

POLICY NOTE

THE CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014 (MODIFICATION) ORDER 2021

SSI 2021/127

The above instrument was made in exercise of the powers conferred by section 48(2) of the Children and Young People (Scotland) Act 2014 (“the 2014 Act”). The instrument is subject to affirmative procedure.

The purpose of the instrument is to increase the mandatory amount of funded early learning and childcare (‘ELC’) to be secured by education authorities for eligible children from 600 hours to 1140 hours in each year for which a child is eligible with a pro-rata amount for each part of a year.

Policy Objectives

1. This instrument reinstates the duty on education authorities to make available to eligible children 1140 hours of funded ELC in each year for which they are eligible, with a pro-rata amount for each part of a year, from August 2021. ‘Education authorities’ is the term for local authorities exercising their education functions.
2. The Scottish Government’s ambition is for every single one of Scotland’s children to grow up in a country where they feel loved, safe and respected, and able to reach their full potential. It is this ambition that is at the heart of the Scottish Government’s commitment to expanding the funded ELC entitlement. This will help secure positive outcomes for children across Scotland and grow Scotland’s economy.

Background

3. Section 47 of the 2014 Act states that an education authority must secure the mandatory amount of ELC for each eligible pre-school child belonging to its area.¹ Section 48 of the 2014 Act defines the ‘mandatory amount’ as 600 hours in each year for which a child is eligible and pro-rata for each part of a year they are eligible.
4. The Children and Young People (Scotland) Act 2014 (Modification) (No. 2) Order 2019 (S.S.I. 2019/207) (“the 2019 Order”) amended the 2014 Act to increase the mandatory ELC hours to 1140 hours from 1 August 2020. However, on 30 April 2020, the 2019 Order was revoked by the Children and Young People (Scotland) Act 2014 (Modification) (No. 2) Revocation Order 2020 (S.S.I. 2020/136) to ensure that the duty on education authorities to make the increased hours of funded ELC available did not take effect at a time when their primary focus was responding to the immediate needs of the COVID-19 pandemic.

¹ Section 47(2) of the 2014 Act and regulations made under that section define ‘eligible pre-school child’. It includes all 3 and 4 year olds and eligible 2 year olds (those who are looked after by a local authority, the subject of a kinship care order or under the care of an appointed guardian or whose parent is in receipt of one or more qualifying benefits). It also includes children who turn 5 years old in the January or February after the school commencement date and who have deferred entry to school.

5. This instrument reinstates the duty on education authorities to increase the mandatory amount of funded hours of ELC available to eligible children from 600 to 1140 from August 2021. The expansion of funded ELC aims to deliver three long-term outcomes for children and families:
 - children's development improves and the poverty-related attainment gap narrows;
 - parents' opportunities to take up work, training or study increase; and
 - family wellbeing improves through enhanced nurture and support.

Consultation

6. The Scottish Government has worked in partnership with COSLA and a variety of stakeholders across the ELC sector throughout the development of the 1140 expansion policy and consulted widely on the expansion of funded ELC prior to the introduction of the 2019 Order. A Joint Delivery Board, co-chaired by the Minister for Children and Young People and the COSLA Spokesperson for Children and Young People, provides joint governance and monitors progress of the expansion programme.
7. Three written consultations gathered views on a number of areas, including the Scottish Government's programme of trials to test a variety of models for delivering the expanded ELC commitment,² the vision and high-level principles for the expansion, as well as key policy choices that had to be made³, and on the draft National Standard, which would underpin the Funding Follows the Child approach to ELC service provision.⁴ In total, 628 responses were received to the written consultations. Consultation events were also held across Scotland to raise awareness of the consultation and to seek the views of parents and ELC providers directly.
8. In addition, in 2017 the Scottish Government commissioned social researchers Craigforth to explore parents' views and use of ELC in Scotland.⁵ This provided information on parents' and carers' current use, views and experiences of ELC and on the flexibility they would like in using their child's entitlement to funded ELC. A total of 10,526 valid survey responses were submitted by parents to inform this research. Feedback from the consultations and this research shaped the development of the policy and the support put in place for local authorities and providers.

