POLICY NOTE

THE PROVISION OF EARLY LEARNING AND CHILDCARE (SPECIFIED CHILDREN) (SCOTLAND) AMENDMENT (NO. 2) ORDER 2021

SSI 2021/344

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.

2. The purpose of the instrument is to amend the Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014, ('the 2014 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

3. Funded ELC for 2 year old children is a 'passported 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.

4. This instrument amends the income threshold from £7,320 to £7,500 per year for those in receipt of both Child Tax Credit and Working Tax Credits.

5. The instrument also amends the Universal Credit threshold from £610 per month to £625 per month.

6. 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 has been automatically uprated by UK Government from £16,105 to £16,480.

Background

7. We introduced an income threshold for families in receipt of Universal Credit through The Welfare Reform (Consequential Amendments) (Scotland) Regulations 2017 and aligned the threshold for those in receipt of Working Tax Credit and Child tax Credit through the Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2019. These amendments had the effect that a child is eligible when a parent receives:

   - Maximum Child Tax Credit and maximum Working Tax Credit, with an annual household income of £7,320 or under;

   - Universal Credit, and take home pay is £610 a month or less.

8. Changes to the National Living Wage by the UK Government means that it is now not possible for a parent age 23 or over to meet these criteria. These policies are:

    - From 1 April 2021 the legal minimum wage age has been reduced from 25 years of age and will now be payable to those aged 23 and over;

    - to increase annually the National Living Wage (the legal minimum wage for those age 23 and over, not to be confused with the 'real living wage) from £8.72 to £8.91 per hour.

9. The amendment 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 2021.

10. 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

11. As this amendment is 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 our plans and agree it is required.

Impact Assessments

12. Our previous impact assessments on amendments to the 2014 Order have been updated to reflect the provisions in 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. We do not consider there to be any impacts on privacy or the environment.

Financial Effects

13. The income threshold proposed is based on modelling which protects the current level of entitlement to early learning and childcare for eligible 2 year olds for 2021/22.

14. A Business and Regulatory Impact Assessment has been updated and is attached. As we do not anticipate a significant increase in the 2 year old eligible population as a result of this change, 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.

    We intend to review the income thresholds annually in order to reflect planned changes to the National Living Wage. As we understand, the UK Government's policy aim intends for the rate of the National Living Wage to reach a target of two thirds of UK median earnings by 2024. The Low Pay Commission published their Low Pay Commission

Report in December 2020 which sets out the methodology and rationale for up-ratings over the next 3 years: National Minimum Wage (publishing.service.gov.uk)[1].

Scottish Government
Early Learning and Childcare Directorate

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[1] National Minimum Wage (publishing.service.gov.uk)