

EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	The Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment (No. 2) Order 2021
Summary of aims and desired outcomes of Policy	<p>This is an amendment to secondary legislation in order to protect children’s eligibility for the targeted entitlement to funded early learning and childcare (ELC) for some 2 year olds.</p> <p>This follows UK Government changes to the National Living Wage from April 2021.</p>
Directorate: Division: team	Early Learning and Childcare: Targeted Childcare and Family Wellbeing Team

Executive summary

Local authorities are required to provide access to statutory funded early learning and childcare (ELC) for any ‘eligible... pre-school child belonging to their area’. This includes all 3 and 4 year olds (from a relevant start date) and some 2 year olds¹.

The definition of an ‘eligible pre-school child’ is set out in section 47(2) of the Children and Young People (Scotland) Act 2014 (‘the 2014 Act’) and in Regulations made under that section: the Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014 (‘the 2014 Order’).

Local authorities also have a discretionary power to provide access to funded ELC to any other child as they see fit.

¹ Children and Young People (Scotland) Act 2014 (legislation.gov.uk)

This instrument amends the income threshold for two of the eligibility criteria covered in the 2014 Order due to an increase in the National Living Wage. The criteria relate to children who are eligible for access to funded ELC due to their parents' receipt of: working tax credits and child tax credit; or universal credit. We intend to increase the thresholds:

- From £7320 for those in receipt of working tax credits and child tax credit to £7500 per annum.
- From £610 per month for those in receipt of universal credit to £625 per month.

The purpose of these amendments is to maintain the profile of the eligible 2 year old population.

The Equality Impact Assessment process on this amendment has concentrated on assessing whether any of the protected characteristics are likely to be represented in the profile of families meeting this specific eligibility criteria.

Through this process we have identified some positive impacts on the basis of sex, disability, race and religion or belief as these groups appear more likely to meet the relevant eligibility criteria. In particular for women who are more likely to head lone parent households.

We have not identified any elements of this amendment that discriminate against any of the protected characteristics either directly or indirectly.

Background

Funded ELC for 2 year olds

We estimate that around 14,500² 2 year olds meet the eligibility criteria for the 2 year old offer. The criteria are based on evidence that children from disadvantaged backgrounds, can particularly benefit in terms of social, emotional and educational outcomes from attending high quality ELC. The criteria are that the child:

² Using October 2016 data from HMRC, it was estimated that there were around 14,500 eligible 2 year olds in Scotland.

- Is care experienced themselves (currently 'looked after', subject to a kinship care or guardianship order)
- Has a care experienced parent
- Or if they have a parent in receipt of a 'qualifying benefit' which are as follows³:
 - Income Support
 - Job Seeker's Allowance (income based)
 - any income related element of Employment and Support Allowance
 - Incapacity or Severe Disablement Allowance
 - State Pension Credit
 - Child Tax Credit, but not Working Tax Credit with annual income of £16,480 or less
 - both maximum Child Tax Credit and maximum Working Tax Credit and income of £7,320 or less
 - support under Part 6 of the Immigration and Asylum Act 1999
 - Universal Credit with household take-home pay of £610 a month or less (equivalent to £7,320 annual income)

We estimate that over 90% of eligible 2 year olds meet criteria relating to their parent receiving a qualifying benefit.

Changes to eligibility

Through 2 previous amendments to regulations, we introduced an income threshold for those families in receipt of universal credit and aligned the working tax credit threshold. These amendments had the effect that a child is eligible when a parent receives:

- maximum child tax credit and maximum working tax credit, with an annual household income of £7,320 or under.
- universal credit, and take home pay is £610 a month or less.

A combination of UK Government policy changes to the National Living Wage (NLW) , effective from 1 April 2021, means that it is now not possible for a parent aged 23 and over to meet the combined working tax credit and child tax credit criterion. These policy changes are:

³ [The qualifying benefits are set out in The Provision of Early Learning and Childcare \(Specified Children\) \(Scotland\) Order 2014](#)

- to increase the National Living Wage annually (the legal minimum wage for those age 23 and over, not to be confused with the 'real' living wage);
- to reduce the age that the National Living Wage is payable from those aged 25 and over to those aged 23 and over.

