Education, Children and Young People Committee
Wednesday 11 February 2026
6th Meeting, 2026 (Session 6)

Note by the Clerk on The Education (Scotland) Act 1980 (Modification) Regulations 2026 (SSI 2026/19)

Overview

1. At this meeting, the Committee will consider the following Scottish Statutory Instrument (SSI), which is subject to the negative procedure. The Committee is invited to consider the instrument and decide what, if any, recommendations to make.

2. More information about the instrument is summarised below:

   Title of instrument: The Education (Scotland) Act 1980 (Modification) Regulations 2026

   Laid under: The Education (Scotland) Act 1980

   Laid on: 23 January 2026

   Procedure: Negative

   Deadline for committee consideration: 2 March 2026

   Deadline for Chamber consideration: 3 March 2026

Procedure

3. Under the negative procedure, an instrument is laid after it is made and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.

4. Once laid, the instrument is referred to:

   - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and

   - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.

5. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).

6. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

Delegated Powers and Law Reform Committee consideration

7. The DPLR Committee considered the instrument at its meeting on 3 February 2026 and reported on it in Subordinate Legislation considered by the Delegated Powers and Law Reform Committee on 3 February 2026. No points were raised.

Purpose of the instrument

8. The purpose of the Regulations set out within this instrument are twofold. They amend section 53(7)(c) of the 1980 Act which relates to pupil eligibility for free school lunches, where their families are in receipt of Universal Credit, and they add Pension Credit as a new qualifying benefit for free school lunches. In the case of Pension Credit, both the Guarantee Credit and Savings Credit elements will be eligible qualifying benefits for free school meals.

9. The Policy Note accompanying the instrument is included in Annexe A. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

Committee consideration

10. So far, no motion recommending annulment has been lodged.

11. Members are invited to consider the instrument and decide whether there are any points they wish to raise. If there are, options include:

    - seeking further information from the Scottish Government (and/or other stakeholders) through correspondence, and/or

    - inviting the Minister (and/or other stakeholders) to attend the next meeting to give evidence on the instrument.

    It would then be for the Committee, at the next meeting, to consider the additional information gathered and decide whether to make recommendations in relation to the instrument.

12. If Members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).

13. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

Clerks to the Committee
February 2026

Annexe A: Scottish Government Policy Note

POLICY NOTE

THE EDUCATION (SCOTLAND) ACT 1980 (MODIFICATION) REGULATIONS 2026

SSI 2026/19

The above instrument was made in exercise of the powers conferred by section 53(8)(a)(i)[1] of the Education (Scotland) Act 1980 ("the 1980 Act"). This instrument is subject to negative procedure.

Summary Box

The purpose of the Regulations set out within this instrument are twofold. They amend section 53(7)(c) of the 1980 Act which relates to pupil eligibility for free school lunches, where their families are in receipt of Universal Credit, and they add Pension Credit as a new qualifying benefit for free school lunches. In the case of Pension Credit, both the Guarantee Credit and Savings Credit elements will be eligible qualifying benefits for free school meals.

Policy Objectives

A free school lunch is a "passported benefit", where the entitlement depends on a child or young person being an eligible child or young person, where their parent(s) or the young person themselves, are in receipt of certain benefits as prescribed in section 53 of the 1980 Act.

Section 53(2) of the 1980 Act provides that an education authority must provide or secure the provision of a school lunch free of charge to pupils falling within section 53(7). A school lunch is defined by section 53(12) of the 1980 Act.

The rules on Universal Credit are set by the UK Government.

