

Department for Education Consultation

Eligibility for free school meals and the early years pupil premium under universal credit Response from the Low Incomes Tax Reform Group (LITRG)

1 Executive Summary

- 1.1 We welcome the opportunity to respond to this consultation. The document states that in establishing the new criteria the opportunity was taken to ensure that the arrangements are 'fair, consistent and simple to deliver'. For the reasons set out in this response, we do not think this has been achieved and if the proposal for a single net earnings threshold proceeds, there will be unfairness, inconsistency and complexity as a result. In particular, there is a real risk that one of the key principles of universal credit, that work always pays, will be undermined. We therefore think there is a strong argument to consider allowing the current arrangements to continue so that all children living with universal credit (UC) recipients are entitled to free school meals.
- 1.2 We welcome the fact that the new criteria will mean 50,000 more pupils are eligible for free school meals than currently receive them. However neither the consultation document nor the equality impact assessment break this down by explaining where the gain comes from (for example, is it due to the transitional measures?), how many people will lose out compared to the current rules and what are the characteristics that those people who lose out will have.
- 1.3 The consultation document lacks sufficient detail about how the net annual income threshold will work in practice against a monthly assessed benefit and in this response we raise a number of related points that need further consideration including the definition of 'earned' income for the threshold, how self-employed claimants subject to the Minimum Income Floor (MIF) will be treated for free school meal purposes and similarly how, from April 2018, those with surplus earnings will have their income assessed.

- 1.4 It is also far from clear how the threshold will be administered in practice, especially for those with fluctuating incomes and whether it is possible to move in and out of eligibility from month-to-month.
- 1.5 A single annual income threshold does not take account of the number of children in a family and it creates a cliff edge in the system. For example, a family with income just over the threshold with four children will not get any help with free school meals, whereas a family with one child with income just under the threshold will be entitled to free school meals. The more children a family has, the less disposable income they have available to pay for costs, including school meals.
- 1.6 The cliff edge, referred to at 1.5, means that working an extra hour, or earning a few pence an hour more, could leave the person considerably worse off financially, thereby negating the principle that work will always pay under UC.¹ We recommend that, if an annual net earnings threshold is used, thought should be given to a run-on or other alternative method (such as entitlement for a set-period as outlined in 1.8) that could alleviate the harshness of this cliff edge.
- 1.7 If the proposed threshold is only based on earned income, some claimants who are not entitled to free school meals now will be entitled under the new criteria. This will lead to unfairness between families with similar household incomes but with different sources of that income.
- 1.8 Finally, how the scheme will work in practice from an administrative point of view is not entirely clear. For example, will people move in and out of entitlement to free school meals from month to month if their income for UC purposes changes? We do not think this is desirable and one way of dealing with this administrative complexity, and potentially reducing administrative costs, is to award free school meals to the end of the current term or preferably to the end of the academic year once the qualification criteria is met.

2 Introduction

- 2.1 The LITRG is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not

¹ See for example <https://www.gov.uk/government/news/welfare-reform-white-paper-universal-credit-to-make-work-pay-radical-welfare-reforms-bring-an-end-to-complex-system>

designed with the low-income user in mind and this often makes life difficult for those we try to help.

- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.
- 2.4 We welcome this opportunity to respond to the consultation document on eligibility for free school meals and the early years pupil premium. Free school meals are extremely important passported benefits for low incomes families and as the consultation points out they make an important contribution to addressing the barriers that young people from lower income backgrounds face.
- 2.5 We have, for many years, been concerned with the complexity for claimants caused by the various qualifying criteria for passported benefits and the impact of their withdrawal on work incentives.
- 2.5.1 In the Government's response to the Social Security Advisory Committee's 2012 report¹ on passported benefits it was noted that the introduction of UC presents not only a challenge for Departments with responsibility for passported benefits, but also a unique opportunity to consider more fundamental reform to simplify and streamline some passported benefits in the future. It is disappointing that the opportunity has not been taken to consider other options and address some of the issues related to having a single fixed threshold as the cut-off point.
- 2.5.2 In our response to the SSAC review of passported benefits² we identified transparency as one of the three key principles that should drive reform of passported benefits. Some complexity is inevitable, but the burden of dealing with this should fall on those responsible for delivering the benefit, rather than those receiving it. It is also important to ensure that the public should understand not only the passported benefit itself, but also how that passported benefit entitlement is linked to income and the impact that changes to income and circumstances will have on the person's overall financial situation.
- 2.5.3 As well as being clear and easily understandable, the scheme should be as easy and straightforward as possible to access in order to ensure high take-up by eligible claimants is as high as possible.
- 2.5.4 The second principle we highlighted in our 2011 response to SSAC was that the impact of passported benefits must be included in any calculation or presentation of marginal deduction rates under UC – both in general terms and to claimants. The loss of passported

¹ <https://www.gov.uk/government/publications/universal-credit-the-impact-on-passported-benefits>

² <https://www.litrg.org.uk/latest-news/submissions/110722-passported-benefits>

benefits as income rises should not come as a shock, such that its impact must not be ignored.

