

The Education (Scotland) Act 1980 (Modification) Regulations 2021

Equality Impact Assessment Record

March 2022



Scottish Government
Riaghaltas na h-Alba
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Equality Impact Assessment Record

Title of policy/ practice/ strategy/ legislation etc:
The Education (Scotland) Act 1980 (Modification) Regulations 2021
Minister:
Deputy First Minister and Cabinet Secretary for Education and Skills
Lead official:
Douglas Forrester
Officials involved in the EQIA:
Phil Alcock
Directorate, Division, Team:
Directorate for Learning: Improvement, Attainment and Wellbeing Division: Support and Wellbeing Unit
Is this new policy or revision to an existing policy?
This is the maintenance of an existing policy. These Regulations amend the current criteria in order to maintain the current policy.

Screening

Policy Aim

The policy aim is to protect eligibility to Free School Meal provision as a passported benefit for those in receipt of both Child Tax Credit and Working Tax Credit and Universal Credit.

The current criteria is that those pupils whose parents are in receipt of both Child Tax Credit and Working Tax Credit can receive free school meals where their annual income is equal to or less than £7,330. The threshold was increased to this level from the previous level of £6,900 in August 2020. The current criteria for those pupils whose parents are in receipt of Universal Credit (or who receive universal credit themselves) is that they can receive free school meals if their monthly earned income is not more than

£610 (this is equivalent to £7,320 per year, however Universal Credit awards are calculated on a monthly basis).

Further changes to National Living Wage mean that some families who would currently be entitled to Free School Meals under the current criteria for recipients of both Child Tax Credit and Working Tax Credit, and Universal Credit, would lose out because the latest increase in the National Living Wage would take them above these thresholds. On 1 April 2021, the National Living Wage increased from £8.72 to £8.91 per hour for people aged 23 and over - equivalent to £7,413 per year. This means that anyone working at least 16 hours a week will earn at least £83 above the current qualifying threshold for free school meals (£7,330). As a result, the policy decision to increase the income threshold to protect those in receipt of both Child Tax Credit and Working Tax Credit to £7,500 has been taken.

As a result of the latest increase in the National Living Wage, it has also become necessary to review the current qualifying threshold for free school meals for those in receipt of Universal Credit. The current qualifying threshold of an earned income of up to £610 per month has been in place since 2017. We have decided the qualifying threshold for those in receipt of Universal Credit should now be increased from £610 to £625 per month. This is equivalent to £7,500 per year and would therefore level the new threshold we have set for those in receipt of both Child Tax Credit and Working Tax Credit.

None of the other criteria for Free School Meals eligibility are being amended at this time.

Who will it affect?

This policy will affect families whose eligibility for free school meals is linked to their being in receipt of both Child Tax Credit and Working Tax Credit or Universal Credit. The provision of free school meals is primarily an education attendance measure, to ensure that children and young people are able to access nutritious, high quality meals whilst they attend school, free of charge. Free school meals are provided universally for some age groups, so the benefit of this policy action will be felt most for families whose children are outwith those age groups for whom universal provision is made.

What might prevent the desired outcomes being achieved?

This regulation will enable both the immediate and unintended consequences of the latest rise in the National Living Wage to be rectified, and to future proof the entitlement to free school meals as a passported benefit for the 2021-22 school year.

The decision to increase the free school meals eligibility threshold in annual increments in line with the National Living Wage, for families in receipt of both Child Tax Credit and Working Tax Credit, was taken in 2019. These amendments will continue to be made automatically every year by Scottish Government officials for as long as it remains necessary to do so.

There is therefore no risk of the desired outcomes, set by the regulations, not being achieved.

Stage 1: Framing

Results of framing exercise

This policy measure is predominantly an education attendance measure rather than a measure which applies to particular protected characteristics. It is most likely that this group relates to single parents or those who are self-employed or on low incomes or out of work. This particular policy action relates to a very particular set of circumstances where a parent or carer is eligible for free school meals as a consequence of being in receipt of both Child Tax Credit and Working Tax Credit, or Universal Credit, and where their annual income is below a level prescribed in legislation (Annex A sets out the criteria in full).

