

Business and Regulatory Impact Assessment

Title of Proposal: The Education (Scotland) Act 1980 (Modification) Regulations 2024

Purpose and intended effect

The purpose of the above Regulations are to amend sections 53(7)(aa) and (c) of the Education (Scotland) Act 1980 (“the 1980 Act”).

Section 53(7)(aa) of the 1980 Act will be amended in order to protect pupil eligibility for free school lunches where their parent(s) are in receipt of both Child Tax Credit and Working Tax Credit. This amendment increases the annual income amount from £8,717 to £9,552 for those in receipt of both Child Tax Credit and Working Tax Credit.

Section 53(7)(c) of the 1980 Act will be amended to increase the monthly earned income amount for a pupil or parent(s) in receipt of Universal Credit from £726 to £796 provided that qualifying criteria about the earned income of the pupil or the parent(s) are satisfied. Where the person in receipt of Universal Credit is not a member of a couple, the criteria will be satisfied if the person’s earned income does not exceed £796 in the assessment period preceding the application. Where the person in receipt of Universal Credit is a member of a couple, the criteria will be satisfied if the couple’s combined earned income does not exceed £796 in the assessment period preceding the application. This amendment is made to maintain alignment with the eligibility amounts for those in receipt of both Child Tax Credit and Working Tax Credit.

The Regulations will protect the eligibility of families for free school lunches following the forthcoming increase to the National Living Wage on 1 April 2024. Similar amendments to the relevant income amounts were made last year in the Education (Scotland) Act 1980 (Modification) Regulations 2023.

Policy Objectives

Free school lunches are a “passport benefit”, where the eligibility depends on a pupil or their parent(s) being in receipt of certain benefits as prescribed by section 53 of the 1980 Act.

The intent behind amending section 53(7)(aa) of the 1980 Act is to maintain eligibility for those families in receipt of both Child Tax Credit and Working Tax Credit who could be affected by the forthcoming increase to the National Living Wage. The increase to the National Living Wage means that the earnings of parent(s) in receipt of both tax credits would exceed the current income amount of £8,717 - as parent(s) would earn at least £9,544 per year if working 16 hours per week. This is a consequence of the increase in National Living Wage and the amendment made to section 53(7)(aa) will ensure continued eligibility for free school lunches. The annual income amount will therefore be increased from £8,717 to £9,552.

The intent behind amending section 53(7)(c) of the 1980 Act is to maintain eligibility for pupils and parents in receipt of Universal Credit who could be affected

by the forthcoming increase to the National Living Wage. In order to maintain parity with the amount for both Child Tax Credit and Working Tax Credit, it is proposed that the earned income of pupils/parents in receipt of Universal Credit is increased from £726 to £796 per month.

This has been rounded to the nearest pound in order to keep the eligibility amount for recipients of Universal Credit at the same level as that for those in receipt of both Child Tax Credit and Working Tax Credit.

The Regulations do not apply to pupils who qualify for free school lunches through their parent(s) receiving any of the other qualifying benefits, since their eligibility would not be affected by the increase in the National Living Wage.

Consultation

Consultation on these Regulations have been limited as the amendments seek to maintain a policy position rather than to create a new position. The amendments seek to rectify an unintended consequence arising from increases to National Living Wage which may otherwise have seen some families losing their entitlement to free school lunches.

Scottish Government officials have spoken with COSLA, the umbrella body representing Scottish local authorities, to inform them of the objectives of these Regulations. They have confirmed they are content with the policy objectives of the Regulations.

Options

No options were presented on this occasion as the Regulations make textual amendments to enable the maintenance of current levels of eligibility to free school lunches.

Benefits

The benefits of making annual incremental changes to the relevant income amounts for free school lunches, in line with increases in the National Living Wage, are that families' eligibility to free school lunches are maintained. This means that the Regulations will ensure that families intended to benefit from this passported benefit can continue to do so.

Costs

The Regulations are considered to be cost neutral as the Regulations are intended to rectify an unintended potential loss of passported benefits, rather than increase or decrease the number of families entitled to the passported benefit. There will be neither increased costs nor decreased costs associated with the Regulations.

Scottish Firms Impact Test

N/A - the impact of these Regulations will be on local authorities rather than Scottish businesses.

Competition Assessment

All 32 local authorities will be required to continue to provide free school lunches as a passported benefit to those receiving Child Tax Credit and Working Tax Credit, and Universal 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 are entitled to both Child Tax Credit and Working Tax Credit, and Universal Credit, and who wish to receive free school lunches. 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 lunches were to significantly reduce, through fewer people being eligible to receive them, 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 lunches 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 lunches 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 school lunches, including free school lunches, is monitored annually through statistical returns which measure registration and uptake of lunches. As 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 as a result of this policy intent.

Summary of Costs

As indicated above there should 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: Jenny Gilruth

Date: 6 February 2024

Jenny Gilruth
Cabinet Secretary for Education and Skills

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