

Education, Children and Young People Committee

5th Meeting, 2024 (Session 6), Wednesday 7 February 2024

Subordinate legislation

1. This note provides information about the [Provision of Early Learning and Childcare \(Specified Children\) \(Scotland\) Amendment Order 2024 \[draft\]](#)
2. These regulations are being considered under the affirmative procedure.

Timeline for Consideration

3. The regulations were laid before the Scottish Parliament on 24 January 2024 and, if agreed, will come into force on 1 April 2024.
4. They were considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meeting on 30 January 2024. That Committee published [its report](#) on 30 January 2024. No points were raised.
5. The regulations will be considered by the Education, Children and Young People Committee at its meeting on 7 February 2024.
6. The Committee is required to report on the regulations by **12 March 2024**.

Formal Procedure

7. 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.
8. The Committee may also hear evidence from Scottish Government officials who have been working on the draft regulations.
9. After taking evidence from the Scottish Government, the Committee will formally consider the SSI. The Committee will do this at its meeting on 7 February 2024.
10. The Minister responsible for the draft regulations will propose, by motion, that the lead committee recommend that the instrument or draft instrument be approved. The Motion to approve these regulations is [S6M-11977](#).

11. The Committee then has up to 90 minutes to debate the motion, before voting on whether to approve the draft regulations.
12. The lead committee must report its recommendation to the Parliament.
13. 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 regulations

14. The purpose of Instrument is to amend the Provision of Early Learning and Childcare (Specified Children) Order 2014 ('the 2014 Order') to protect eligibility for 2-year-old children who qualify for access to funded early learning and childcare (ELC) due to their parents' receipt of Working Tax Credits and Child Tax Credits or Universal Credit.
15. The draft Policy Note states that—

“Entitlement for funded ELC for 2-year-old children depends on a child being an ‘eligible child’, which includes their parent being in receipt of certain ‘qualifying benefits’, as set out in the 2014 Order. Any income the household receives (not from benefits) must not exceed a certain level, also set out in the 2014 Order.

This maximum income level is broadly equivalent to the amount a person would receive annually or monthly if they work 16 hours per week, at the National Living Wage.

This instrument amends the maximum income level from £8,717 to £9,552 per year for those in receipt of both Child Tax Credit and Working Tax Credits. The instrument also amends the maximum income level for those in receipt of Universal Credit from £726 per month to £796 per month.”

16. A copy of the draft Policy Note is included at the Annexe.

Consultation

17. The draft Policy Note states that no public consultation was carried out as the regulations are being made to maintain rather than change eligibility.

Impact Assessments

18. The draft Policy Note highlights that the quality impact assessment on amendments to the 2014 Order has been updated to reflect the provisions in this instrument
19. It also states that no child who is currently accessing funded ELC will lose their place because of this amendment. It may however lead to a slight change in the profile of household that is eligible.

20. The draft Policy Note states that the government is of the view that this instrument does not discriminate on the basis of age, disability, race, religion or belief, sex, sexual orientation or gender reassignment. In addition, it states that there is no negative impact on children's rights and wellbeing. The draft Policy Note also states that there are no impacts on island communities, privacy or the environment.

21. The Business and Regulatory Impact Assessment has not been updated as there is no anticipation of any material impact on ELC providers.

Financial Effects

22. The draft Policy Note states that there is no anticipated material impact on local authorities' ability to fund this provision within the current financial settlement.

For decision

1. The Committee is invited to—

- **consider the instrument and then;**
- **delegate authority to the Convener to sign off the Committee's report to Parliament on the instrument.**

**Education, Children and Young People Committee
30 January 2024**

Annexe

POLICY NOTE**THE PROVISION OF EARLY LEARNING AND CHILDCARE (SPECIFIED CHILDREN) (SCOTLAND) AMENDMENT ORDER 2024****SSI 2024/XXX**

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.

The purpose of the instrument is to amend the Provision of Early Learning and Childcare (Specified Children) Order 2014 ('the 2014 Order') to protect eligibility for 2 year old children who qualify for access to funded early learning and childcare (ELC) due to their parents' receipt of Working Tax Credits and Child Tax Credits; or Universal Credit.

Policy Objectives

2. Entitlement for funded ELC for 2 year old children depends on a child being an 'eligible child', which includes their parent being in receipt of certain 'qualifying benefits', as set out in the 2014 Order. Any income the household receives (not from benefits) must not exceed a certain level, also set out in the 2014 Order.
3. This maximum income level is broadly equivalent to the amount a person would receive annually or monthly if they work 16 hours per week, at the National Living Wage.
4. This instrument amends the maximum income level from £8,717 to £9,552 per year for those in receipt of both Child Tax Credit and Working Tax Credits.
5. The instrument also amends the maximum income level for those in receipt of Universal Credit from £726 per month to £796 per month.

Background

6. The UK Government confirmed in the Autumn Statement on 22 November 2023 that there would be an increase to the National Living Wage. From 1 April 2024, the National Living Wage will increase from £10.42 to £11.44 per hour and the age at which it is to be paid decreases from age 23 to those age 21 and over. The National Living Wage is the statutory minimum wage rate for those age 21 and over, not to be confused with the 'real living wage'.
7. The amendments 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 from April 2024.

8. If we make no change to these maximum income levels, it would mean access to this entitlement would narrow. This and any future up-ratings in line with the National Living Wage are necessary to maintain eligibility for funded ELC. If no changes were made to the maximum income levels, modelling suggests the eligible population would decrease by around 400 2-year-olds.

Consultation

9. As these amendments are being made in order to maintain rather than change eligibility, we have not consulted on the uprated maximum income level. The Convention of Scottish Local Authorities (COSLA) are aware of, and in agreement with this approach.

Impact Assessments

10. Our previous equality impact assessment on amendments to the 2014 Order has been updated to reflect the provisions in this instrument and will be published separately.
11. Overall, the amendments will maintain the eligibility criteria in line with the National Living Wage increase and a broadly similar population will be eligible. Due to the decrease in age at which the National Living Wage must be paid however, there may be a small group of parents age 21 and 22 year olds who could previously have worked more than 16 hours a week without exceeding the maximum income levels, who would now not meet the eligibility criteria if they did so. This would be due to the number of hours they work, rather than because of their age and so we do not consider this amendment to have an impact on the protected characteristic of age.
12. No child who is currently accessing funded ELC will lose their place as a result of this amendment. It may however lead to a slight change in the profile of household that is eligible.
13. We are of the view that this instrument does not discriminate 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 island communities, privacy or the environment.
14. As we do not anticipate a significant change to the 2 year old eligible population as a result of these changes, we do not anticipate any material impact on ELC providers in the private and third sectors. We have not therefore updated a Business and Regulatory Impact Assessment.

Financial Effects

15. The maximum income levels proposed are based on modelling which protects the current level of entitlement to early learning and childcare for eligible 2 year olds for 2024/2025.
16. We anticipate no material impact on local authorities' ability to fund this provision within the current financial settlement.
17. We intend to continue to review the income thresholds in the 2014 Order annually in order to reflect planned changes to the National Living Wage.

Scottish Government

Directorate for Children and Families: Early Learning and Childcare

January 2024