Whilst free school meals are provided to children and young people, the qualifying criteria and income threshold apply to their parents in this case. Information on the protected characteristics of pupils parents is not collected and therefore this EQIA is based upon the probability of potential positive or negative affect. Young people themselves are unlikely to be attending school, and employed to such a degree that they would meet the income criteria themselves.

In Scotland pupils within some age groups are universally entitled to free school meals as a result of SG funding arrangements and therefore are unaffected by this proposed policy approach. This policy therefore applies only to pupils outwith those age groups for whom universal provision is made. In 2020, there were 90,527 pupils in Primary 4 to Secondary 6 registered for free school meals, of which 59,598 were taking them. At that time pupils in Primary 1 to Primary 3 were universally entitled to free school meals.

There are a number of criteria which enable the passported benefit of free school meals, this policy change relates to two of those criteria and therefore would only potentially affect a proportion of those children and young people above. As a result it is concluded that there is likely to be a minimal effect as a result of this proposal.

Extent/Level of EQIA required

It is considered that as the policy is focussed as an anti-poverty measure rather than a measure to promote equality, an EQIA is required, but that impact of the policy (both negative or positive) is minimal.

Stage 2: Data and evidence gathering, involvement and consultation

Protected Characteristic of Age - evidence gathered, data gaps identified and action taken

- In 2020, there were 90,527 children and young people from primary 4 to secondary 6 were registered for free school meals in Scotland. Of these, 59,598 took up their entitlement to free school meals¹. Age is not a relevant matter in relation to the criteria for the passported benefit which applies, or doesn't apply, in relation to circumstances which are not related to age.
- Some information is available in relation to children and young people, but as age is not a direct criteria for the passported benefit of free school meals, no further action was taken to establish further data.

Protected Characteristic of Disability - evidence gathered, data gaps identified and action taken

- In 2017-20, there was a higher proportion of households in relative poverty after housing costs, with a disabled person in the household (23%) in comparison to households with no disabled persons (17%)². Disabilities may impact on the ability of a parent/carer to work, but this would not limit the opportunity of the child or young person to benefit from free school meal entitlement, nor would it be relevant in relation to this specific element of entitlement criteria.
- It is recognised that a disability may affect a parent or carers ability to work, but this would not necessarily prevent access to entitlement to free school meals - due to other eligibility criteria. Disability is not a directly relevant criteria for access to this passported benefit therefore no further action taken to establish further data.

Protected Characteristic of Sex - evidence gathered, data gaps identified and action taken

¹ [Chapter 1: School meals - School Healthy Living Survey statistics: 2020 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/school-meals-statistics-2020/pages/1-introduction-and-overview.aspx)

² [Poverty and Income Inequality in Scotland 2017-20 \(data.gov.scot\)](https://data.gov.scot/publications/poverty-income-inequality-scotland-2017-20/pages/1-introduction.aspx)

- In 2017-20, the relative poverty rate after housing costs was higher for single women with dependent children (38%) than for other single working-age adults³.
- This confirms our understanding that female single parents are likely to be the biggest beneficiaries from this policy change and protection. No further information needed on this element.

Protected Characteristic of Pregnancy and Maternity - evidence gathered, data gaps identified and action taken

- There was limited information available in relation to pregnancy and maternity.
- Pregnancy and maternity would not necessarily prevent access to the benefit - due to other eligibility criteria. Pregnancy and maternity is not a directly relevant criteria for access to this passported benefit therefore no further action taken to establish further data.

Protected Characteristic of Gender Reassignment - evidence gathered, data gaps identified and action taken

- There was limited information available in relation to gender reassignment.
- Gender reassignment would not necessarily prevent access to the benefit - due to other eligibility criteria. Gender reassignment is not a directly relevant criteria for access to this passported benefit therefore no further action taken to establish further data.

Protected Characteristic of Sexual Orientation - evidence gathered, data gaps identified and action taken

- There was limited information available in relation to sexual orientation.
- Sexual orientation would not necessarily prevent access to the benefit - due to other eligibility criteria. Sexual orientation is not a directly relevant criteria for access to this passported benefit therefore no further action taken to establish further data.

