POLICY NOTE

THE PROVISION OF EARLY LEARNING AND CHILDCARE (SPECIFIED CHILDREN) (SCOTLAND) AMENDMENT ORDER 2025

SSI 2025/XXX

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.

Summary Box

The purpose of the instrument is to amend the Provision of Early Learning and Childcare (Specified Children) Order 2014 ('the 2014 Order') to protect eligibility for two-year-old children who qualify for access to funded early learning and childcare (ELC) due to their parents' receipt of certain qualifying benefits.

Policy Objectives

Entitlement for funded ELC for 2 year old children depends on a child being an 'eligible pre-school child', which includes their parent being in receipt of certain 'qualifying benefits', as set out in the 2014 Order. For some qualifying benefits, there is an additional requirement that any income the household receives must not exceed a certain level. This maximum income level is set out in the 2014 Order.

This amending instrument amends the maximum income level for those in receipt of Universal Credit from £796 per month to £850 per month, with effect from 1 April 2025, in line with an increase to the National Living Wage.

The instrument also removes working tax credit and child tax credit as qualifying benefits with effect from 6 April 2025, in line with the closure of tax credits from 5 April 2025.

Background

A maximum income level was introduced to the 2014 Order for those on Universal Credit in 2017[1]. At that time, the maximum income levels for those in receipt of tax credits (both child tax credit only and a joint working tax credit and child tax credit claim) were included in the Order and aligned to the level for those in receipt of a Universal Credit claim, in 2019[2].

The maximum income level has been broadly equivalent to the amount a person would receive if they work 16 hours per week at the rate of the National Living Wage since 2021[3].

The UK Government confirmed on 30 October 2024 that there would be an increase to the National Living Wage. From 1 April 2025, the National Living Wage will increase from £11.44 to £12.21 per hour. The National Living Wage is the statutory minimum wage rate for those age 21 and over, not to be confused with the 'real living wage'.

[1] https://www.legislation.gov.uk/ssi/2017/182/regulation/3/made
[2] https://www.legislation.gov.uk/ssi/2019/359/article/2/made
[3] https://www.legislation.gov.uk/ssi/2021/344/article/2/made

As part of the managed migration of UK Government legacy benefits to Universal Credit, tax credits are ending on 5 April 2025 and so a parent's entitlement to tax credits will no longer qualify a child for funded ELC at age two from 6 April 2025. The reference to tax credits in the 2014 Order will therefore be redundant from that date.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU

Consultation

As these amendments are being made in order to maintain rather than change eligibility, we have not consulted on the uprated maximum income level. The Convention of Scottish Local Authorities (COSLA) are aware of, and in agreement with this approach.

Impact Assessments

These amendments do not impact on children currently accessing funded ELC due to a parent's receipt of a qualifying benefit. Their eligibility is protected, even if a parent's circumstances change.

If we make no change to the maximum income level, it would mean access to funded ELC at age two would narrow for those who have not yet started funded ELC. The profile of people who would fall out of eligibility are those who qualify due to receipt of Universal Credit who are working 16 hours a week at the National Living Wage (those working fewer hours would not see their income exceed the current maximum income level). It is not possible to identify the exact number of people this would be but modelling suggests the eligible population would decrease by a range of between 200 and 1,200 two-year-olds.

The rules on tax credits and Universal Credit, set by the UK Government, are complex and it is not possible to predict at a national level how individual families' entitlements may change as they transition from tax credits to Universal Credit. Since the introduction of a maximum income level for those in receipt of Universal Credit in 2017, the Scottish Government's overall aim has been that the relative size and profile of the families benefitting from access to funded ELC at age two remains broadly the same through the migration from legacy benefits to Universal Credit. Our internal analysis suggests our current policy approach has achieved this aim.

Overall, the amendments here, and any future up-ratings in line with the National Living Wage, are necessary to maintain eligibility for funded ELC. A broadly similar population will

be eligible after the amendments come in to force and we do not anticipate any reduction in the eligible population as a result of the draft amendments.

Our previous equality impact assessment on amendments to the 2014 Order has been reviewed and updated. This will be published separately.

We are of the view that the effect of these amendments is not discriminatory on the basis of age, disability, race, religion or belief, sex, sexual orientation or gender reassignment. There is no 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

The maximum income levels proposed are based on modelling which protects the current level of entitlement to early learning and childcare for eligible two-year-olds for 2025/2026. We anticipate no material impact on local authorities' ability to fund this provision within the current financial settlement.

As we do not anticipate a change to the two-year-old eligible population as a result of these changes, we do not anticipate any material impact on ELC providers in the private and third sectors. We have not updated the Business and Regulatory Impact Assessment published for the 2021 Amending Order[4].

The Minister for Children, Young People and the Promise confirms that no new BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

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
Directorate for Children and Families: Early Learning and Childcare

January 2025

[4] https://www.gov.scot/publications/early-learning-childcare-2-year-old-eligibility-income-threshold-change-june-2021-bria/