit and Working Tax Credit to qualify for free school meals for their children.
  - 2.3 This Order has been requested by the Wolverhampton City Council, whose schools have been aware of the pilot since May. It is therefore seen as an exception to the Department's commitment given to the House of Lords Merits Committee in May 2009.
3. **Matters of special interest to the Joint Committee on Statutory Instruments.**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 Section 512ZB of the Education Act 1996 specifies that pupils are entitled to free school lunches if their parent is entitled to a prescribed tax credit in defined circumstances.
  - 4.2 The defined circumstances are set out in The Education (Free School Lunches) (Prescribed Tax Credits) (England) Order 2003. The first of these prescribes that where the parent is entitled to Child Tax Credit but not Working Tax Credit their child is entitled to free school lunches. The second prescribes that the award of Child Tax Credit must be based on an annual income not exceeding the amount determined for the purposes of s.7(1)(a) of the Tax Credits Act 2002, currently £16,040 per annum.
  - 4.3 In this Order the reference to Working Tax Credit has been removed. The effect of it is that a child who is registered at a school maintained by Wolverhampton City Council is eligible for free school meals if the parent is eligible for Child Tax Credit based on an annual income not exceeding £16,040, which will include those parents who receive Working Tax Credit.

## **5. Territorial Extent and Application**

5.1 This Order applies only to pupils at schools maintained by Wolverhampton City Council.

5.2 This Order is effective for a period of three years, until 31<sup>st</sup> October 2012, in order to allow for the pilot scheme.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### **• *What is being done and why***

7.1 Free School Meals are available to non-working families, who are classed as being out of work, or working for less than 16 hours per week, and who are in receipt of certain benefits and tax credits. The eligible benefits and tax credits, as set out in section 512ZB of the Education Act 1996, are:

- Income Support;
- Income Based Jobseekers Allowance;
- An Income-related Employment and Support Allowance;
- Support under part VI of the Immigration and Asylum Act 1999;C
- Child Tax Credit, provided they are not entitled to Working Tax Credit and have an annual income (as assessed by Her Majesty's Revenue and Customs - HMRC) that as of 6 April 2009 does not exceed £16,040; or
- The guaranteed element of State Pension Credit.

7.2 The DCSF and the DH, together, have invited Wolverhampton City Council to participate in a pilot to test different approaches to free school meals. The authority will extend the current free school meals eligibility criteria so that primary and secondary school pupils are entitled to a free school lunch if their parents meet the existing criteria or are families on Working Tax Credit where annual income does not exceed £16,040.

7.3 Under current legislation a person is not entitled to free school meals for their children if they are working and are eligible for Working Tax Credit. This Order enables Wolverhampton City Council to extend the eligibility criteria by giving free school meals to children whose parents are Working Tax Credit.

7.4 The aim of the pilot is to improve the evidence base on the health and educational benefits of extending access to free school meals. Durham County

Council and the London Borough of Newham are also taking part in the pilot by offering universal free school meals to all primary school children. The Education and Inspections Act 2006 already gives local authorities the power to offer all pupils free meals, fresh fruit, milk and other refreshments during the school day, so there is no requirement to amend legislation to allow Durham and Newham to participate in the pilot.

- **Consolidation**

7.5 The Department has no intention of consolidating at this time.

## **8. Consultation outcome**

8.1 Wolverhampton City Council has been fully involved in setting up the pilot and has requested that this Order be made. No other consultation has been carried out. There is no new obligation placed on schools or local authorities other than Wolverhampton city Council, and there is no national extension of the eligibility criteria for free school meals.

8.2 The effect of this Order is merely to allow Wolverhampton City Council to extend the current eligibility criteria in order to take part in a free school meal pilot.

## **9. Guidance**

9.1 No guidance is necessary.

## **10. Impact**

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The National Centre for Social Research (NatCen) has been appointed to evaluate the free school meal pilot. The evaluation will look in particular at the impact of free school meals on school lunch take up; diet and eating habits at school and at home, and on health, behaviour, concentration and attainment. The evaluation will be used to inform the government's policy on access to free school meals.

### **13. Contact**

Holly Turner at the Department for Children, Schools and Families, Tel: 01325 392256 or email: [Holly.Turner@dcsf.gsi.gov.uk](mailto:Holly.Turner@dcsf.gsi.gov.uk) who can answer any queries regarding the instrument.