

POLICY NOTE

THE PROVISION OF EARLY LEARNING AND CHILDCARE (SPECIFIED CHILDREN) (SCOTLAND) AMENDMENT ORDER 2019

SSI 2019/359

1. The above instrument was made in exercise of the powers conferred by section 47(2)(c)(ii) of the Children and Young People (Scotland) Act 2014 (the Act). This instrument is subject to affirmative procedure.

The purpose of the instrument is to amend the Provision of Early Learning and Childcare (Specified Children) Order 2014, as amended ('the 2014 Order') to protect eligibility for 2 year old children who qualify for access to funded early learning and childcare (ELC) due to their parents' receipt of Working Tax Credits and Child Tax Credits.

Policy Objectives

2. The Scottish Government's objective is for every single one of Scotland's children to grow up in country where they are safe, loved, respected and able to reach their full potential. Evidence shows that high quality early learning and childcare brings many positive benefits for children, and in particular for those from disadvantaged background. The Scottish Government is committed to ensuring early access to statutory funded early learning and childcare for those children who will benefit from it most through the 2 year old funded ELC offer.
3. Statutory funded early learning and childcare (ELC) for 2 year old children is a 'passed benefit', where the entitlement depends on a child being an 'eligible child', which includes their parent being in receipt of certain benefits, as set out in the 2014 Order.
4. This instrument increases the income threshold to £7,320 per year for those in receipt of both Child Tax Credit and Working Tax Credit. This change is intended to mitigate the impact of separate changes to UK Government policy that would otherwise reduce the number of children eligible.
5. There is a similar criterion for those in receipt of Child Tax Credit only. We are not changing this as the income threshold is higher and the increase in the National Living Wage does not affect this part of the eligible population.

Background

6. Since 2015, eligibility criteria for the entitlement to a 2 year old place has included that a 2 year old is eligible where a parent receives maximum Child Tax Credit and maximum Working Tax Credit with an annual income that does not exceed a threshold set in UK Regulations of £6,420 or less. A combination of UK Government policies means that it is now not possible for a parent aged 25 and over to meet this criterion. These policies are:

- to increase annually the National Living Wage (the legal minimum wage for those age 25 and over, not to be confused with the ‘real’ living wage);
 - to freeze income thresholds for receipt of maximum Working Tax Credit and maximum Child Tax Credit at £6,420 or less.
 - from 1 April 2019 the annual income for a person aged 25 and over working 16 hours per week is £6,831.
7. This amendment 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 over the next 3 years (up to at least 2022 based on estimates from the Office for Budget Responsibility), we have chosen a threshold that allows a degree of stability to 2021. It also aligns to the threshold used for those children who qualify for the 2 year old entitlement due to their families’ receipt of Universal Credit. This should therefore provide consistency across benefit types as more families transition over to Universal Credit.
 8. If we make no changes to the threshold, we estimate the eligible population will decrease by around 4,100 children based on 2017 estimates of the eligible population (of 14,216 children). This would represent 28% of that eligible population.
 9. With the new income threshold of £7,320, it is estimated that the eligible population could increase by up to an additional 400 2 year olds compared to the 2017 eligible population. Due to uptake rates for the 2 year old entitlement and continual migration from tax credits to Universal Credit, we estimate this is an upper range and it is likely that fewer individual children will become newly eligible. Arrangements are in place with local authorities to monitor any financial impact.
 10. This number will reduce in time as more families switch over to Universal Credit and fewer children are eligible due to receipt of Tax Credits.

Consultation

11. The statutory entitlement to funded ELC for eligible two year olds was originally introduced in the Children and Young People (Scotland) Act 2014. As this amendment is being brought in to protect rather than modify eligibility in response to UK government policies - we have not conducted a specific consultation.
12. We have discussed the proposed income threshold with a range of stakeholders, including individual local authorities and COSLA as our partner in the joint aspiration to improve the uptake and quality of the 2 year old entitlement.
13. COSLA agree that these changes are necessary due to circumstances outwith the control of Scottish Government to ensure the policy intent for the 2 year old offer is met. The impact of the policy will be monitored jointly by Scottish Government and COSLA through the ELC Finance Working Group.

14. We have received feedback from One Parent Families Scotland and the Child Poverty Action Group on the proposed amendment. We have also notified our wide stakeholder network to inform them of the proposal and to request feedback.
15. All stakeholders who have responded understand that we must protect eligibility for children who are eligible based on their parents' receipt of Working Tax Credits and Child Tax Credits and agree there are benefits to the approach we have taken in setting the threshold at £7,320.
16. We plan to consider eligibility criteria for the 2 year old entitlement as a whole in the future and will work with a wide range of stakeholders and partners at that point.

Impact Assessments

17. An EQIA has been completed on the provisions in 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. We do not consider there to be any impacts on privacy or the environment.

Financial Effects

18. The income threshold proposed is based on modelling which protects the current level of entitlement to early learning and childcare for eligible 2 year olds and provides a degree of future-proofing against further increases in the National Living Wage.
19. A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. Scottish Government accept that there is a financial impact as a result of the amendment as more families will become eligible for the entitlement. However, our modelling indicates this impact will be limited and manageable within the existing financial settlement. Any increase arising from this legislative change is also likely to be further offset by the continued gradual migration of families from Tax Credits to Universal Credit.
20. While we anticipate little or no material impact on local authorities' ability to fund this provision within the current financial settlement, both Scottish Government and COSLA will monitor the impact. We do not anticipate any material impact on ELC providers in the private and third sectors.
21. We will review the threshold in the future if it is considered necessary, for example if Local Authorities report a significant financial impact as a result of this change.

Scottish Government
Early Learning and Childcare Directorate

20 June 2019