

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

8th March 2023

1. This note provides information about the [Education \(Scotland\) Act 1980 \(Modification\) Regulations 2023](#)
2. These regulations may also be referred to by their Scottish Statutory Instrument number which is SSI 2023/37.
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 **10 February 2023**
5. They were considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meeting on [28 February 2023](#). No points were raised.
6. These regulations will be considered by the Education, Children and Young People Committee at its meeting on **8 March 2023**.
7. If the Committee wishes to produce a report on these regulations, it must do so by **27 March 2023**.

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

8. No.

Purpose of the regulations:

1. The purpose of the Regulations are to amend sections 53(7)(aa) and (c) of the 1980 Act which relates to pupil eligibility for free school meals.
2. A copy of the Scottish Government's Policy Note is included in [Annexe A](#).
3. 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 the young person themselves, are in receipt of certain benefits as prescribed in section 53 of the 1980 Act.
4. 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.

5. The Regulations will amend section 53(7)(aa) of the 1980 Act, to require provision of a free school lunch to a pupil if the parent(s) of the pupil are in receipt of both Child Tax Credit and Working Tax Credit and the income calculated for the purpose of awarding those tax credits does not exceed £8,717. The amendment will increase the current annual income amount from £7,920 to £8,717. This will protect eligibility for those who are affected by the recent increase to the National Living Wage.
6. There is a separate eligibility criterion for those in receipt of Child Tax Credit only, whose annual income does not exceed the expected amount of £18,725. These Regulations will not change this annual income amount since it is automatically updated by virtue of regulation 4(a) of the Education (School Lunches) (Scotland) Regulations 2009 ("the 2009 Regulations") which refers to the income amount set in UK regulations. The previous revision to the amount 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. The 2023 Up-rating Regulations are not yet in force.
7. These Regulations also amend section 53(7)(c) of the 1980 Act to require provision of a free school lunch to a pupil if the pupil or their parent(s) are in receipt of Universal Credit. This amendment will increase the current monthly earned income amount from £660 to £726, bringing the monthly earned income amount for families in receipt of Universal Credit into line with that for families in receipt of both Child Tax Credit and Working Tax Credit.

Consultation

8. The policy note states that the amendments made by these Regulations protect existing eligible families, through amending 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.
9. The policy note also states that the proposed annual income amount of £8,717 for recipients of both Child Tax Credit and Working Tax Credit, and the proposed monthly earned income amount of £726 for recipients of Universal Credit, have been discussed with the Convention of Scottish Local Authorities (COSLA) in order to inform COSLA of the intention to protect the eligibility of all families currently entitled to a free school lunch.

Impact Assessments

10. 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 the Scottish

Government does not consider there to be any impacts on privacy or the environment.

Financial Impact

11. [A Business and Regulatory Impact Assessment](#) has been completed. The income amount proposed is based on cost-neutral estimates which will protect the current levels of entitlement to a free school lunch for the 2023-24 financial year. The relevant income amount will continue to be reviewed annually to take account of future increases in the National Living Wage.

Procedure

12. These regulations are being considered by the Education, Children and Young People Committee under the negative procedure.
13. 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.
14. 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.
15. 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).
16. 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.
17. 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.
18. 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.
19. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.
20. The Committee is invited to consider the instrument.

Jane Davidson,
Committee Assistant
Education, Children and Young People Committee
2 March 2023

Annexe A

POLICY NOTE

The Education (Scotland) Act 1980 (Modification) Regulations 2023

SSI 2023/37

The above Regulations were 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”). These Regulations are subject to negative procedure.

The purpose of the Regulations are to amend sections 53(7)(aa) and (c) of the 1980 Act which relates to pupil eligibility for free school meals. The amendment to section 53(7)(aa) ensures that a pupil will be eligible for free school lunches where the parent(s) of the pupil are in receipt of both Child Tax Credit and Working Tax Credit provided that the income as calculated for the purpose of awarding those tax credits does not exceed £8,717. This amendment is required as a result of the increase in the National Living Wage which will take effect from 1 April 2023 and will protect eligibility for those pupils whose parent(s) who are in receipt of both Child Tax Credit and Working Tax Credit.

The amendments to section 53(7)(c) ensures that a pupil will be eligible for free school lunches if the pupil is, or the parent(s) of the pupil are, in receipt of Universal Credit provided that qualifying criteria about 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 £726 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 £726 in the assessment period preceding the application. This amendment will protect eligibility for those pupils who are, or whose parent(s) are, in receipt of Universal Credit as a result of the increase of the National Living Wage which takes effect on 1 April 2023.

