

Final Business and Regulatory Impact Assessment

Title of Proposal: The Education (Scotland) Act 1980 (Modification) Regulations 2021 (Free School Lunch Entitlement)

Purpose and intended effect

The purpose of these Regulations is to amend section 53(7)(aa) of the Education (Scotland) Act 1980, in order to protect eligibility to free school lunches for children and young people who qualify for them due to their parent(s) or guardian(s) being in receipt of both Child Tax Credit and Working Tax Credits. This amendment increases the income threshold to £7,500 per year for those in receipt of both Child Tax Credit and Working Tax Credits.

A similar change was made last year in regulations which increased the income threshold for recipients of this benefit from the then threshold of £6,900 to the current threshold of £7,330. Consequently, this further amendment protects eligibility for those who are affected by recent increases to the National Living Wage which came into effect in April 2021.

This instrument will also increase the monthly earned income threshold for parents, guardians or pupils in receipt of Universal Credit from a monthly earned income of up to £610 to £625 in order to level it with the eligibility threshold for those in receipt of both Child Tax Credit and Working Tax Credit.

Universal Credit was first introduced as a qualifying benefit in 2013 by way of an amendment to the Education (School Lunches) (Scotland) Regulations 2009. This instrument removes this provision from those Regulations and inserts it into section 53 the Education (Scotland) Act 1980.

Policy Objectives

Free school lunches are a “passported benefit”, where the eligibility depends on a child or young person being an eligible child or young person, where their parent(s) or guardian(s), or the young person themselves, are in receipt of certain benefits as prescribed by section 53 of the Education (Scotland) Act 1980.

The intent of this amendment is to maintain eligibility for those families in receipt of Child Tax Credit and Working Tax Credit who may be affected by the recent increase to the National Living Wage. The increase to the National Living Wage means that earnings of parents in receipt of both benefits would marginally exceed the current income threshold of £7,330. This is an unintended consequence of the increase in National Living Wage and the amendment made by these Regulations will ensure continued eligibility for free school lunches.

In addition, this latest rise to the National Living Wage has required us to review the eligibility threshold to free school lunches for those in receipt of Universal Credit. The current eligibility threshold of an earned income of up to £610 per month has been in place since August 2017. Since this is equivalent to £7,320 per year we have decided to increase the eligibility threshold for those in receipt of Universal Credit to £625 per month. This is equivalent to £7,500 per year and will therefore bring the eligibility threshold for recipients of Universal Credit to the

same level as that for those in receipt of both Child Tax Credit and Working Tax Credit.

The instrument does not apply to children in those age groups which are covered by universal provision of free school lunches for all children. It also does not apply to children and young people who qualify for free school lunches through their parent(s) or guardian(s) receiving any of the other qualifying benefits, since their eligibility will not be affected.

Consultation

Consultation on this proposal has been limited as this is an amendment which seeks to maintain a policy position rather than to create a new position. The amendment seeks to rectify an unintended consequence brought about by increases to National Living Wage which may otherwise have seen some families losing their entitlement.

Scottish Government officials wrote to CoSLA, the umbrella body representing Scottish local authorities, who confirmed they were content with the policy objectives of these Regulations.

Options

No options were presented on this occasion. When we presented the Deputy First Minister with a submission to increase the free school lunches eligibility threshold, for families in receipt of both maximum Child Tax Credit and maximum Working Tax Credit, from £6,420 to £6,900 in 2019 we presented him with three options at the time.

Those three options were: to increase the free school lunches eligibility threshold, for families in receipt of both Child Tax Credit and Working Tax Credit, in annual increments to take account of increases in the National Living Wage; to increase the income threshold to a higher amount to enable the maintenance of the entitlement to free school lunches as a passported benefit and to 'future proof' against further increases in National Living Wage; or to do nothing and leave the threshold at what was then its existing level of £6,420.

The Deputy First Minister chose to increase the eligibility threshold in annual increments, in line with increases in the National Living Wage, therefore this Statutory Instrument follows on from that instruction.

The review of the eligibility threshold for those in receipt of Universal Credit will also be undertaken annually at the same time as that for those in receipt of both Child Tax Credit and Working Tax Credit in future years to ensure their eligibility is maintained. Scottish Government officials will continue to do this annually for as long as it remains necessary to do so.

Benefits

The benefits of making annual incremental changes to the eligibility threshold for free school lunches, in line with increases in the National Living Wage, are that we will be rectifying the unintended consequences of an increased National Living Wage. This means that our measures will ensure that families intended to benefit from this passported benefit can continue to do so.

<p>Costs</p> <p>This amendment is considered to be cost neutral. As these Regulations are intended to rectify an unintended potential loss of passported benefit, rather than to increase or decrease the population of people entitled to the passported benefit, there will be neither increased costs or decreased costs associated with it.</p>
<p>Scottish Firms Impact Test</p> <p>N/A the impact of these Regulations will be to local authorities rather than Scottish businesses.</p>
<p>Competition Assessment</p> <p>All 32 local authorities will be required to continue to provide free school lunches as a passported benefit to those receiving Child Tax Credit and Working Tax Credit, and Universal Credit, where they meet the income-related eligibility criteria, within their authority area. There is not a competitive element to that provision.</p>
<p>Consumer Assessment</p> <p>The intent of the amendment in these Regulations is to protect the rights of children and young people whose parents and carers are entitled to both Child Tax Credit and Working Tax Credit, or Universal Credit, and who wish to receive Free School Lunches. The effect is to maintain the access to this passported benefit for those children and young people.</p> <p>There is a minimal risk that if access to free school lunches were to significantly reduce, then there would be a change in the secondary services required to secure food, and make and prepare school food.</p>
<p>Test run of business forms</p> <p>This is not applicable in this case. The arrangements for the provision and claiming of free school lunches as a passported benefit will not be changed by these Regulations.</p>
<p>Digital Impact Test</p> <p>This is not applicable in this case. The arrangements for the provision and claiming of free school lunches as a passported benefit will not be changed by these Regulations.</p>
<p>Legal Aid Impact Test</p> <p>Legal Aid is not affected by these proposals, and therefore it is considered that there will be no impact.</p>
<p>Enforcement, sanctions and monitoring</p>

The provision of free school lunches is monitored annually through statistical returns which measure registration and uptake of lunches. This is monitored annually at a national level and by local authority level, any change in uptake or registration can be identified. However, in the case of this amendment it is unlikely that any change will be identified as a result of this policy intent.

Summary of Costs

As indicated above there will be no additional costs, nor any reduction in costs to local authorities as the intent of this policy action is to maintain eligibility rather than to increase or reduce it.

Declaration and publication

Sign-off for Final BRIAs: I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Shirley-Anne Somerville

Date: 20 May 2021

Scottish Government Contact point: Douglas Forrester