Section 53(7)(c) of the 1980 Act is to be amended to ensure that a pupil will be eligible for free school lunches if the pupil is, or the parent(s) of the pupil are, in receipt of Universal Credit provided that qualifying criteria about earned income of the pupil or the parent(s) are satisfied. Where the person in receipt of Universal Credit is not a member of a couple, the criteria will be satisfied if the person's earned income does not exceed £995 in the assessment period preceding the application. Where the person in receipt of Universal Credit is a member of a couple, the criteria will be satisfied if the couple's combined earned income does not exceed £995 in the assessment period preceding the application. This amendment is being put in place to take account of the UK Government's increase to the National Living Wage which takes effect on 1 April 2026 and to protect eligibility for those pupils who are, or whose parent(s) are, in receipt of Universal Credit. This amendment will also take account of the UK Government's

[1] Section 53 of the Education (Scotland) Act 1980 was substituted by section 22(2) of the Education (Scotland) 2016 (asp 8).

decision to increase the Administrative Earnings Threshold and the impact of the associated increase of the National Living Wage in April 2026.

These Regulations also amend section 53(7) of the Education (Scotland) Act 1980 to add Pension Credit as a new qualifying benefit for free school lunches. Families in receipt of Pension Credit will be eligible for free school meals whether they are in receipt of either the guarantee element, savings element of Pension credit or both.

Background

Impact of changes to the National Living Wage on recipients of Universal Credit

Universal Credit has been a qualifying benefit for free school lunches since April 2013. As the roll-out of Universal Credit became more widespread, it became necessary to introduce a monthly earned income amount that could not be exceeded. Maximum eligible income levels for Universal Credit, based upon monthly earned income, were introduced in 2017[2].

The Regulations increase the monthly earned income amount for recipients of Universal Credit (set out in section 53(7)(c) of the 1980 Act) from the current level of £850 to £995, from 1 April 2026 to take account of the increase in the National Living Wage which will come into effect on that date. The increase in the maximum monthly earned income level is greater this year, in comparison to previous years, to take account of the increased Administrative Earnings Threshold for recipients of Universal Credit.

The monthly earned income level for recipients of Universal Credit will continue to be monitored and future increases to the National Living Wage will be taken into account in order to protect the eligibility of the existing cohort of families which are currently eligible to a free school lunch.

Impact of adding Pension Credit as a new eligible qualifying benefit

Adding pension credit will ensure that children of lower income parents and kinship carers of state pension age will be eligible for free school meals. People of state pension age cannot apply for Universal Credit and, as a result, this means there is currently no legal mechanism in place which would require local authorities to offer such children free school meals.

Previously, under the tax credits system, people of state pension age may have been in receipt of tax credits. Therefore they could apply for free school meals if they had been in receipt of eligible tax credits such as Child Tax Credit. Adding Pension Credit as a new qualifying benefit is intended to ensure such persons remain eligible for free school meals following the closure of the tax credits system.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

[2] https://www.legislation.gov.uk/ssi/2017/182/contents/made.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Education (Scotland) Act 1980 (Modification) Regulations 2026 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

The amendments made by these Regulations protect existing eligible families, through amending eligibility criteria for recipients of Universal Credit, in response to UK Government policies which increase the level of the National Living Wage from 1 April 2026. There is no statutory requirement to conduct a consultation and no public consultation was carried out.

The proposed monthly earned income level of £995 for recipients of Universal Credit, and the addition of state pension credit as a new qualifying benefit, has been discussed with the Convention of Scottish Local Authorities (COSLA) in order to inform COSLA of the intention to protect the eligibility of families currently entitled to a free school lunch.

Impact Assessments

An Equality Impact Assessment and a Children's Right and Wellbeing Impact Assessment have been completed on the provisions of these Regulations. It is not considered that these Regulations 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 and we do not consider there to be any impacts on privacy or the environment.

Financial Effects

A Business and Regulatory Impact Assessment has been completed and is attached. The revised income level proposed reflects the increased Administrative Earnings Threshold, and will protect the current levels of entitlement to a free school lunch for the 2026-27 financial year. The relevant income level will continue to be reviewed annually to take account of future increases in the National Living Wage. Pension Credit is added as a new eligible qualifying benefit.

Scottish Government
Directorate for Learning
January 2026