

The Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2022

Equality Impact Assessment - Results

March 2022

EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	The Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2022
Summary of aims and desired outcomes of Policy	<p>This is an amendment to secondary legislation in order to protect children's eligibility for the targeted entitlement to funded early learning and childcare (ELC) for some 2 year olds.</p> <p>This follows UK Government changes to increase the National Living Wage from April 2022.</p>
Directorate: Division: team	Early Learning and Childcare: Targeted Childcare and Family Wellbeing Team

Executive summary

Local authorities are required to provide access to statutory funded early learning and childcare (ELC) for any 'eligible... pre-school child belonging to their area'. This includes all 3 and 4 year olds (from a relevant start date) and some 2 year olds¹.

The definition of an 'eligible pre-school child' is set out in section 47(2) of the Children and Young People (Scotland) Act 2014 ('the 2014 Act') and in Regulations made under that section: the Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014 ('the 2014 Order').

Local authorities also have a discretionary power to provide access to funded ELC to any other child as they see fit.

This instrument amends the income threshold for two of the eligibility criteria covered in the 2014 Order due to an increase in the National Living

¹ Children and Young People (Scotland) Act 2014 (legislation.gov.uk)

Wage. The criteria relate to children who are eligible for access to funded ELC due to their parents' receipt of: working tax credits and child tax credit; or universal credit. We intend to increase the thresholds:

- From £7,500 for those in receipt of working tax credits and child tax credit to £7,920 per annum.
- From £625 per month for those in receipt of universal credit to £660 per month.

The purpose of these amendments is to maintain the profile of the eligible 2 year old population.

The Equality Impact Assessment process on this amendment has concentrated on assessing whether any of the protected characteristics are likely to be represented in the profile of families meeting this specific eligibility criteria.

Through this process we have identified some positive impacts on the basis of sex, disability, race and religion or belief as these groups appear more likely to meet the relevant eligibility criteria. In particular for women who are more likely to head lone parent households.

We have not identified any elements of this amendment that discriminate against any of the protected characteristics either directly or indirectly.

Background

Funded ELC for 2 year olds

The criteria for eligible 2 year olds are based on evidence that children from disadvantaged backgrounds, can particularly benefit in terms of social, emotional and educational outcomes from attending high quality ELC. The criteria are currently that the child:

- Is care experienced themselves (currently 'looked after', subject to a kinship care or guardianship order)
- Has a care experienced parent

- Or if they have a parent in receipt of a 'qualifying benefit' which are as follows²:
 - Income Support
 - Job Seeker's Allowance (income based)
 - any income related element of Employment and Support Allowance
 - Incapacity or Severe Disablement Allowance
 - State Pension Credit
 - Child Tax Credit, but not Working Tax Credit with annual income at or below the relevant threshold.
 - both Child Tax Credit and Working Tax Credit and income at or below the relevant threshold.
 - support under Part 6 of the Immigration and Asylum Act 1999
 - Universal Credit with household take-home pay at or below the relevant threshold (set out as a monthly income equivalent to the annual threshold for those on both Child Tax Credit and Working Tax Credit).

We estimate that over 90% of eligible 2 year olds meet criteria relating to their parent receiving a qualifying benefit.

Changes to eligibility

Through previous amendments to regulations, we introduced an income threshold for those families in receipt of Universal Credit, which is aligned to the threshold for those receiving Working Tax Credit and Child Tax Credit.

Our most recent amendment was through the Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment (No.2) Order 2021 which had the effect that a child is eligible when a parent receives: Child Tax Credit and Working Tax Credit, with an annual household income of £7,500 or under , or; Universal Credit, and take home pay is £625 a month or less.

The UK Government confirmed during their budget announcement on 25 October 2021 that the National Living Wage (NLW) would increase from 1 April 2022, from £8.91 to £9.50.

² [The qualifying benefits are set out in The Provision of Early Learning and Childcare \(Specified Children\) \(Scotland\) Order 2014](#)

In order to be in receipt of Working Tax Credit, a claimant must work at least 16 hours per week. As a result, this will mean that, from 1 April 2022, it will no longer be possible for a parent aged 23 and over to meet the combined Working Tax Credit and Child Tax Credit criterion.

If a parent is aged 23 or over and works 16 hours per week at £9.50 per hour, their annual income would be £7,904 – which is above the current threshold.

Impact

The amendments aim to largely maintain the status quo by protecting eligibility for households that have seen an increase in their earnings due to the increase in the National Living Wage. We understand UK Government intend to increase the National Living Wage annually until at least 2024. This was initially based on their policy aim for the rate of the National Living Wage to reach a target of two thirds of UK median earnings by 2024. However, in December 2021 the Low Pay Commission published their latest Low Pay Commission Report 2021³ and has recommend that this target is extended by one year - pushing this back to 2025. The report sets out the methodology and rationale for up-ratings over the next 3 years: National Minimum Wage (publishing.service.gov.uk).

Household circumstances for these families will not have materially changed as a result of the increase in the NLW, as a small increase such as this is necessary for low-income households to maintain living standards while the cost of living increases across the country. Labour market trends show that the distribution of low paid jobs has been broadly stable with a similar percentage of workers earning at and just above the NLW.

We do not anticipate there being any significant increase in the number of 2 year olds becoming newly eligible as a result of this change. If we make no changes to the threshold, we estimate the eligible population decreases by around 1,000 children.

