

IMPACT ASSESSMENT – RESULTS

Title of Policy	The Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2021
Summary of aims and desired outcomes of Policy	<p>This is an amendment to secondary legislation in order to entitle all children to funded early learning and childcare when they defer entry to primary 1 (P1) for a year.</p> <p>The aim of amending the eligibility criteria as currently drafted is to ensure that parents decisions on whether to defer their child’s P1 entry can be based on the best interests of the child and not whether they automatically qualify for access to funded ELC.</p>
Directorate: Division: team	Early Learning and Childcare Programme: Parents, Providers and Workforce: ELC Access and Parental Communications

Executive summary

1. In Scotland, all three and four year olds and eligible two year olds – those we believe will benefit most - have a statutory entitlement of up to 600 hours a year of funded ELC from the relevant start dates¹. Some children are also eligible for an additional year of funded ELC when they defer their entry to Primary 1 (P1) for a year.
2. All parents have the legal right to defer their child’s entry to primary school if they are not yet five years old at the beginning of the school year. In the current system, the youngest children (those with a January or February birth date) are eligible for an additional year of funded ELC when their parent has exercised their statutory right to delay their child’s school entry to P1 for a year.
3. Children who turn five years old between the August and December after the school commencement date can also be deferred, however, currently they do not have an automatic entitlement to funded ELC in that deferred year.
4. Local authorities have discretion over a further year of funded ELC for these children. The Scottish Government expects local authorities to make the decision about additional funded ELC for these children, based on an assessment of wellbeing, as set out in the Early Learning and Childcare statutory guidance² that accompanied the Children and Young People (Scotland) Act 2014.

¹ Children and Young People (Scotland) Act 2014:

<http://www.legislation.gov.uk/asp/2014/8/section/48>

² Early Learning and Childcare Statutory Guidance: <https://www.gov.scot/publications/early-learning-childcare-statutory-guidance/>

5. This Order will remove this birth date related distinction, and entitle all children to a further year of funded ELC when their parents have decided to defer their entry to P1 for a year.
6. This Equality Impact Assessment (EQIA) was undertaken to consider the impacts of this Order on families with a protected characteristic. This document also covers the scope of a Fairer Scotland Duty Assessment and an Island Communities Impact Assessment.
7. This EQIA process did not identify any direct or indirect unlawful discrimination through the introduction of this policy. In addition, this process identified a number of areas where the Order could advance equality of opportunity for families with particular protected characteristics.
8. The process did identify that current uptake of statutory ELC for deferred children (i.e. children who defer with January and February birth dates) is higher from families from the least deprived areas. National and local government both have a role to play in making sure parents/carers are aware of their child's funded ELC entitlement. Although there is no obligation for parents to take up their child's ELC entitlement and the option to defer may not be taken by all parents, it will be important that all parents are aware of their children's entitlement to funded ELC and can make an informed decision for their child so that families in the least deprived areas are equally able to take up this option if they feel it is right for their child.
9. We have been working with COSLA, local authorities and other stakeholders to consider implementation of the policy and we plan to continue to work with partners to consider any further learning e.g. from authorities that are already delivering this policy in part or in full, or those who adopt the policy in advance of August 2023 as a result of local policy decisions. We are considering opportunities to work with any authorities participating in early adoption of the obligation, including potential data collection and evaluation of the implementation process. Part of this work will assess communications and information approaches to support parental choice.
10. When the policy is fully implemented, it is expected that the future ELC census, which will be fully established by 2022, will allow for more substantive research on how different families use ELC in a deferred year and help to identify if there are any particular groups where uptake is significantly different and where the Scottish Government and local authorities may need to further explore why this is in order to establish whether policy adjustments should be made. Where there are early adopters of this policy we will consider whether an evaluation approach will allow us to gather additional evidence to inform the wider implementation.

Background

Early Learning and Childcare Eligibility and School Deferral

11. The overall objective of the Scottish Government's policy on funded early learning and childcare (ELC) is to provide high quality, flexible ELC that is accessible and affordable for all families.

12. In Scotland, all three and four year olds and eligible two year olds – those we believe will benefit most - have a statutory entitlement of up to 600 hours a year of funded ELC from the relevant start dates³.
13. Some children are also eligible for an additional year of funded ELC when they defer their entry to Primary 1 (P1) for a year. All parents have the legal right to defer their child's entry to primary school if they are not yet five years old at the beginning of the school year. In the current system, the youngest children (those with a January or February birth date) are eligible for an additional year of funded ELC when their parent has exercised their statutory right to delay their child's school entry to P1 for a year.
14. Children who turn five years old between the August and December after the school commencement date can also be deferred, however, currently they do not have an automatic entitlement to funded ELC in that deferred year. Local authorities have discretion over a further year of funded ELC for these children. The Scottish Government expects local authorities to make the decision about additional funded ELC for these children, based on an assessment of wellbeing, as set out in the Early Learning and Childcare statutory guidance⁴ that accompanied the Children and Young People (Scotland) Act 2014.