3 Specific comments on the proposals

3.1 **Question 1 – Do you agree with our proposed net earnings threshold to determine eligibility for free school meals and the early years pupil premium under Universal Credit?**

3.1.1 We do not agree with the proposed net earnings threshold outlined in the paper because it will create too many uncertainties, cliff edges and anomalies as we describe in the following paragraphs.

Use of an annual net earnings threshold

3.1.2 Page 9 of the consultation document states ‘We are proposing a net earnings threshold of £7,400 per annum for a household’s eligibility for free school meals’. However, the glossary of terms on Page 18 says:

‘Earnings threshold for households receiving universal credit

A maximum monthly net earned income level for households in receipt of Universal Credit that qualifies an individual or a family to receive additional support.’

In the examples on page 10, reference is made to both an annual threshold of £7,400 and a monthly threshold of £617 a month.

3.1.3 UC is a monthly assessed benefit and therefore it is not easily compatible with a true annual threshold. It seems that the intention is to either have a monthly threshold against which the UC monthly income is compared or the UC monthly income is being used as a ‘proxy’ for the annual income and multiplied by 12 to give an annual figure which is then compared to the annual threshold.

3.1.4 It is important that this distinction is considered further, not least from a communication perspective. For example, consider a family who are outside of the UC system and have earnings of £10,000 from April to August and then the main wage earner loses their job and they claim UC in September. If there was a true annual threshold – this family would not qualify because their actual annual earnings are above £7,400 – whereas we think what is actually intended is that their earnings in September will be used as a proxy for annual earnings and compared to the threshold. The position is far from clear.

3.1.5 Introducing a fixed threshold will mean claimants face a cliff edge and also creates unfairness by not recognising the extra costs faced by families responsible for more children. Under the proposed criteria, a family with one child and income of £7,375 will get free school meals whereas a family with four children and income of £7,425 will not, despite the fact that the more children a family has, the less income is available to pay for costs such as school meals.

- 3.1.6 No matter what mechanism is used to calculate the person's net annual income, there will be a sharp cliff edge above which an additional £1 of earnings will result in a total loss of free school meals. This means that working an extra hour, or earning a few pence¹ an hour more, could leave the person considerably worse off financially, thereby negating the principle that work will always pay under UC. The Children's Society report that the average cost of school meals are £400 per child a year and that for a family with three children, the parent would need additional gross earnings of £3,582 (7.7 hours a week at National Living Wage of £9 p/h in 2020)² to make up for the loss of free school meals.
- 3.1.7 SSAC's report recommended a run-on period after eligibility has ceased to avoid the sudden loss of a passported benefit and this should be considered further along with other alternatives. Otherwise, there is a real risk that reforms will work against each other and harm the most vulnerable claimants by leaving them in a trap of not being able to increase their hours. We expand on this in paragraph 3.1.11 below.
- 3.1.8 It is not clear to us how the threshold will be administered especially if it is to be broken down into a monthly figure or if the claimant's monthly income is to be grossed up to an annual figure. If someone starts receiving UC in, say, September (with income under the relevant threshold) and then has income above the threshold in October – will they lose free school meals for a month and then potentially regain entitlement in November if their income falls? Or once you gain entitlement does it last for the remainder of the school year?
- 3.1.9 Given that UC awards are calculated monthly in arrears once the income data is known for the assessment period just ended, how will that work for people who have fluctuating incomes? Will they only know if they qualify once the assessment period ends?
- 3.1.10 If entitlement to free school meals can change from month-to-month, those who have certain pay patterns or who fall foul of late RTI reporting by their employer could find they have more than one pay taken into account in an assessment period which could then impact on their passported benefits.
- 3.1.11 The consultation document is silent on how administration will work, but it is an area we think needs far more consideration especially when the threshold has to be communicated to claimants. We do not think it is desirable for people to move in and out of entitlement month-to-month – one option to help smooth this would be to allow entitlement to run for a whole term or preferably an academic year once a person qualifies. This would potentially reduce the cost of administering the system and address some of the concerns in paragraph 3.1.7 around a run-on when earnings increase.

