

## Final Business and Regulatory Impact Assessment

### **Title of Proposal: The Education (Scotland) Act 1980 (Modification) Regulations 2020 (Free School Meal 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 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. This amendment increases the income threshold to £7,330 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 to £6,900. 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 2020.

#### **Policy Objectives**

Free school meals 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 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 £6,900. This is an unintended consequence of the increase in National Living Wage and the amendment made by these Regulations 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 receive free school meals by virtue of Scottish Government funding arrangements. It also does not apply to children and young people who qualify for free school meals 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 meals 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 meals 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 meals 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.

### **Benefits**

The benefits of making annual incremental changes to the eligibility threshold for free school meals, 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.

### **Costs**

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. In the interim, local authorities have been using their discretionary 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 Child Tax Credit and Working Tax Credit, where they meet the income-related eligibility criteria, within their authority area. There is not a competitive element to that provision.

### **Consumer Assessment**

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 maximum Child Tax Credit and maximum Working Tax Credit and who wish to receive Free School Meals. The effect is to maintain the access to this passported benefit for 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.

**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 these Regulations.

**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 these Regulations.

**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: 13 May 2020

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

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