

Education, Children and Young People Committee

9 March 2022

Consideration of subordinate legislation

This note provides information about—

[Draft SSI: The Provision of Early Learning and Childcare \(Specified Children\) \(Scotland\) Amendment Order 2022.](#)

Timeline for considering the Draft SSI: The Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2022—

1. These regulations were laid before the Scottish Parliament on **26 January 2022**.
2. They were considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meeting on [1 February 2022](#) and the Committee made no comment.
3. They will be considered by the Education, Children and Young People Committee at its meeting on **9 March 2022**.
4. If the committee wishes to produce a report on these regulations, it must do so by **15 March 2022**.

Formal Procedure

5. As the draft regulations (also known as draft Scottish Statutory Instruments or draft SSIs) are being considered under the affirmative procedure, usual practice is for the committee to hear evidence from the Minister in charge, prior to the Committee formally considering the draft regulations.
6. The Committee may also hear evidence from Scottish Government officials who have been working on the draft regulations.
7. After taking evidence from the Scottish Government, the Committee will formally consider the SSI.
8. The Minister responsible for the draft regulations will propose, by motion, that the lead committee recommend that the instrument or draft instrument be approved.
9. The committee then has up to 90 minutes to debate the motion, before voting whether or not to approve the draft regulations.
10. The lead committee must report its recommendation to the Parliament.
11. Where the lead committee recommends the instrument be approved, the Parliamentary Bureau will propose a motion for agreement by the whole Parliament that the instrument be agreed.

Purpose of the Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2022 – draft

12. The purpose of the instrument is to amend the Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014, ('the 2014 Order'), in light of increases to the National Living Wage, in order to protect eligibility for those 2 year old children who qualify for access to funded early learning and childcare ('ELC') due to their parents' receipt of Working Tax Credit and Child Tax Credit or Universal Credit.
13. The policy note published to accompany the statutory instrument is set out at [Annexe A.](#)

For decision

14. The committee is invited to—

- **take evidence from the Minister and Scottish Government officials on the instrument (agenda item 2);**
- **consider the instrument (agenda item 3); and then**
- **delegate authority to the Convener and Deputy Convener to sign off the Committee's report to Parliament on the instrument.**

**Jane Davidson
Committee Assistant Clerk
Education, Children and Young People Committee
4 March 2022**

Annexe A**POLICY NOTE****Provision of Early Learning and Childcare
(Specified Children) (Scotland) Amendment Order
2022**

SSI 2022/XXX

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) (Scotland) Order 2014, ('the 2014 Order'), in light of increases to the National Living Wage, in order to protect eligibility for those 2 year old children who qualify for access to funded early learning and childcare ('ELC') due to their parents' receipt of Working Tax Credit and Child Tax Credit or Universal Credit.

Policy Objectives

2. Funded ELC for 2-year-old children is a 'passport 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.
3. This instrument amends the income threshold from £7,500 to £7,920 per year for those in receipt of both Child Tax Credit and Working Tax Credits.
4. The instrument also amends the Universal Credit threshold from £625 per month to £660 per month.
5. There is a similar criterion for those in receipt of Child Tax Credit only. We are not changing this as this is linked to UK Regulations and will be automatically updated by UK Government from £16,480 to £17,005.

Background

6. The UK Government confirmed at their recent budget announcement on 25 October 2021 that there would be a further increase to the National Living Wage. From 1 April 2022, the National Living Wage (the legal minimum wage for those age 23 and over, not to be confused with the 'real living wage') will increase from £8.91 to £9.50 per hour.
7. The amendments in this SSI will protect eligibility for those households in receipt of either Working Tax Credit and Child Tax Credit or Universal Credit by reflecting

the increase in yearly and monthly income as a result of the increase in the National Living Wage in April 2022.

8. If we make no change to the income thresholds, it would mean access to this entitlement would narrow. This and future up-ratings in line with the National Living Wage are therefore necessary to maintain eligibility for funded ELC. If no changes were made, we estimate this would negatively impact around 1,000 2-year olds.

Consultation

9. As these amendments are being brought in order to maintain rather than change eligibility, we have not consulted on the threshold. The Convention of Scottish Local Authorities (COSLA) are aware of, and in agreement with, these amendments.

Impact Assessments

10. Our previous impact assessments on amendments to the 2014 Order have been updated to reflect the provisions in this instrument and will be published separately. We are of the view that this instrument does not discriminate 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 island communities, privacy or the environment.

Financial Effects

11. The income thresholds proposed are based on modelling which protects the current level of entitlement to early learning and childcare for eligible 2 year olds for 2022/23.
12. A Business and Regulatory Impact Assessment has been updated and will be published separately. As we do not anticipate a significant increase in the 2-year-old eligible population as a result of these changes, we anticipate no material impact on local authorities' ability to fund this provision within the current financial settlement. We do not anticipate any material impact on ELC providers in the private and third sectors.
13. We intend to continue to review the income thresholds in the 2014 Order annually in order to reflect planned changes to the National Living Wage.

Scottish Government

Early Learning and Childcare Directorate

January 2022