¹ Even a small pay rise offered by an employer, or annual increase to the National Minimum or Living Wage could result in a loss of the passported benefits.

² <https://www.childrensociety.org.uk/news-and-blogs/press-releases/universal-credit-one-million-children-in-poverty-to-miss-out-on-free>

The amount of the threshold

- 3.1.12 The proposed threshold of £7,400 is low and significantly lower than the £14,000 adopted recently in Northern Ireland. We therefore think there is a strong argument to consider allowing the current arrangements to continue so that all UC recipients are entitled to free school meals. Although this will have a cost attached, we think it will reduce complexity and ensure all children from low income families will have access to a nutritious meal each day at school.
- 3.1.13 It will of course still create a cliff-edge at the point that UC entitlement is lost, however it will be far higher up the income scale in most cases.
- 3.1.14 We also think that only using earnings to set the level of the threshold (as opposed to unearned income) does risk creating some unfairness. Under the Universal Credit Regulations 2013,¹ the calculation of UC is done by reference to the claimant's 'earned income' and 'unearned income'. Earned income is indeed calculated on a net basis – after deducting tax, National Insurance and pension contributions. A 63% taper is then applied to this to produce the earned income figure to be used in the calculation of UC. However if income is classed as unearned income, the amount received is taken into account in full with no taper applied.
- 3.1.15 The consultation document introduces an earnings threshold and on Page 19 it is made clear that this only considers income from employment and self-employment – in other words unearned income is excluded.
- 3.1.16 This means that a family with a significant proportion of their income coming from unearned income could have a much higher income than a family with the majority of their income from earnings yet the former may qualify for free school meals whereas the latter may not. This is due simply to the source of their income.

Definition issues

- 3.1.17 Page 19 of the consultation document defines 'net earned income' as:

'Earnings from employment or self-employment after deductions for taxes. The two common deductions are income tax and national insurance'

- 3.1.18 It is not clear whether the definition will be aligned in legislation with 'earned income' for UC purposes or whether this slightly different definition will be used. For example, the UC definition of earned income allows deductions of pension contributions – will they be allowed to reduce income for the purposes of free school meals? We note that the consultation document on free early years education for 2 year-olds uses a similar definition but specifically mentions pension contributions and we therefore hope that the same definition will be used for free school meals.

¹ <http://www.legislation.gov.uk/uksi/2013/376/contents/made> Regulations 51-64

- 3.1.19 Similarly, the UC definition of earned income includes a tax refund in some circumstances. It would seem unfair if a tax refund in a particular month could block entitlement to free school meals.
- 3.1.20 Self-employed UC claimants may be affected by the MIF. After the first 12 months of trading, if they are in the all-work requirements group, their UC will be calculated using either their actual income or if that is lower than their MIF amount, the MIF figure will be used in place of their actual income.
- 3.1.21 The MIF is very harsh for self-employed claimants who have fluctuating income and expenditure patterns and it does not take account of pension contributions (whereas employed UC claimants have their award calculated after the deduction of all pension contributions).
- 3.1.22 There is no detail in the consultation document about whether it will be the self-employed UC claimant's actual income that will be assessed against the new earnings threshold or whether it will be the MIF amount.
- 3.1.23 No families who are currently getting free school meals should lose their entitlement due to changes to the threshold or the mechanism used to determine their income against the threshold. We recommend that thought be given to transitional protection to ensure help is not removed from those who need it most.
- 3.1.24 In addition, from April 2018, new surplus earnings and loss rules will be introduced into UC that could add further distortions to income figures used to calculate UC awards and therefore will have a knock-on effect onto entitlement to free school meals and other passported benefits.
- 3.2 ***Question 2 – Do you agree with our intention to protect those pupils who would otherwise lose their entitlement to free school meals, and those children who would otherwise lose their entitlement to the early years pupil premium, under the new eligibility criteria?***
- 3.2.1 The transitional protection plans seem comprehensive, but such arrangements create further complexity and it is important that people fully understand their position through good communications to claimants and Local Authorities.
- 3.3 Although we welcome the fact that the new criteria will mean 50,000 more pupils are eligible for free school meals than currently, neither the consultation document nor the equality impact assessment break this down by explaining where the gain comes from, how many people will lose relative to the current rules, or what characteristics they will have. Although the suggestion is that the 50,000 are a result of the threshold itself, it is not clear whether that includes the transitional measures.