



Department
for Education

Eligibility for free school meals and the early years pupil premium under Universal Credit: Equality analysis

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The public sector equality duty

1. Under Section 149 of the Equality Act 2010, the Secretary of State is under a duty to have due regard to the need to:
 - a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.
 - b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, in particular the need to:
 - remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
 - encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low
 - c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it, in particular the need to:
 - i. tackle prejudice
 - ii. promote understanding.
2. The Equality Act 2010 identifies the following as protected characteristics for the public sector equality duty:
 - age
 - disability
 - gender reassignment
 - pregnancy and maternity
 - race (including ethnicity)
 - religion or belief
 - sex
 - sexual orientation

Proposed eligibility criteria for free school meals and the early years pupil premium under Universal Credit

3. This equality analysis sets out our assessment of the impact of the proposals for the eligibility criteria for free school meals¹ and the early years pupil premium under Universal Credit with regard to the protected characteristics identified in the Equality Act 2010. It also responds to the relevant points raised during the consultation on these proposals.
4. This analysis was initially published on 16 November 2017 alongside our consultation paper, and has now been updated following the closure of this consultation.
5. The consultation invited views on the proposed approach to setting eligibility for free school meals and the early years pupil premium under Universal Credit for pupils in early years, primary and secondary education, and students in further education. The public consultation was launched on 16 November 2017 and closed on 11 January 2018.
6. Final decisions on the eligibility criteria are set out in the consultation response published alongside this impact assessment. The key proposals are summarised below:
 - We will introduce an annual net earned income threshold of £7,400 for households in receipt of Universal Credit. A typical family earning around this threshold, depending on their exact circumstances, would have a total household income of between £18,000 and £24,000 once benefits are taken into account.
 - Those earning under this threshold will be eligible for free school meals and the early years pupil premium. As a result of these proposals, we estimate that by 2022 around 50,000² more children will benefit from a free school meal compared to the previous benefits system.
 - We will introduce transitional protections to ensure that existing recipients of free school meals and the early years pupil premium will have their entitlement

¹ Free school milk is covered by the same legislation as free school meals. Where free school meals is referenced throughout, the same applies to free school milk.

² The modelling for the threshold was conducted using a range of data, including population projections, Office of Budget Responsibility forecasts of earnings growth and employment rates, and expected levels of take-up. Since we published the consultation, we have updated the modelling with the latest population estimates, earnings data, and assumptions about National Living Wage increases. These numbers will be subject to change as these forecasts are updated.

protected until the end of the Universal Credit rollout, and then until the end of each pupil's phase of education if they are still in school when the rollout of Universal Credit is complete.

7. These changes do not affect the criteria for universal infant free school meals, which will continue to be available to all pupils in reception, year 1 and year 2 regardless of parental income.
8. We do not intend to change the current free school meals or early years pupil premium criteria for children whose parents receive support provided under Part 6 of the Immigration and Asylum Act 1999 or the guarantee element of State Pension Credit. These criteria will not be changed by the rollout of Universal Credit.
9. This document is about free school meals and early years pupil premium eligibility in England only. Northern Ireland, Scotland and Wales have responsibility for establishing their own criteria for these entitlements.

Consultation responses

10. Of the 512 responses to our question on equality impacts in the consultation, 295 (58% of those who responded to this question) felt there would be no adverse effect on one or more of the protected characteristics outlined in the Equality Act 2010.
11. Of the 217 respondents (42%) who believed there might be an adverse impact, 103 provided a free text answer explaining why they considered this might be the case. Analysis of the free text responses showed that a large proportion of those suggesting an adverse effect on protected characteristics were opposed to the proposed new threshold more generally, and did not specify particular protected groups that may be adversely affected, or explain why this may be the case.
12. Of the remaining free text responses that did address the specific question in relation to protected characteristics, many did so by comparing to a scenario in which all children on Universal Credit would be eligible for free school meals, rather than comparing to the legacy benefits system. We consider this point in further detail in paragraphs 16-18 below.
13. Only a small proportion of those that provided free text responses cited specific protected characteristics. These included:
 - a. A small number of references to disability, indicating that individuals with disabilities have lower earnings on average than those without disabilities;
 - b. A smaller number of references to age, indicating that children nearer to their end of education phase (eg primary, secondary school) would receive fewer years of protection for their free school meals compared with younger children who will remain in their current education phase for a longer period; and

- c. A very small number cited race, including links between race and lower household earnings, as well as possible impacts on migrant families who may be more likely to fall just above the threshold due to lower average earnings.

Consideration of the protected characteristics identified in the Equality Act 2010

14. This document provides an assessment, pursuant to the public sector equality duty, of the potential effect of the proposals set out in the government response to the 'Eligibility for free school meals and the early years pupil premium under Universal Credit' consultation, and our response to the relevant points raised during this consultation. We have assessed the impact of our proposals on the eight protected characteristics identified in the Equality Act 2010.
15. Our overall assessment of the impact of our proposals is that we expect children with a special educational need or disability, pupils attending schools with no religious character, and children from certain ethnic groups to benefit more than others from the increase in the size of the free school meal cohort (outlined in more detail below). We do not have evidence to suggest there will be a negative impact on the other protected characteristics.
16. Our assessment is based on a comparison between the proposals in our consultation paper and what would be the position in the absence of Universal Credit (based on the continuation of the legacy benefits that currently entitle households to free school meals and the early years pupil premium³).⁴
17. Some respondents made a comparison to a situation where all children on Universal Credit would be eligible for free school meals. However, this is not a realistic comparison, as the government has always been clear that it planned to introduce updated criteria for free school meals eligibility as Universal Credit rolled out more widely.
18. When, as an interim measure, the government extended eligibility for free school meals to all households on Universal Credit in 2013, ministers at the time⁵ were clear that this was intended only to cover the duration of the Universal Credit pilots, in order to ensure that families moving onto Universal Credit in the early stages of rollout did not lose their entitlements. This was also clear from the government's impact assessment for the Welfare Reform Act 2012, which stated the government's

³ These legacy benefits include Income Support, Jobseeker's Allowance and Child Tax Credit. A full list of the current eligibility criteria for free school meals and the early years pupil premium was published in the department's consultation document 'Eligibility for free school meals and the early years pupil premium under Universal Credit' (November 2017)

⁴ See footnote 2.

