

Consideration of subordinate legislation by the Education, Children and Young People Committee

1. This note provides information about [The Education \(Scotland\) Act 1980 \(Modification\) Regulations 2022](#).
2. These regulations may also be referred to by their Scottish Statutory Instrument number which is SSI 2022/172.
3. These regulations are being considered under the negative procedure.

Timeline for considering these regulations

4. These regulations were laid before the Scottish Parliament on **23 May 2022**
5. They were considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meeting on **7 June 2022**. The Committee had no comments and the report produced by the Committee is [available here](#).
6. They will be considered by the Education, Children and Young People Committee at its meeting on **15 June 2022**.
7. If the Committee wishes to produce a report on these regulations, it must do so by **27 June 2022**.

Is there a requirement to hear evidence from the Cabinet Secretary on these regulations?

8. No.

Purpose of the regulations:

9. These regulations modify the following:
 - Modify Section 53(7)(aa) of the 1980 Act relating to eligibility for free school meals
 - Modify Section 53(7)(c)(i) and (c)(ii) by increasing the income threshold for parent or pupils in receipt of Universal Credit

10. A copy of the Scottish Government's Policy Note is included in [Annexe A](#).

Consultation

11. The policy note states that there is no statutory requirement to carry out a consultation and therefore no formal consultation was carried out.

Impact Assessment

12. The policy note states that an Equality Impact Assessment and a Children's 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 Impact

13. The policy note states that a Business and Regulatory Impact Assessment has been completed. 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 2022-23 school year. The Scottish Government states that it will continue to review the threshold annually to take account of future increases in the National Living Wage.

Procedure

14. These regulations are being considered by Education, Children and Young People Committee under the negative procedure.

15. This means that the regulations become law immediately, i.e. as soon as they have been laid before the Scottish Parliament. These regulations can, however, be annulled up to 40 days after this has happened.

16. Rule 10.4 of the Scottish Parliament's standing orders states that any Member of the Scottish Parliament can lodge a Parliamentary motion within the 40-day time period seeking an annulment of regulations.

17. All regulations considered under the negative procedure are scrutinised by both the Delegated Powers and Law Reform Committee (on various technical grounds) and by a lead committee (on policy grounds).

18. If a motion to annul is lodged, the lead committee will consider this and then hold a vote. If the motion is disagreed to, then the regulations will remain in their current form.
19. If, however, the majority of MSPs on the lead committee agrees the regulations should be annulled, then a further motion is lodged by the Parliamentary Bureau. This is then voted on by the whole Parliament.
20. If that is also agreed to (i.e. the majority of MSPs agree with it), then Scottish Ministers must revoke (withdraw) the instrument. It will no longer be law and the Scottish Government must lay a new set of regulations before the Scottish Parliament.
21. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.
22. The Committee is invited to consider the instrument.

Jane Davidson
Committee Assistant
Education, Children and Young People Committee
7 June 2022

Annexe A

POLICY NOTE

The Education (Scotland) ACT 1980 (Modification) Regulations 2022 SSI 2022/172

The above instrument was made in exercise of the powers conferred by section 53(8)(a)(i) and (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)(aa) of the 1980 Act, relating to eligibility for free school meals, by increasing the income threshold for parents in receipt of both Child Tax Credit and Working Tax Credit from £7,500 to £7,920. This modification is required as a result of the increase in the National Living Wage which took effect in April 2022 and will protect eligibility for those pupils whose parents who are in receipt of both Child Tax Credit and Working Tax Credit.

This instrument also modifies sections 53(7)(c)(i) and (c)(ii) by increasing the income threshold for parents or pupils in receipt of Universal Credit from £625 to £660. This modification will protect eligibility for those pupils who are, or whose parents are, in receipt of Universal Credit as a result of the increase of the National Living Wage in April 2022.

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(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.