Policy Objectives

Free school lunch is a “passport benefit”, where the entitlement depends on a child or young person being an eligible child or young person, where their parent(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.

⁽¹⁾ Section 53 of the Education (Scotland) Act 1980 was substituted by section 22(2) of the Education (Scotland) 2016 (asp 8).

The Regulations will amend section 53(7)(aa) of the 1980 Act, to require provision of a free school lunch to a pupil if the parent(s) of the pupil are in receipt of both Child Tax Credit and Working Tax Credit and the income calculated for the purpose of awarding those tax credits does not exceed £8,717. The amendment will increase the current annual income amount from £7,920 to £8,717. This will protect eligibility for those who are affected by the recent increase to the National Living Wage.

There is a separate eligibility criterion² for those in receipt of Child Tax Credit only, whose annual income does not exceed the expected amount of £18,725. These Regulations will not change this annual income amount since it is automatically updated by virtue of regulation 4(a) of the Education (School Lunches) (Scotland) Regulations 2009 (“the 2009 Regulations”) which refers to the income amount set in UK regulations. The previous revision to the amount 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 The 2023 Up-rating Regulations are not yet in force.

These Regulations also amend section 53(7)(c) of the 1980 Act to require provision of a free school lunch to a pupil if the pupil or their parent(s) are in receipt of Universal Credit. This amendment will increase the current monthly earned income amount from £660 to £726, bringing the monthly earned income amount 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, pupils have been eligible for free school lunches where their parent(s) received both maximum Child Tax Credit and maximum Working Tax Credit up until the 2018-19 school year. At that point in time, parent(s) were entitled to both maximum tax credits where the parent’s annual income did not exceed £6,420. In the 2023-24 financial year, the parent’s annual income (in relation to both maximum tax credits) is expected to increase to £7,455 in the 2023 Up-rating Regulations. Where a parent’s annual income exceeds £7,455 on the above basis, the amount paid in tax credits starts to taper off.

A combination of UK Government policies means that it would not be possible for pupils whose parent(s) are in receipt of both maximum Child Tax Credit and maximum Working Tax Credit to receive free school lunches if the eligibility criteria had been set at the above level. These UK policies are:

² [Regulation 3 of the Tax Credits \(Income Thresholds and Determination of Rates\) Regulations 2002.](#)

³ [The Tax Credits, Child Benefit and Guardian’s Allowance Up-rating Regulations 2022 \(legislation.gov.uk\)](#)

- to increase the National Living Wage annually (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
- the annual income amount of £7,455 in relation to receiving both maximum Child Tax Credit and maximum Working Tax Credit would be too low to allow families to receive free school lunches if they were currently eligible through this qualifying benefit.

Accordingly, following the increase to the National Living Wage, the annual income amount in section 53(7)(aa) of the 1980 Act requires to be increased to £8,717 in order to protect the eligibility of the existing cohort of families which are currently entitled to a free school lunch. 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 annual income amount will continue to be required in subsequent years.

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 amount that could not be exceeded. This amount was set at £610 per month from 1 August 2017⁴.

The Regulations increase the monthly earned income amount for recipients of Universal Credit (set out in section 53(7)(c) of the 1980 Act) to £726, in line with the increase in the National Living Wage from 1 April 2023.

The monthly earned income amount for recipients of Universal Credit will continue to be monitored and future increases to the National Living Wage will be taken into account in order to protect the eligibility of the existing cohort of families which are currently eligible to a free school lunch.

The annual income amount of £8,717 for recipients of both Child Tax Credit and Working Tax Credit is not an exact multiple of the £726 monthly income threshold for recipients of Universal Credit. The 2023-24 financial year includes a leap year on 29 February 2024, which affects the weekly-annual part of the income calculation. The Universal Credit monthly amount of £726 was calculated through being rounded to the nearest pound.

Consultation

The amendments made by these Regulations protect existing eligible families, through amending 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 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

The proposed annual income amount of £8,717 for recipients of both Child Tax Credit and Working Tax Credit, and the proposed monthly earned income amount of £726 for recipients of Universal Credit, have been discussed with the Convention of Scottish Local Authorities (COSLA) in order to inform COSLA of the intention to protect the eligibility of all families 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 amount proposed is based on cost-neutral estimates which will protect the current levels of entitlement to a free school lunch for the 2023-24 financial year. The relevant income amount will continue to be reviewed annually to take account of future increases in the National Living Wage.

Scottish Government
Directorate for Learning

February 2023