It is important to note however that no 2 year old currently accessing the funded entitlement will lose out, as eligibility is only assessed once before the child begins provision. Once the child is accessing their funded place they will retain it, even if their family's circumstances change.

³ [National Minimum Wage Low Pay Commission Report 2021 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

The Scope of the EQIA

This Equality Impact Assessment (EQIA) considered whether 2 year old children and parents or carers within protected characteristics groupings faced any barriers, discrimination or harassment as a result of the proposed amendments to secondary legislation.

In order to understand the barriers or impacts that parents or carers in receipt of the qualifying benefits and or eligibility criteria may face as a result of the proposed increase to the income threshold, the following evidence was reviewed:

- a) Labour Market Briefing -Annual Survey of Hours and Earnings 2019⁴
- b) Scottish Household Survey 2019⁵
- c) Poverty and Income Inequality in Scotland 2017-20⁶
- d) Sexual Orientation in Scotland 2017: A Summary of the Evidence Base⁷
- e) Is Scotland Fairer?⁸
- f) The Tackling Child Poverty Delivery Plan 2018-22 (Annex 2)⁹
- g) What do we know about in-work poverty in Scotland?¹⁰
- h) The 2015 Budget Effects on Black and minority ethnic people¹¹
- i) Regional employment patterns in Scotland: statistics from the Annual Population Survey 2019¹²
- j) Disabled people in the labour market in Scotland: 2018¹³
- k) Scottish Surveys Core Questions 2019¹⁴

⁴ <http://www.gov.scot/Topics/Statistics/Browse/Labour-Market/Earnings>

⁵ <https://www.gov.scot/publications/scottish-household-survey-2019-annual-report/>

⁶ [Poverty and Income Inequality in Scotland 2017-20](#)

⁷ <http://www.gov.scot/Publications/2017/01/4911/0>

⁸ <https://www.equalityhumanrights.com/en/publication-download/scotland-fairer-2018>

⁹ <https://www.gov.scot/publications/tackling-child-poverty-delivery-plan-annex-2-further-technical-information/>

¹⁰ <https://www.gov.scot/publications/working-poverty/>

¹¹ [The 2015 Budget Effect on BME RunnymedeTrust 27thJuly2015.pdf](#)

¹² [Regional Employment Patterns in Scotland: Statistics from the Annual Population Survey 2019](#)

¹³ <https://www.gov.scot/publications/disabled-people-labour-market-scotland-2018/>

- l) Child and Working Tax Credits statistics: Finalised awards, 2019-20¹⁵
- m) Universal Credit statistics, 29 April 2013 to 14 October 2021¹⁶

Current evidence relating to pre-school children in particular that information in relation to 2 years olds was also considered.

- n) Schools in Scotland - summary statistics: 2020¹⁷
- o) Summary statistics for schools in Scotland no. 10: 2019 edition¹⁸
- p) Children's Social Work Statistics Scotland: 2019 - 2020¹⁹
- q) Every child, every chance: Tackling Child Poverty Delivery Plan' 2018-22²⁰
- r) Scottish Study of Early Learning and Childcare²¹

Key Findings

Scottish Government does not have access to UK Government data detailing the profile of recipients of Tax Credit or Universal Credit awards in Scotland. We have therefore been limited to what conclusions we can draw on the impact of the planned amendment.

The available data shows that ethnic minority households and households with a disabled adult or child have a higher risk of being in relative poverty. It is likely that these households will continue to be positively affected by the planned change if they fit the criteria for receiving Working Tax Credits and Child Tax Credits or Universal Credit. However, we do not currently have access to data that would allow us to assess the extent to which these households contribute to the specific population targeted by the change in eligibility criteria. Therefore we can only indirectly make an assumption

¹⁴ <https://www.gov.scot/publications/scottish-surveys-core-questions-2019/>.

¹⁵ [Child and Working Tax Credits Finalised Annual Awards 2019 to 2020 Main Commentary - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/431211/Child-and-Working-Tax-Credits-Finalised-Annual-Awards-2019-to-2020-Main-Commentary.pdf)

¹⁶ [Universal Credit statistics, 29 April 2013 to 14 October 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/431211/Universal-Credit-statistics-29-April-2013-to-14-October-2021.pdf)

¹⁷ <https://www.gov.scot/publications/summary-statistics-schools-scotland-2020/>

¹⁸ <https://www.gov.scot/publications/summary-statistics-schools-scotland-no-10-2019-edition/>

¹⁹ [Children's social work statistics: 2019 to 2020 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/summary-statistics-schools-scotland-no-10-2019-edition/)

²⁰ [Every child, every chance: tackling child poverty delivery plan 2018-2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/summary-statistics-schools-scotland-no-10-2019-edition/)

²¹ <https://www.gov.scot/publications/scottish-study-early-learning-childcare-phase-1-report-updated-2021/>

that these specific protected characteristic groups (in particular Sex, Race and Disability) are more likely to be impacted positively.

Recommendations and Conclusion

The overall purpose of this amendment is to largely maintain the status quo and to ensure that eligibility is protected for those families who have seen an increase in their earnings but no material change in their financial circumstances due to the UK policy changes.

The EQIA process has identified the potential for limited positive impacts in particular for: single lone parents which appear to be more directed towards women; ethnic minority households and; households with a disabled adult or child.

If these families meet the eligibility criteria it is highly likely that they will benefit from the increase to the income threshold.

The EQIA is a working document and will be reviewed to reflect any new evidence or information that may impact any of the protected characteristics as a result of this amendment to secondary legislation.



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