Early Learning and Childcare Expansion

15. In a joint agreement with local government, the Scottish Government has committed to almost double the entitlement to funded ELC to 1140 hours per year. The expanded statutory entitlement was due to come into force from August 2020, however, the coronavirus (COVID-19) pandemic necessitated a delay to the full roll-out. We have jointly agreed with Local Government to review readiness later this year, with a view to reintroducing the duty as early as possible.
16. Quality is at the heart of the ELC expansion, and a key commitment of the ELC expansion is Funding Follows the Child. Funding Follows the Child allows parents to access their child's funded ELC entitlement from any provider in the public, private or third sector including childminders, who meets the National Standard, has a place available and is willing to enter a contract with the local authority. The National Standard focuses on what children and their families can expect from their ELC experience, regardless of where they access their funded entitlement.
17. Despite the legal duty to deliver 1140 not being introduced from August 2020, following the publication of the Interim Guidance⁵ on 30 July, it is expected that local authorities will continue to use the principles and criteria of Funding Follows the Child and the National Standard as a framework to shape local funded ELC delivery.

³ Children and Young People (Scotland) Act 2014:
<http://www.legislation.gov.uk/asp/2014/8/section/48>

⁴ Early Learning and Childcare Statutory Guidance: <https://www.gov.scot/publications/early-learning-childcare-statutory-guidance/>

⁵ Funding Follows the Child and the National Standard for early learning and childcare providers. Interim Guidance: <https://www.gov.scot/publications/funding-follows-the-child-and-the-national-standard-for-early-learning-and-childcare-providers-interim-guidance/>

Policy Aim

18. The objective of The Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2020 is to entitle all children to funded ELC whose parents have decided to defer their entry to P1 for a year.
19. This means that children whose 5th birthday falls between the school commencement date in August and 31 December, are entitled to an additional year of funded ELC automatically when their parent defers their school entry for a year. This brings the entitlement for these children in line with the entitlement that already exists for deferred children whose 5th birthday is in January or February.
20. The aim of amending the eligibility criteria as currently drafted is to ensure that parents decisions on whether to defer their child's P1 entry can be based on the best interests of the child and not whether they automatically qualify for access to funded ELC. This was first set out by the Minister for Children and Young People, during a parliamentary debate in October 2019:

*"The decision to defer school for their child is not one that parents take easily. It is essential that that decision is based on the wellbeing of the individual child and not based on their access to early learning and childcare. For that reason, we intend to introduce legislation to entitle all children whose school start is deferred to access funded early learning and childcare in their deferred year."*⁶

21. This policy, as part of the wider programme to expand funded ELC entitlement to 1140 hours, contributes to the following National Outcomes:
 - We grow up loved, safe and respected so that we realise our full potential.
 - We live in communities that are inclusive, empowered, resilient and safe
 - We are well educated, skilled and able to contribute to society.
 - We tackle poverty by sharing opportunities, wealth and power more equally

The Scope of the Impact Assessment

This document covers the scope of:

22. *An Equality Impact Assessment (EQIA)*. The protected characteristics under the Public Sector Equality Duty that the Scottish Government has a duty to consider are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. The protected characteristic of marriage and civil partnership was not considered to be in scope of this Equality Impact Assessment. For each of these protected 8 characteristics, this impact assessment process assessed how the Scottish Government is giving due regard to the 'needs' of the public sector equality duty. The 'needs' are to

⁶ Meeting of the Parliament 2 October 2019:

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12292&i=111119>

eliminate discrimination, harassment and victimisation; advance equality of opportunity; and foster good relations.

23. *A Fairer Scotland Duty Assessment (FSDA)*, considering impacts of the policy on 'inequalities of outcome' caused by 'socio-economic disadvantage'.
24. *An Island Communities Impact Assessment (ICIA)*, considering the impacts of the policy on those living in island communities.

Methodology

Key Data Sources

25. Scottish Government ELC census⁷ which provides information on funded ELC. This includes data on the number of registrations for funded ELC, with information available on numbers by age, disability and additional support needs.
26. The Scottish Pupil Census which collects individual-level data on publicly-funded schools and their pupils. Data is collected from all local authority and grant-aided schools and school centres. Analysis of the pupil census data⁸ was conducted by the Scottish Government in order to inform the understanding of trends and variations in deferral rates between 2014 and 2018, and the characteristics of pupils identified as having deferred entry to primary school. Analysis of the following characteristics is included: sex, Additional Support Needs (ASN) status, disability status, ethnicity, SIMD of the pupil's home postcode, and local authority of the children to have deferred entry to primary school.
27. Research Exploring parents' views and use of Early Learning and Childcare in Scotland⁹. This was commissioned by the Scottish Government in 2017 and involved a nationally representative survey and follow up discussions with parents and carers of children under the age of six about their use, views and experience of ELC. A total of 10,526 valid survey responses were submitted by parents. The research explored views and experiences across different parent groups.

