

## EXPLANATORY MEMORANDUM TO

### THE FREE SCHOOL LUNCHES AND MILK, AND SCHOOL AND EARLY YEARS FINANCE (AMENDMENTS RELATING TO UNIVERSAL CREDIT) (ENGLAND) REGULATIONS 2018

2018 No. 148

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

#### 2. Purpose of the instrument

- 2.1 This instrument amends the existing eligibility criteria for free school lunches and milk (FSM) and the early years pupil premium (EYPP). This instrument should be read alongside The Welfare Reform Act 2012 (Commencement No. 30 and Transitory Provisions) Order 2018, which lays out the associated transitory protections throughout the rollout of Universal Credit (UC) for children who would otherwise lose their entitlement to FSM as a result of the introduction of new entitling criteria outlined in this instrument.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

##### *Other matters of interest to the House of Commons*

- 3.2 This entire instrument applies only to England because it only applies to schools in England.
- 3.3 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly, if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.
- 3.4 The Department has reached this view because it considers that the primary purpose of the instrument relates to education, which is within the devolved legislative competence of each of the three devolved legislatures: the primary purpose of the subject matter of the instrument is not within Schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act); the primary purpose of the subject matter of the instrument is not within Schedules 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act); the primary purpose of the subject matter of the instrument is within paragraph 5 of Schedule 7 to the Government of Wales Act 2006 and is not within

one of the exceptions listed therein nor is it otherwise outside the legislative competence of the National Assembly for Wales (see section 108 of that Act).

#### **4. Legislative Context**

- 4.1 FSM fall under the powers introduced by the Education Act of 1996. UC was introduced as an entitling criterion for FSM in 2013 through a statutory instrument to entitle all households in receipt of UC to FSM in the early stages of rollout.
- 4.2 The EYPP was introduced in the 2015-16 financial year through the School and Early Years Finance (England) Regulations 2018. The EYPP is funding allocated to local authorities under the Dedicated Schools Grant. Regulations (made annually) under the School Standards and Framework Act 1998 require local authorities to distribute the EYPP funding to providers in respect of eligible children.
- 4.3 This instrument, The Free School Lunches and Milk (Prescribed Circumstances and Transitional Provisions Relating to Universal Credit) (England) Order 2018, introduces a net earned income threshold under UC, below which a household must earn to qualify for FSM and the EYPP from 1 April 2018. This is necessary to ensure that this funding is targeted towards the most disadvantaged families. This instrument should be read alongside The Welfare Reform Act 2012 (Commencement No. 30 and Transitory Provisions) Order 2018, which ensures that no child suffers from the sudden loss of a meal as a result of the introduction of this threshold by introducing transitory protections.

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

- 5.1 This entire instrument extends to England and Wales.
- 5.2 The territorial application of this instrument is set out in Section 3 under “Other matters of interest to the House of Commons”.

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

- 6.1 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 During the early stages of UC rollout, UC was added to the list of entitling benefits for FSM and the EYPP. This was to ensure that children of families moving onto UC in the early pilot areas would continue to be entitled to FSM and the EYPP.
- 7.2 As planned, and to ensure that FSM and the EYPP continue to be targeted at the families that need it most, this Statutory Instrument amends the eligibility criteria by applying earnings thresholds under UC. This is consistent with how the Department for Work and Pensions (DWP) and other government departments have established new criteria for other ‘passport’ benefits.
- 7.3 For FSM and the EYPP we are introducing a net earned income threshold of £7,400 per annum under UC. To be eligible, a household must have an annual net earned income equivalent to £7,400 at the point of claim. Eligibility will be verified by using an equivalent monthly check verified from the most recent Universal Credit assessment period. Where eligibility cannot be verified from the most recent

assessment period, eligibility can be verified based on earnings over the previous two or three assessment periods where data is available. We will provide further guidance to local authorities and schools on how eligibility checks will be performed.

