

Final Business and Regulatory Impact Assessment

Title of Proposal The Education (Scotland) Act 1980 (Modification) Regulations 2019 (Free School Meal Entitlement)

Purpose and intended effect

The purpose of the Regulation is to amend section 53(7) of the Education (Scotland) Act 1980, in order to protect eligibility to free school meals 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. The Regulation is intended to increase the income threshold to £6,900 per year for those in receipt of both Child Tax Credit and Working Tax Credits. Consequently this protects eligibility for those who are affected by recent changes to National Living Wage.

Policy Objectives

Free school meals is a “passport benefit”, where the entitlement 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 Regulation is to maintain eligibility for those in receipt of Child Tax Credit and Working Tax Credit who may be affected by the recent increase to the National Living Wage. Whilst the National Living Wage enables an increased wage amount, this would marginally exceed the current income threshold of £6,420 when in receipt of both maximum Child Tax Credit and maximum Working Tax Credit. This is an unintended consequence of the increase in National Living Wage and this technical amendment by Regulation will ensure continued qualification for free school meal entitlement.

The instrument does not apply to children in the first three years of primary school, at publicly-funded schools, since they are universally entitled to free school meals. It also does not apply to children and young people who qualify 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 a Regulatory amendment which seeks to maintain a policy position rather than to create a new position. The Regulation seeks to rectify an unintended consequence of increases to National Living Wage which may have meant that some families may have lost entitlement.

Scottish Ministers wrote to local authorities to seek that they use their powers to rectify these matters in the interim. There have been no concerns raised about this position and proposed action as a result of this engagement, or through engagement with CoSLA.

Options

There were 3 options considered:

Option 1 was to increase the income threshold to £6,900 to enable the maintenance of the entitlement to free school meals as a passported benefit.

Option 2 was to increase the income threshold to a higher amount to enable the maintenance of the entitlement to free school meals as a passported benefit and to 'future proof' against further increases in National Living Wage.

Option 3 was to take no action.

Benefits

Option 1 provides the benefits of rectifying the unintended consequence of increased National Living Wage. This option was considered to ensure that families intended to benefit from the passported benefit were able to continue to do so.

Option 2 also provided the benefit of rectifying the unintended consequence of increased National Living Wage. The income threshold could be increased beyond the level of current need, in relation to National Living Wage, however the benefit is administrative. It would not be the Scottish Government's intention to increase the income threshold for those in receipt of both maximum Child Tax Credit and maximum Working Tax Credit, beyond protecting those formerly in receipt of the passported benefit, as it is not intended that the criteria for accessing the passported benefit will be made significantly more generous.

Option 3 did not have particular benefits, as those who may lose entitlement to free school meals as a passported benefit would do so, and would continue to do so. This is contradictory to the policy intention.

Option 1 is the option which is being pursued here.

Costs

This amendment is considered to be cost neutral. As this Regulation is 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. In the interim, local authorities have been using their powers to maintain this position.

Scottish Firms Impact Test

N/A the impact of this regulation will be to local authorities rather than Scottish businesses.

Competition Assessment

All 32 local authorities will be required to continue to provide free school meals as a passported benefit to those receiving maximum Child Tax Credit and maximum Working Tax Credit within their authority area. There is not a competitive element to that provision.

Consumer Assessment

The intent of the Regulation is to protect the rights of children and young people whose parents and carers are entitled to both maximum Child Tax Credit and maximum Working Tax Credit and who wish to receive Free School Meals. The effect of this Regulation is to maintain the access to this passported benefit to those children and young people.

There is a minimal risk that if access to free school meals were to significantly reduce, then there would be a change in the secondary services required to secure food, and make and prepare school food. However, in this case, this circumstance is already mitigated through the interim usage of local authorities powers to continue to provide free school meals as a passported benefit to those affected by the unintended consequence as a result of the increase in National Living Wage.

Test run of business forms

This is not applicable in this case. The arrangements for the provision and claiming of free school meals as a passported benefit will not be changed by this Regulation.

Digital Impact Test

This is not applicable in this case. The arrangements for the provision and claiming of free school meals as a passported benefit will not be changed by this Regulation.

Legal Aid Impact Test

Legal Aid is not affected by these proposals, and therefore it is considered that there will be no impact.

Enforcement, sanctions and monitoring

The provision of free school meals is monitored annually through statistical returns which measure registration and uptake of meals. 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, both as a result of this policy intent and the interim measures taken forward by local authorities through their use of relevant powers.

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: **John Swinney**

Date: **20 May 2019**

John Swinney, Deputy First Minister and Cabinet Secretary for Education and Skills

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