³ [Poverty and Income Inequality in Scotland 2017-20 \(data.gov.scot\)](https://data.gov.scot/publications/poverty-income-inequality-scotland-2017-20/pages/12/default.aspx)

Protected Characteristic of Ethnicity - evidence gathered, data gaps identified and action taken

- In 2015-20, people from minority ethnic (non-white) groups are more likely to be in relative poverty after housing costs compared to those from the White - British or White - Other groups. The poverty rate was 43% for 'Mixed, Black or Black British and Other' ethnic groups, and 41% for the 'Asian or Asian British' ethnic group. However the poverty rate amongst the 'White - Other' group (24%) was higher than that of the 'White - British' group (18%)⁴.
- This information confirms the potential impact of poverty in relation to ethnicity - this may in turn lead to increased registration and uptake of free school meals. Further evidence is not required to confirm this point.

Protected Characteristic of Religion or Belief - evidence gathered, data gaps identified and action taken

- In 2015-20, 52% of people who identified their religion as Muslim were living in poverty after housing costs. Those who identify their religion as Church of Scotland had a lower poverty rate after housing costs (15%) than found for all individuals. The poverty rate, after housing costs, for those identifying their religion as Roman Catholic; other Christian denominations and no religion were all 19%; whilst the poverty rate after housing costs for those identifying with other religions was 21%⁵.
- This information confirms the potential impact of poverty in relation to particular religious groups - this may in turn lead to increased registration and uptake of free school meals. Further evidence is not required to confirm this point.

Protected Characteristic of Marriage or Civil Partnership - evidence gathered, data gaps identified and action taken

- This policy had no impact on this protected characteristic.

⁴ [Poverty and Income Inequality in Scotland 2017-20 \(data.gov.scot\)](#)

⁵ [Poverty and Income Inequality in Scotland 2017-20 \(data.gov.scot\)](#)

Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			Y	This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit children and young people, nor will this change eliminate unlawful discrimination, harassment or victimisation.
Advancing equality of opportunity			Y	This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit

				children and young people, nor will it support additional advancement of equality of opportunity.
Promoting good relations among and between different age groups			Y	This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit children and young people, nor will it promote good relations.

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			Y	This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit children and young people, nor will this change eliminate unlawful discrimination, harassment or victimisation.

Advancing equality of opportunity	Y			<p>This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit children and young people.</p> <p>However, given that relative poverty affects households with disabled persons more than households with no disabled persons, this policy change would potentially benefit those households more positively.</p>
Promoting good relations among and between disabled and non-disabled people			Y	<p>This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit children and young people.</p>

Do you think that the policy impacts on men and women in different ways?

Sex	Positive	Negative	None	Reasons for your decision
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Eliminating unlawful discrimination			Y	This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit children and young people, nor will this change eliminate unlawful discrimination, harassment or victimisation.
Advancing equality of opportunity	Y			This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit children and young people. However, given that relative poverty affects lone mothers more predominantly than other single people, this policy change would potentially benefit those households more positively.
Promoting good relations between men and women			Y	This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school meal entitlement. As a result of

				measures already in place the policy will neither positively nor negatively benefit children and young people, nor will it promote good relations.
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Do you think that the policy impacts on women because of pregnancy and maternity?

Pregnancy and Maternity	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			Y	This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit children and young people, nor will this change eliminate unlawful discrimination, harassment or victimisation.
Advancing equality of opportunity			Y	This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit children and young people, nor will it support

				additional advancement of equality of opportunity.
Promoting good relations			Y	This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit children and young people, nor will it promote good relations.

Do you think your policy impacts on transsexual people?

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			Y	This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit children and young people, nor will this change eliminate unlawful discrimination, harassment or victimisation.

Advancing equality of opportunity			Y	This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit children and young people, nor will it support additional advancement of equality of opportunity.
Promoting good relations			Y	This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit children and young people, nor will it promote good relations.

Do you think that the policy impacts on people because of their sexual orientation?