- 7.4 A typical family earning around this threshold, depending on their exact circumstances, would have a total annual household income of between £18,000 and £24,000 once benefits are taken into account.
- 7.5 At the time of the consultation we estimated that by 2022, because of the new threshold, around 50,000 more children will benefit from a FSM compared to the previous benefits system.
- 7.6 As well as the threshold, and as specified in The Welfare Reform Act 2012 (Commencement No. 30 and Transitory Provisions) Order 2018 (“the Order”), all existing FSM claimants whose circumstances are set out in the Order as circumstances where eligibility for a FSM will cease will continue to receive FSM until the 31<sup>st</sup> March 2022 (current published end-date of the rollout of Universal Credit rollout). This will apply even if they are in receipt of UC and their earnings rise above the new threshold. This protection will also apply to all children becoming eligible for FSM after the threshold has been introduced up until the 31<sup>st</sup> March 2022. Following the 31<sup>st</sup> March 2022, any protected pupils still in education that no longer meet the eligibility criteria at that point will continue to receive protection until the end of their phase of education (e.g. primary or secondary or further education at a further education institution).
- 7.7 Because of the aforementioned protections, no child will suffer a sudden loss of FSM as a result of the introduction of this net earned income threshold.
- 7.8 We will also ensure that no child attracting early years pupil premium loses it while taking up the free childcare entitlement.
- 7.9 As mentioned in the next section of this Explanatory Memorandum, there has been some public interest in this proposal and the proposals attracted limited media attention in national and local press.

#### ***Consolidation***

- 7.10 There are no plans for consolidation at present.

### **8. Consultation outcome**

- 8.1 The Department ran a public consultation on changing the entitling criteria for FSM and the EYPP (16 November 2017 to 11 January 2018).
- 8.2 We received 576 responses to this consultation, alongside 8,421 emails in response to a campaign run by the Children’s Society primarily asking the Government to extend eligibility for FSM to all children in families on UC, a different proposition to that which was consulted on.
- 8.3 The majority of respondents (56% of the 560 who responded to this question) agreed with our proposed net earnings threshold of £7,400 per annum, citing this as an improvement on the current system of eligibility. Of those who disagreed, a significant proportion cited the Children’s Society’s ambition to extend entitlement to FSM to all children in households on UC.
- 8.4 The vast majority of respondents (87% of the 560 who responded to this question) agreed with our proposed protections, citing that this would give certainty to families

and ensure that children did not experience a sudden loss of their FSM during the transition to UC.

- 8.5 The majority (58% of the 512 who responded to this question) did not think the proposals might adversely affect one or more of the protected characteristics outlined in the Equality Act 2010. Of those respondents who suggested that the proposals might have an adverse effect on those with protected characteristics the majority were opposed to the proposed threshold more broadly, and did not specify particular protected groups that might be adversely affected, or explain why this might be the case.

## **9. Guidance**

- 9.1 We will ensure that schools, local authorities and further education providers have the information they need to help families understand the changes to eligibility. We will therefore provide schools, local authorities and further education providers with guidance, as well as information about UC and how it affects eligibility for FSM and the EYPP.
- 9.2 We will also provide local authorities and schools with more detailed guidance on how eligibility checks will be performed. To be eligible, a household must have an annual net earned income equivalent to £7,400 at the point of claim. Eligibility will be verified by using an equivalent monthly check verified from the most recent assessment period. Where eligibility cannot be verified from the most recent assessment period, eligibility can be verified based on earnings over the previous two or three assessment periods where data is available.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is minimal.
- 10.3 An Impact Assessment has not been prepared for this instrument.
- 10.4 This legislation improves the targeting of FSM and the EYPP by directing this funding to the most disadvantaged households and to the children who need them the most. At the time of the consultation we estimated that by 2022, because of the new threshold, around 50,000 more children would benefit from a FSM compared to the previous benefits system.

## **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

## **12. Monitoring & review**

- 12.1 The Department for Education will keep the threshold constant until the end of the Universal Credit rollout period. After that point, it will then keep the threshold under review to ensure those who most need support are benefiting.

## **13. Contact**

- 13.1 Please email [Freeschoolmeals.MAILBOX@education.gov.uk](mailto:Freeschoolmeals.MAILBOX@education.gov.uk) should you have any queries regarding the instruments.