In order to be in receipt of working tax credit, a claimant must work at least 16 hours per week. From 1 April 2021 the annual income for a person aged 23 and over working 16 hours per week is around £7,413.

We are amending the relevant Scottish Statutory Instrument (The Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014, as amended) to increase the income threshold for those families who are in receipt of both child tax credits and working tax credits to £7500 per annum; and for those in receipt of universal credit to £625 per month.

Impact

The amendments aim to largely maintain the status quo by protecting eligibility for households that have seen an increase in their earnings due to the increase in the National Living Wage. We understand UK Government intend to increase the National Living Wage annually until at least 2024. This is based on their policy aim for the rate of the National Living Wage to reach a target of two thirds of UK median earnings by 2024. The Low Pay Commission published their Low Pay Commission Report in December 2020 which sets out the methodology and rationale for up-ratings over the next 3 years: National Minimum Wage (publishing.service.gov.uk).

Household circumstances for these families will not have materially changed as a result of the increase in the NLW, as a small increase such as this is necessary for low-income households to maintain living standards while the cost of living increases across the country. Labour market trends show that the distribution of low paid jobs has been broadly stable with a similar percentage of workers earning at and just above the NLW.

We do not anticipate there being any significant increase in the number of 2 year olds becoming newly eligible as a result of this change. If we make no changes to the threshold, we estimate the eligible population decreases by around 1,000 children. This represents 7% of that eligible population.

It is important to note however that no 2 year old currently accessing the funded entitlement will lose out, as eligibility is only assessed once before the child begins provision. Once the child is accessing their funded place they will retain it, even if their family's circumstances change.

The Scope of the EQIA

This Equality Impact Assessment (EQIA) considered whether 2 year old children and parents or carers within protected characteristics groupings faced any barriers, discrimination or harassment as a result of the proposed amendments to secondary legislation.

In order to understand the barriers or impacts that parents or carers in receipt of the qualifying benefits and or eligibility criteria may face as a result of the proposed increase to the income threshold, the following evidence was reviewed:

- a) Labour Market Briefing -Annual Survey of Hours and Earnings 2019⁴
- b) Scottish Household Survey 2019⁵
- c) Poverty and Income Inequality in Scotland 2016-19⁶
- d) Sexual Orientation in Scotland 2017: A Summary of the Evidence Base⁷
- e) Is Scotland Fairer?⁸
- f) The Tackling Child Poverty Delivery Plan 2018-22 (Annex 2)⁹
- g) What do we know about in-work poverty in Scotland?¹⁰
- h) The 2015 Budget Effects on Black and minority ethnic people¹¹
- i) Regional employment patterns in Scotland: statistics from the Annual Population Survey 2018¹²

⁴ <http://www.gov.scot/Topics/Statistics/Browse/Labour-Market/Earnings>

⁵ <https://www.gov.scot/publications/scottish-household-survey-2019-annual-report/>

⁶ <https://www.gov.scot/publications/poverty-income-inequality-scotland-2016-19/>

⁷ <http://www.gov.scot/Publications/2017/01/4911/0>

⁸ <https://www.equalityhumanrights.com/en/publication-download/scotland-fairer-2018>

⁹ <https://www.gov.scot/binaries/content/documents/govscot/publications/publication/2018/03/tackling-child-poverty-delivery-plan-annex-2-further-technical-information/documents/00533643-pdf/00533643-pdf/govscot%3Adocument>

¹⁰ <https://www.gov.scot/publications/working-poverty/>

¹¹ [The 2015 Budget Effect on BME RunnymedeTrust 27thJuly2015.pdf](#)

- j) Disabled people in the labour market in Scotland: 2018¹³
- k) Scottish Surveys Core Questions 2019¹⁴
- l) Child and Working Tax Credits statistics: Finalised awards, 2018-19¹⁵
- m) Universal Credit statistics, 29 April 2013 to 8 April 2021¹⁶

Current evidence relating to pre-school children in particular that information in relation to 2 years olds was also considered.