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			Y	This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free

				school meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit children and young people, nor will this change eliminate unlawful discrimination, harassment or victimisation.
Advancing equality of opportunity			Y	This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit children and young people, nor will it support additional advancement of equality of opportunity.
Promoting good relations			Y	This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit children and young people, nor will it promote good relations.

Do you think the policy impacts on people on the grounds of their ethnicity?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			Y	<p>This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit children and young people, nor will this change eliminate unlawful discrimination, harassment or victimisation.</p>
Advancing equality of opportunity	Y			<p>This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit children and young people.</p> <p>However, given that relative poverty affects people belonging to ethnic minority groups more predominantly than people belonging to white ethnic groups, this policy change would potentially benefit those households more positively.</p>

Promoting good relations			Y	This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit children and young people, nor will it promote good relations.
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Do you think the policy impacts on people because of their religion or belief?

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			Y	This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit children and young people, nor will this change eliminate unlawful discrimination, harassment or victimisation.
Advancing equality of opportunity	Y			This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school

				<p>meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit children and young people.</p> <p>However, given that relative poverty affects people who identify their religion as Muslim more predominantly than people identifying with other religious denominations, this policy change would potentially benefit those households more positively.</p>
Promoting good relations			Y	<p>This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit children and young people, nor will it promote good relations.</p>

Do you think the policy impacts on people because of their marriage or civil partnership?

Marriage and	Positive	Negative	None	Reasons for your decision
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Civil Partnership⁶				
Eliminating unlawful discrimination			Y	This is a predominantly anti-poverty focussed policy. The purpose of the policy is to rectify an unintended consequence, which may have led to a reduction in free school meal entitlement. As a result of measures already in place the policy will neither positively nor negatively benefit children and young people, nor will it promote good relations.

⁶ In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

Have positive or negative impacts been identified for any of the equality groups?
<p>There have been no negative impacts identified as a result of this policy approach. There may be some benefit to those who identify as from minority ethnic (non-white) groups, as they are more likely to be in relative poverty after housing costs compared to those from the 'White - British' group.</p> <p>Further, some religious groups who are more likely to experience poverty may also benefit, should they be in the particular circumstances of being eligible for free school meals through being in receipt of both Child Tax Credit and Working Tax Credit, or Universal Credit, and their annual income being at a level below that prescribed in legislation.</p>
Is the policy directly or indirectly discriminatory under the Equality Act 2010?
No.
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?
N/A
If not justified, what mitigating action will be undertaken?
N/A

Describing how Equality Impact analysis has shaped the policy making process

This is considered a predominantly anti-poverty related action, which is intended to ensure continued access to the passported benefit of free school meals. That said the EQIA process has confirmed that single parents are likely to benefit, lone mothers are likely to benefit particularly, as a result of their increased risk of poverty in comparison to others. The EQIA process also confirmed that those identify as from minority ethnic (non-white) groups, and some religious groups are more likely to experience poverty, and as a result are may be more likely to benefit from this policy change, should they also they be in the particular

circumstances of being eligible for free school meals for people in receipt of both Child Tax Credit and Working Tax Credit, or Universal Credit, and their annual income being at a level below that prescribed in legislation.

Monitoring and Review

The implementation of free school meals policy will continue to be monitored through annual statistical analysis of returns. This particular element of the policy will continue to be reviewed again every year, in line with future increases in the National Living Wage for as long as it remains necessary to do so.

Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes ☒ No ☐

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:

- Eliminating unlawful discrimination, harassment, victimisation;
- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people's different needs;
- Encouraging participation (e.g. in public life);
- Fostering good relations, tackling prejudice and promoting understanding.

Yes ☒ No ☐

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:

Yes ☐ No ☐ Not applicable ☒

Declaration

I am satisfied with the equality impact assessment that has been undertaken Free School Meals - The Education (Scotland) Modification Regulations 2021 and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: Alison Taylor

**Position: Deputy Director, Improvement, Attainment and Wellbeing
Division**

Authorisation Date: 19 May 2021



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This publication is available at www.gov.scot

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The Scottish Government
St Andrew's House
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EH1 3DG

ISBN: 978-1-80435-304-2 (web only)

Published by The Scottish Government, March 2022

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS936646 (03/22)

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