This instrument will amend paragraph (aa) of section 53(7), which requires provision of a free lunch to a pupil if the parent(s) of the pupil are in receipt of both Child Tax Credit and Working Tax Credit and their combined annual household income is not

⁽¹⁾ Section 53 of the Education (Scotland) Act 1980 was substituted by section 22 of the Education (Scotland) 2016 (asp 8).

more than £7,500. The amendment will increase this income threshold to £7,920. This protects eligibility for those who are affected by the recent increase to National Living Wage. Further detail is provided 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 £17,005². These Regulations will not change this threshold since it is automatically updated by virtue of regulation 4(a) of the Education (School Lunches) (Scotland) Regulations 2009 which refers to the threshold set in UK regulations. The latest revision to the threshold for Child Tax Credit only was made by regulation 4(2)(b) of the Tax Credits, Child Benefit and Guardian's Allowance Up-rating Regulations 2022.³

This instrument also modifies paragraphs (c)(i) and (ii) of section 53(7) of the 1980 Act to require provision of a free school lunch to pupils where the pupil, their parents or guardians are in receipt of Universal Credit and have a monthly earned income of no more than £660, which is equivalent to £7,920 per year. This increases the threshold from its previous level of £625, made in light of the latest increase to the National Living Wage. This brings the earnings threshold for families in receipt of Universal Credit into line with that for families in receipt of both Child Tax Credit and Working Tax Credit.

Background

Impact of Changes to the National Living Wage on recipients of both Child Tax Credit and Working Tax Credit

Since the introduction of the 2009 Regulations, any child or young person has been eligible for a free school lunch where their parent(s) or guardian(s) received both maximum Child Tax Credit and maximum Working Tax Credit up until the 2018-19 school year. At that point in time, both maximum Child Tax Credit and maximum Working Tax Credit was paid where annual income was less than £6,420. In the 2022-23 financial year this figure increased to an annual income of less than £6,770. 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 would not be possible for anyone aged 23 or over, and in receipt of both maximum Child Tax Credit and maximum Working Tax Credit, to receive free school lunches if the eligibility threshold had been set at this level. These policies are:

- to increase annually the National Living Wage (this is the legal minimum wage for those aged 23 and over - not to be confused with the 'real living wage' as prescribed by the Living Wage Foundation); and

² This provision is set out in regulation 3 of the 2009 Regulations.

³ [The Tax Credits, Child Benefit and Guardian's Allowance Up-rating Regulations 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

- the £6,770 threshold for receiving both maximum Child Tax Credit and maximum Working Tax Credit, which would be too low to allow families to receive free school lunches if they were currently eligible for them through this qualifying benefit.

The Education (Scotland) Act 1980 (Modification) Regulations 2021, which came into effect on 1 August 2021, increased the income threshold for eligibility for free school lunches which is set out in section 53(7)(aa) to £7,500. A further increase in the National Living Wage, effective from April 2022, means the income threshold in section 53(7)(aa) needs to be further amended. The increase in the income threshold to £7,920 will continue to protect eligibility for those 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, further increases to the income eligibility threshold will be required in subsequent years.

We have set an income threshold of £7,920, 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.

Impact of Changes to the National Living Wage on recipients of Universal Credit

Universal Credit has been a qualifying benefit for free school lunches since April 2013. As the roll-out of Universal Credit became more widespread, it became necessary to introduce a monthly earned income threshold. This threshold was set at £610 per month from 1 August 2017⁴.

This instrument revises the monthly earned income threshold for recipients of Universal Credit upwards to £660, set out in paragraphs (c)(i) and (c)(ii) of section 53(7) of the Education (Scotland) Act 1980, in line with the increase in the National Living Wage in April 2022.

We will continue to monitor the monthly earned income threshold for recipients of Universal Credit to take account of future increases in the National Living Wage in order to protect the eligibility of the existing cohort of households which are currently eligible to a free school lunch.

Consultation

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

⁴ [The Welfare Reform \(Consequential Amendments\) \(Scotland\) Regulations 2017 \(legislation.gov.uk\)](#)

We have discussed our proposed annual income threshold of £7,920 for recipients of both Child Tax Credit and Working Tax Credit, and our proposed monthly earned income threshold of £660 for recipients of Universal Credit, 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 Children's 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 2022-23 school year. We will continue to review the threshold annually to take account of future increases in the National Living Wage.

Scottish Government
Directorate for Learning

May 2022