- n) Schools in Scotland - summary statistics: 2020¹⁷
- o) Summary statistics for schools in Scotland no. 10: 2019 edition¹⁸
- p) Children's Social Work Statistics Scotland: 2019 - 2020¹⁹
- q) Scottish Government's 'The Tackling Poverty Delivery Plan' 2018-22
- r) Scottish Study of Early Learning and Childcare²⁰

Key Findings

Scottish Government does not have access to UK Government data detailing the profile of recipients of Tax Credit or Universal Credit awards in Scotland. We have therefore been limited to what conclusions we can draw on the impact of the planned amendment.

The available data shows that ethnic minority households and households with a disabled adult or child have a higher risk of being in relative poverty. It is likely that these households will continue to be positively affected by the planned change if they fit the criteria for receiving Working Tax Credits

¹² <https://www.gov.scot/publications/regional-employment-patterns-scotland-statistics-annual-population-survey-2018/>

¹³ <https://www.gov.scot/publications/disabled-people-labour-market-scotland-2018/>

¹⁴ <https://www.gov.scot/publications/scottish-surveys-core-questions-2019/#:~:text=The%20Scottish%20Surveys%20Core%20Questions%20in%202019%20reports%20on%20the,caring%20and%20local%20government%20satisfaction.>

¹⁵ <https://www.gov.uk/government/statistics/child-and-working-tax-credits-statistics-finalised-annual-awards-2018-to-2019/child-and-working-tax-credits-statistics-finalised-awards-2018-19>

¹⁶ [Universal Credit statistics: 29 April 2013 to 8 October 2020 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/universal-credit-statistics-29-april-2013-to-8-october-2020)

¹⁷ <https://www.gov.scot/publications/summary-statistics-schools-scotland-2020/>

¹⁸ <https://www.gov.scot/publications/summary-statistics-schools-scotland-no-10-2019-edition/>

¹⁹ [Children's social work statistics: 2019 to 2020 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/childrens-social-work-statistics-2019-to-2020/)

²⁰ <https://www.gov.scot/publications/scottish-study-early-learning-childcare-phase-1-report-updated-2021/>

and Child Tax Credits or Universal Credit. However, we do not currently have access to data that would allow us to assess the extent to which these households contribute to the specific population targeted by the change in eligibility criteria. Therefore we can only indirectly make an assumption that these specific protected characteristic groups (in particular Sex, Race and Disability) are more likely to be impacted positively.

The 'Tackling Child Poverty Delivery Plan 2018-22' demonstrates that ethnic minority families are more likely to be in work but on lower incomes. It also highlights that minority ethnic groups have a lower reliance on social security payments than the population average. The data analysed did not have a large enough sample size to look at minority ethnic poverty in isolation, or to look at the different Scottish minority ethnic groups.

The 'Poverty and Income Inequality in Scotland 2016' suggests that in comparison to 'White-British group (combined data for 2014-19) people from minority ethnic (non-white) groups are more likely to be in poverty, both after and before housing costs. After housing costs 38% of people from 'Mixed, Black, Black British and Other' ethnic groups and 39% of 'Asian or Asian British' ethnic groups were in relative poverty.

The Scottish Household Survey 2019 report also indicates that Minority ethnic people are less likely to report managing well financially. In 2018, 42% of those in minority ethnic groups (non-white) were managing well financially compared with 56% for the White groups. If we explore deeper, the findings of the publication show that Pakistani and Chinese ethnic groups are more likely to be in poverty (51% and 45% respectively were in relative poverty). It also suggests that in 2014-19, 49% of people who identified their religion as Muslim were more likely to be living in poverty after housing costs.