Impact Assessments

9. An Equalities Impact Assessment ('EQIA'), a Children's Rights and Wellbeing Impact Assessment ('CRWIA') and a Fairer Scotland Duty Assessment ('FSDA') were conducted for the expansion programme prior to the introduction of the 2019 Order.⁶ These impact assessments have been reviewed and updated in light of the

² [1140 Hours Expansion – Programme of trials \[2016\]](#)

³ [A Blueprint for 2020: The Expansion in Early Learning and Childcare \[2016-2017\]](#)

⁴ [Early Learning and Childcare Service Models consultation \[2018\]](#). See also [Funding follows the child and the national standard for early learning and childcare providers: principles and practice](#)

⁵ [Parents' views and use of early learning and childcare: report - gov.scot](#)

⁶ See [early learning and childcare expansion: EQIA](#), [ELC expansion - learning and wellbeing project: EQIA](#), [barriers to employment in ELC: EQIA](#), [ELC expansion - 2 year old eligibility: EQIA](#), [ELC expansion: CRWIA](#) and [ELC expansion: Fairer Scotland Duty](#).

reintroduction of the duty on education authorities to increase the mandatory amount of funded hours of ELC available to eligible children to 1140 from August 2021.

10. The EQIA did not identify any direct or indirect unlawful discrimination by increasing the funded entitlement to ELC. The process identified a number of areas where this increase can help to advance equality of opportunity for families with a protected characteristic and promote good relations between those with and those without a protected characteristic. The updated EQIA⁷ found that the impacts identified in the original EQIA are still live and valid, and did not identify any direct or indirect unlawful discrimination through the reintroduction of the statutory duty to deliver 1140 hours of funded ELC from 1 August 2021.
11. The expansion programme is supported by the Scottish Study of Early Learning and Childcare (SSELC), which will evaluate whether the expansion's three desired long-term outcomes have been achieved.⁸ Three SSELC baseline data reports, which provide an overview of outcomes for children and families receiving 600 hours of funded ELC, have been published. Further evaluation data will be gathered after the expansion occurs.
12. The CRWIA found that the expansion programme will not have a negative impact on children's rights or wellbeing and will support positive social, emotional, and cognitive outcomes for children. The process also found that expanded ELC will give better or further effect to the requirements of the UN Convention on the Rights of the Child in Scotland. The updated CRWIA⁹ found that the impacts identified in the original CRWIA are still live and valid. It concluded that reinstatement of the legislative duty will be even more important due to the wider impact of the COVID-19 pandemic on some children's rights and wellbeing since March 2020.
13. The FSDA found that the expansion programme will provide a number of positive steps towards reducing inequalities of outcome for children and families facing socio-economic disadvantage. It identified a number of benefits of expanding ELC, such as reducing the socio-economic attainment gap for children, removing income-related barriers to accessing funded ELC, and reducing barriers to employment opportunities for parents and carers. The updated FSDA¹⁰ found that the impacts identified in the original FSDA are still live and valid. It concluded that reinstatement of the legislative duty will be even more important due to the wider impact of the COVID-19 pandemic on children and families facing socio-economic disadvantage.
14. An Islands Communities Impact Assessment ('ICIA')¹¹ has been completed, and consultation on the impact of the reintroduction of the statutory duty was carried out with the Early Years teams of the 6 island authorities.¹² The ICIA found that reinstatement of this duty will not have a significantly different impact on island communities when compared to other communities (including other island communities). However, the process did identify some issues around implementation

⁷ <https://www.gov.scot/isbn/9781800045835>

⁸ [Early learning and childcare expansion evaluation - gov.scot](#)

⁹ <https://www.gov.scot/isbn/9781800045873>

¹⁰ <https://www.gov.scot/isbn/9781800045866>

¹¹ <https://www.gov.scot/isbn/9781800045859>

¹² Specifically Argyll and Bute, Comhairle nan Eilean Siar, Highland, North Ayrshire, Orkney and Shetland

of the duty which are likely to be more acute for island communities (most notably, around recruitment and infrastructure).

15. We do not consider there to be any impacts on privacy or the environment as a result of this instrument.

Financial Effects

16. There is a financial cost associated with increasing the mandatory amount of funded ELC to 1140 hours. The Scottish Government has agreed a multi-year funding agreement with COSLA to fully fund the expansion to 1140 hours.
17. A Business and Regulatory Impact Assessment ('BRIA') was completed prior to the 2019 Order, and this has been reviewed and updated.¹³ The BRIA identified benefits to children, families, providers and the wider economy as a result of the increase in the funded entitlement. It identified an additional recurring revenue cost of £567 million per annum from 2021-22 and an additional £476 million capital cost for the four financial years from 2017-18 to 2020-21 inclusive. The updated BRIA¹⁴ highlights that the broad expected benefits from the expansion are as set out in the previous BRIA (to accompany the 2019 Order). However, it also notes that the COVID pandemic has impacted childcare providers (in the private, third and childminding sectors), like many sectors of the economy, and many have experienced financial pressures.

Scottish Government
Early Learning and Childcare Programme Directorate
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¹³ See [early learning and childcare expansion: BRIA](#)

¹⁴ <https://www.gov.scot/isbn/9781800045842>