⁵

https://publications.parliament.uk/pa/cm201213/cmhansrd/cm130417/text/130417w0004.htm#130417w0004.htm_spnew23

intention for eligibility criteria for these passported benefits under Universal Credit to be cost-neutral, rather than to grant passported benefits to all Universal Credit recipients. The government has been consistently clear that the extension of eligibility to all households on Universal Credit was not intended as a long-term measure for the period during which Universal Credit was rolled out more widely.

19. The following paragraphs outline our assessment in relation to each protected characteristic:

Age

20. The public sector equality duty, so far as it concerns age, does not apply to the exercise of a function relating to the provision of benefits, facilities or services to pupils in schools.⁶

21. Our proposed net earnings threshold will result in more three- and four-year-olds benefiting from the early years pupil premium than would have been the case under the previous benefits system.⁷ As the express purpose of the early years pupil premium is to benefit three- and four-year-olds, we do not consider this to be detrimental to children or adults of other ages.

Sex

22. The Department for Education does not consider there to be any negative impact on the protected characteristic of sex. Under the new criteria, we would expect the number of pupils (both male and female) who are eligible to increase. As all pupils in England who are eligible for free school meals at the point of introducing the threshold should continue to be eligible until the end of the rollout of Universal Credit, and then until the end of their phase of education at that time, there should be no negative impact on this protected characteristic. For the same reason, we expect there should be no negative impact on this protected characteristic in respect of the early years pupil premium.

Gender reassignment, pregnancy and sexual orientation

23. The Department for Education is not aware of any evidence indicating that changes to free school meals and the early years pupil premium eligibility would differentially

⁶ Schedule 18 of [the Equalities Act 2010](#). See also the Department for Education, '[Equality Act 2010: advice for schools](#)', June 2014.

⁷ See footnote 2.

affect children and young people with these characteristics and therefore does not believe there to be any direct impact from these proposals.

Religion

24. The proposals on the free school meals and the early years pupil premium thresholds will be applied consistently to all schools, settings and children, including in faith schools. Currently, pupils attending schools with no religious character are more likely to be eligible and claiming free school meals than pupils at schools with a religious denomination. Data⁸ shows that certain religious groups (e.g. Muslim, Hindu and Sikh) have a greater likelihood of experiencing poverty and are therefore more likely to benefit under the new criteria.

Race (including ethnicity)

25. Certain ethnic groups are twice as likely to have a household income below 60% of the median, including Bangladeshi, Pakistani, and Black/African/Caribbean/Black British and Other Ethnic Groups. 60% of median household income is currently around £15,800⁹ (please note, this includes benefits income and is therefore not directly comparable to our proposed net earnings threshold, which does not include income from benefits).
26. The Department for Education expects these groups to be more likely to have earnings below the threshold outlined in our consultation and subsequently more likely to become eligible for free school meals and the early years pupil premium under the new criteria.

Disability

27. Currently, pupils with a special educational need or disability (SEND) are more likely to be in receipt of free school meals, with 26.8% claiming compared to 13.9% of those without SEND¹⁰. Pupils with a special educational need or disability have a greater likelihood of experiencing poverty and so we estimate are more likely to benefit under the new criteria, as a greater number of children in poverty will be receiving free school meals.

⁸ <http://csi.nuff.ox.ac.uk/wp-content/uploads/2015/03/religion-and-poverty-working-paper.pdf>

⁹

<https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/incomeandwealth/bulletins/householddisposableincomeandinequality/financialyearending2016>

¹⁰ Special educational needs in England: January 2017, Department for Education, 2017.

28. The early years pupil premium gives providers additional funding (up to £302 for the maximum 570 hours per year) for each disadvantaged three and four-year-old taking up the universal 15-hour free early education entitlement. There are no specific eligibility criteria related to disability. Disabled children taking up the free entitlement may attract wider funding such as Disability Access Fund payments, high needs funding and funding through the Special Educational Needs Inclusion Fund.

29. Some concerns were raised by respondents to the consultation that some parent/carers with learning difficulties could have difficulties completing application forms. The Equality Act 2010 is clear that where this is the case, local authorities must make reasonable adjustments to prevent them from suffering discrimination, and supply additional aids and services to assist with individuals' disabilities.

Next steps

30. The Department for Education will continue to keep under review the impact of the delivery of free school meals and the early years pupil premium in line with the public sector equality duty.
31. We will ensure that future policy and delivery in relation to these entitlements is developed and implemented in a way that ensures that, as far as possible, any negative impact on those with protected characteristics is mitigated and any potential positive impact is maximised.
32. As indicated in the Government's response to the consultation, published alongside this equality analysis, we are laying regulations in parliament which will bring the proposed thresholds into force in April 2018.



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