

# Education, Children and Young People Committee

**8 September 2021**

## Consideration of subordinate legislation

This note provides information about—

[Draft SSI: The Provision of Early Learning and Childcare \(Specified Children\) \(Scotland\) Amendment \(No. 2\) Order 2021](#)

### Timeline for considering the Draft SSI: The Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment (No. 2) Order—

1. These regulations were laid before the Scottish Parliament on **21 June 2021**.
2. They were considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meeting on [31 August 2021](#) and the Committee made no comment.
3. They will be considered by the Education, Children and Young People Committee at its meeting on **8 September 2021**.
4. If the committee wishes to produce a report on these regulations, it must do so by **3 October 2021**.

### Formal Procedure

5. As the draft regulations (also known as draft Scottish Statutory Instruments or draft SSIs) are being considered under the affirmative procedure, usual practice is for the committee to hear evidence from the Minister in charge, prior to the committee formally considering the draft regulations.
6. The committee may also hear evidence from Scottish Government officials who have been working on the draft regulations.
7. After taking evidence from the Scottish Government, the committee will formally consider the SSI.
8. The Minister responsible for the draft regulations will propose, by motion, that the lead committee recommend that the instrument or draft instrument be approved.
9. The committee then has up to 90 minutes to debate the motion, before voting whether or not to approve the draft regulations.
10. The lead committee must report its recommendation to the Parliament.
11. Where the lead committee recommends the instrument be approved, the Parliamentary Bureau will propose a motion for agreement by the whole Parliament that the instrument be agreed.

## **Purpose of the Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment (No. 2) Order [draft]**

12. 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.

The policy note published to accompany the statutory instrument is set out at [Annexe A](#).

### **For decision**

**13. The committee is invited to—**

- **take evidence from the Minister and Scottish Government officials on the instrument (agenda item 3);**
- **consider the instrument (agenda item 4); and then**
- **delegate authority to the Convener and Deputy Convener to sign off the Committee's report to Parliament on the instrument.**

**Jane Davidson  
Committee Assistant Clerk  
Education, Children and Young People Committee  
3 September 2021**

## Annexe A

### SCOTTISH GOVERNMENT POLICY NOTE

#### The Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment (No. 2) Order 2021

##### SSI 2021/

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 'passport 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 updated 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](https://publishing.service.gov.uk))<sup>1</sup>.

Scottish Government  
Early Learning and Childcare Directorate  
June 2021

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<sup>1</sup> [National Minimum Wage \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)