POLICY NOTE

THE EDUCATION (SCOTLAND) ACT 1980 (MODIFICATION) REGULATIONS 2025

SSI 2025/44

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 omit section 53(7)(aa) and amend section 53(7)(c) of the 1980 Act both of which relate to pupil eligibility for free school lunches.

Section 53(7)(aa) of the 1980 Act currently provides that a pupil is eligible for free school lunches where the parent(s) of the pupil is 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 £9,552. This provision is to be omitted as the tax credit system will end on 5 April 2025 with all families who were previously in receipt of tax credits having been migrated to Universal Credit. Consequently, tax credits will cease to be an eligible qualifying benefit to receive free school lunches after this date.

Section 53(7)(c) of the 1980 Act is to be amended to ensure 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 £850 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 £850 in the assessment period preceding the application. This amendment is being put in place to take account of the UK Government's increase to the National Living Wage which takes effect on 1 April 2025 and to protect eligibility for those pupils who are, or whose parent(s) are, in receipt of Universal Credit.

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 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).

As tax credits are ending on 5 April 2025, a parent's entitlement to tax credits will no longer qualify a child for free school lunches from 6 April 2025. The provision concerning tax credits in section 53(7)(aa) of the 1980 Act will be redundant from that date and will therefore be omitted in these Regulations.

The rules on tax credits and Universal Credit are set by the UK Government. These are complex and it is not possible to predict at a national level how individual families entitlements may change as they migrate 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 free school lunches remains broadly the same through the migration from legacy benefits to Universal Credit.

These Regulations will 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 monthly earned income level from £796 to £850.

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 Education (School Lunches) (Scotland) Regulations 2009, pupils have been eligible for free school lunches where their parent(s) received both Child Tax Credit and Working Tax Credit.

Tax Credit payments will end on 5 April 2025. After this date, all families previously in receipt of tax credits will have been migrated over to Universal Credit and tax credits will cease to be an eligible qualifying benefit to receive free school lunches.

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 level was set at £610 per month from 1 August 2017[2].

The Regulations increase the monthly earned income amount for recipients of Universal Credit (set out in section 53(7)(c) of the 1980 Act) from the current level of £796 to £850, from 1 April 2025 to take account of the increase in the National Living Wage which will come into effect on that date.

The monthly earned income level 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.

[2] https://www.legislation.gov.uk/ssi/2017/182/contents/made

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 Education (Scotland) Act 1980 (Modification) Regulations 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

The amendments made by these Regulations protect existing eligible families, through amending eligibility criteria for recipients of Universal Credit, in response to UK Government policies which increase the level of the National Living Wage from 1 April 2025. There is no statutory requirement to conduct a consultation and no public consultation was carried out.

The proposed monthly earned income level of £850 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 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 these Regulations. It is not considered that these Regulations 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 revised income level proposed is based on cost-neutral estimates which will protect the current levels of entitlement to a free school lunch for the 2025-26 financial year. The relevant income level will continue to be reviewed annually to take account of future increases in the National Living Wage.

Scottish Government
Directorate for Learning

February 2025