

POLICY NOTE

THE EDUCATION (SCOTLAND) ACT 1980 (MODIFICATION) REGULATIONS 2019

SSI 2019/179

The above instrument was made in exercise of the powers conferred by section 53(8)(a)(ii)⁽¹⁾ of the Education (Scotland) Act 1980 (the “1980 Act”). This instrument is subject to negative procedure.

The purpose of the instrument is to modify section 53(7) of the 1980 Act, by adding a description of pupil by reference to any tax credit or element of a tax credit within the meaning of the Tax Credits Act 2002 received by the parents of the pupil in such circumstances as may be so prescribed. This modification is required in order to protect the eligibility to a free school lunch 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.

Policy Objectives

Free school lunch is a “passported 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 in section 53 of the 1980 Act.

Section 53 of the 1980 Act provides wide powers to an education authority under which they may provide food or drink to pupils and makes provision for the circumstances in which they may charge for such provision. Children in the first three years of primary school, at all publicly-funded schools, are universally entitled to a free school lunch. On 5 January 2015, the Scottish Government entered into an agreement with education authorities where they would fund them to provide a free school lunch to all infant pupils. Section 53(2) of the 1980 Act provides that an education authority must provide or secure the provision of a school lunch free of charge to pupils falling within section 53(7). A school lunch is defined by section 53(12) of the 1980 Act. Section 53(7)(a) already requires the provision of a free school lunch to a pupil if the pupil or the parents of the pupil are in receipt of income support, income-based jobseeker’s allowance or an income related allowance under Part 1 of the Welfare Reform Act 2007. Section 53(7)(b) requires the provision of a free school lunch to a pupil if the parents of the pupil are in receipt of support provided under Part 6 of the Immigration and Asylum Act 1999.

⁽¹⁾ Section 53 of the Education (Scotland) Act 1980 (the “1980 Act”) was substituted by Section 22 of the Education (Scotland) 2016 (asp 8) (the “2016 Act”). Section 22 of the 2016 Act was commenced with effect from 1 April 2018 by the Education (Scotland) Act 2016 (Commencement No. 5 and Savings Provision) Regulations 2018/36 (the “2018 Regulations”). Regulation 3 of the 2018 Regulations saved 3 instruments which had been made under the previous version of section 53 of the 1980 Act. Those instruments are the Education (School Lunches)(Scotland) Regulations 2009 (SSI 2009/178); the Education (School Lunches)(Scotland) Amendment Regulations 2013 (SSI 2013/64) and the Education (School Lunches)(Scotland) Regulations 2015 (SSI 2015/269).

This instrument will modify section 53(7) of the 1980 Act by adding paragraph (aa) after the existing paragraph (a). The new provision adds a description of pupil by reference to any tax credit or element of a tax credit within the meaning of the Tax Credits Act 2002 received by the parents of the pupil in such circumstances as may be so prescribed. The power to make such a modification to this primary legislation is set out in section 53(8)(a)(ii) of the 1980 Act. The modification is required in order to protect the eligibility to a free school lunch 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 instrument provides that a pupil falls within section 53(7) if the parents of the pupil are in receipt of an award of child tax credit and working tax credit where the income calculated for the purposes of awarding those tax credits does not exceed £6,900. The effect of the instrument is therefore to set the qualifying threshold at an annual income of £6,900 per year for those in receipt of both Child Tax Credit and Working Tax Credits. This is an increase from the current threshold of £6,420. Consequently this protects eligibility for those who are affected by recent changes to National Living Wage. Further detail is provided in background below.

There is a separate eligibility criterion for those in receipt of Child Tax Credit only, which has an annual income threshold of less than £16,105. We are not changing this criterion as the income threshold is higher and the increase in the National Living Wage does not affect this part of the eligible population.

Background

Since the introduction of The Education (School Lunches) (Scotland) Regulations 2009², any child or young person has been eligible for a free school lunch where their parent(s) or guardian(s) receive both maximum Child Tax Credit and maximum Working Tax Credit. At present, both maximum Child Tax Credit and maximum Working Tax Credit is paid where annual income is less than £6,420. Once income increases above this level, the amount paid in tax credits starts to taper off. A combination of UK Government policies means that it is now not possible for someone aged 25 or over to meet this criterion. These policies are:

- to increase annually the ‘National Living Wage’ (this is the legal minimum wage for those aged 25 and over - not to be confused with the ‘real living wage’ as prescribed by the Living Wage Foundation); and
- to freeze income thresholds for receipt of maximum Child Tax Credit and maximum Working Tax Credit.

The modification made by the 2019 Regulations will protect eligibility for households that have seen an increase in their earnings due to the increase in the National Living Wage. As it is anticipated that the National Living Wage will continue to rise until the roll-out of Universal Credit is completed in 2023, further increases to the eligibility threshold will be made in subsequent years to reflect future increases in the National Living Wage for recipients of both Child Tax Credit and Working Tax Credit.

We have chosen a threshold of £6,900, for recipients of both Child Tax Credit and Working Tax Credit, since it will protect the eligibility of the existing cohort of households which are currently entitled to a free school lunch.

² <http://www.legislation.gov.uk/ssi/2009/178/contents/made>

If we made no changes to the existing threshold of £6,420, we estimate that the eligible population will decrease by around 8,000 children compared with the number eligible for a free school lunch during the 2018-19 school year.

In order to protect the existing cohort of eligible households, new instruments will be laid in subsequent years, in line with future increases in the National Living Wage, until such a time as all households will have migrated from the legacy benefits system to Universal Credit.

Consultation

This instrument is being brought in to protect existing eligible households, through modifying eligibility criterion for recipients of both Child Tax Credit and Working Tax Credit in response to UK Government policies. There is no statutory requirement to conduct a consultation and no public consultation was carried out.

We have discussed our proposed annual income threshold of up to £6,900 with the Convention of Scottish Local Authorities in order to inform them of our intention to protect the eligibility of all households currently entitled to a free school lunch.

Impact Assessments

An Equality Impact Assessment, and a Childrens' Right and Wellbeing Impact Assessment, have been completed on the provisions of this instrument. It is not considered that this instrument will be discriminatory on the basis of age, disability, race, religion or belief, sex, sexual orientation or gender reassignment. There is no negative impact on children's rights and wellbeing and we do not consider there to be any impacts on privacy or the environment.

Financial Effects

A Business and Regulatory Impact Assessment has been completed and is attached. The income threshold proposed is based on cost-neutral estimates which will protect the current levels of entitlement to a free school lunch for the 2019-20 school year. We will be reviewing the threshold annually to take account of future increases in the National Living Wage.

Scottish Government
Directorate for Learning

May 2019