'Child and Working Tax Credits statistics: Finalised awards, 2018-19' , is the most recent publication available at this time. The summary report provides information on the UK level statistics for the number of families benefiting from tax credits. It also presents details about the number of children in benefitting families. In 2018-19 at a national level, there were approximately: 3.3 million families claiming Child Tax Credit (CTC) and/or Working Tax Credit (WTC). There were approximately 6.1 million children in tax credit claiming families. At a regional level, figures for Scotland show that approximately 242,000 tax credit recipient families and approximately 405,000 tax credit recipient children. In the UK lone parent families with

children were either receiving the full award of CTC (when out-of-work) or WTC and CTC (when in-work). In 2018-19, 41% of tax credit families were in work and in receipt of both Working Tax Credit and Child Tax Credit. Breakdowns by protected characteristics are not provided in the published analysis.

'Universal Credit statistics, 29 April 2013 to 8 April 2021' published by DWP, show that at a national level and in response to the pandemic, Universal Credit claims doubled from March 2020, from 3 million claimants to currently 6 million .

The latest DWP statistic show that nationally, women account for 52% of people on Universal Credit. It also suggests that single parent families account for 25.22% of claims and couples with children account for 12.81%. The proportion of people on Universal Credit that were men increased to 49% in May 2020 from 44% in March 2020.

The 'Scottish Household Survey 2019' found a large proportion of single parent families are female-headed. The survey suggests that female-headed households are less likely to report “managing well” financially (a term used in the publication). In 2019, households where the highest income householder was male were more likely to say they managed well.

Data from the 'Poverty and Income Inequality in Scotland 2016-19' publication shows that the relative poverty rate after housing costs was higher for lone mothers (39%) than for other single working-age adults. The poverty rate for single working-age women without dependent children was 28%, and for single working-age men it was 34%. This report has also published three-year averaged estimates of the percentage of people, children, working-age adults and pensioners in Scotland living in poverty, and other statistics on household income and income inequality.

These estimates are used to monitor progress in reducing poverty, child poverty and income inequality. Although evidence suggests that poverty rates may have stopped rising²¹, in 2016-19, after housing costs are accounted for, 24% of children and 19% of working-age adults were living in relative poverty. Analysis shows that before housing costs were deducted there were 20% of children and 16% of working-age adults in Scotland were living in relative poverty. We do not currently have access to a breakdown of this data in relation to those families who may qualify for

²¹ We recognise that this evidence may have been impacted as a result of the COVI-19 pandemic and therefore that this position may have changed.

funded ELC, which would allow us to assess the extent to which these households contribute to the specific population targeted by the change in eligibility criteria. Therefore we can only indirectly make an assumption that these specific protected characteristic groups (in particular Sex, Race and Disability) are more likely to be impacted positively.

The 'SSELC phase 1' study found that that 53% of the households of eligible 2 year olds in the SSELC were single parents. This compared with 16% of households of 3 year olds who had just started accessing 600 hours of funded hours in November to December 2019.

The study shows that 49% of the households of eligible 2 year olds were in households amongst the lowest 10% (decile) of equivalised household incomes (having an annual income of less than £9701) . A further 20% of households had incomes in the second lowest decile (an annual income of at least £9701 but less than £13,929). The report identifies that there is a disproportionate representation of lower income households amongst the cohort reflects the eligibility criteria for access to statutory funded provision of ELC for two year olds. These are households that are more likely to have a parent or carer in receipt of certain qualifying benefits (out of work benefits or income related benefits).

Recommendations and Conclusion

The overall purpose of this amendment is to largely maintain the status quo and to ensure that eligibility is protected for those families who have seen an increase in their earnings but no material change in their financial circumstances due to the UK policy changes.

The EQIA process has identified limited positive impacts in particular for single lone parents which appear to be more directed towards single women.

As there was limited evidence available in relation to the tax credit population, or Universal Credit population we were unable to ascertain if the policy change will impact on specific protected characteristic groups directly or indirectly. We can indirectly make assumptions that there will be positive impacts for ethnic minority households and households with a disabled adult or child as they have a higher risk of being in relative poverty. If these families meet the eligibility criteria it is highly likely that they will benefit from the increase to the income threshold.

The EQIA is a working document and will be reviewed to reflect any new evidence or information that may impact any of the protected characteristics as a result of this amendment to secondary legislation.