Consultation

28. The Scottish Government had planned to carry out a formal consultation on this policy however, the ELC Directorate's work was prioritised to the COVID-19 response, meaning this could not be carried out.
29. Despite not carrying out a formal consultation, the Scottish Government has discussed the introduction of the legislation to entitle all deferred children to funded ELC with a range of stakeholders, as outlined below:

⁷ Scottish Government: Funded early learning and childcare statistics in Scotland:

<https://www.gov.scot/collections/early-learning-and-childcare-statistics/>

⁸ Scottish Government: Deferred entry to primary school: statistics:

<https://www.gov.scot/publications/deferred-entry-primary-school-statistics/>

⁹ Scottish Government: Exploring parents' views and use of early learning and childcare in Scotland; 2018: <https://www.gov.scot/publications/exploring-parents-views-use-early-learning-childcare-scotland/>

- Convention of Scottish Local Authorities (COSLA)
 - Individual local authorities
 - Association of Directors of Education in Scotland (ADES) Early Years Network
 - ADES Resources Network
 - Working Group on ELC and Childcare Sector Recovery
 - Give Them Time Campaign
 - Scottish Government Policy Units and Education Scotland
30. Since the Minister for Children and Young People made the commitment to extend eligibility for all deferred children to have access to funded ELC, it was made clear that it would be implemented in partnership with education authorities, who hold the statutory duty to ensure provision of funded ELC. Prior to the pandemic and before full roll out of the 1140 hours ELC expansion was delayed, both COSLA and ADES Early Years Network advised that commencing this change at the same time as when local authorities statutory duty to provide 1140 hours begins, would put their successful delivery of the ELC expansion at risk as removing local authority discretion over funded ELC for deferred children born between August and December could lead to an increase in the number of children each year with a statutory entitlement to funded ELC places that has not been accounted for in current ELC expansion plans.
31. In our discussions with COSLA, and with local authorities directly, we have therefore explored the implications of this policy change and different options for implementation, mindful of the need to ensure that full rollout does not put delivery of the 1140 hours ELC expansion at risk.
32. The Working Group on ELC and Childcare Sector Recovery membership is drawn from the representative bodies from across the childcare sector (CALA, EYS, NDNA, SCMA and SOSCN) together with the Care Inspectorate, COSLA and Scottish Government. This group raised no significant concerns on the Order. Written feedback from one of the childcare sector membership organisations who had asked for comments from their members, supported the introduction of this legislation. They noted that the change will offer choice and continuity for families, and will mean there is a consistent policy nationally.
33. Since the Give Them Time campaign group launched in 2018, they have called for a further year of ELC funding for all children whose parents have a statutory right to defer their child's P1 entry. They also have called for more consistent and transparent information from local authorities in relation to parents legal rights on deferral and asked that decisions on a discretionary funding for children with an August to December birth date who are deferred, are consistently child-centred. They have received official support from the following organisations:
- Connect
 - Play Scotland
 - The National Parent Forum of Scotland
 - Children in Scotland
 - Upstart Scotland
 - Reform Scotland
 - Home-start

34. Before the COVID-19 outbreak, draft statutory guidance¹⁰ was published for public consultation between December 2019 and March 2020. This included updated sections on school deferral and ELC eligibility, based on the current legislative framework. This consultation received feedback on the current legislation for ELC eligibility for deferred children, with many responses calling for the current legislation to change so that all deferred children can access funded ELC in their deferred year. An independent analysis of the consultation responses is currently being produced for future publication.

Key Findings

Key Findings – potential Impacts on the ‘Needs’ of the Public Sector Equality Duty

Potential Impacts on Eliminating Discrimination

35. This process did not find evidence to suggest that this policy will discriminate against people who share the relevant protected characteristics.
36. The policy will have a statutory basis. This means that education authorities will have a statutory duty to secure funded ELC for all children that defer in their area, regardless of the family’s background or circumstances.
37. Funded ELC in Scotland is underpinned by the National Standard, which underlines our commitment to ensuring that children’s funded ELC entitlement is fully inclusive. Education authorities and ELC providers have a wide range of duties that they must already meet under existing legislation to eliminate discrimination, harassment and victimisation within ELC:
- Education (Additional Support for Learning) (Scotland) Act 2004¹¹;
 - Public Services Reform (Scotland) Act 2010¹²;
 - Equality Act 2010¹³;
 - Children and Young People (Scotland) Act 2014¹⁴; and
 - Standards in Scotland’s Schools etc. Act 2000¹⁵.
38. This means that ELC provision must be delivered in a way that ensures equality of access for, and accounts for the varying needs of, all children. Children should be able to learn free from discrimination and in settings which actively tackle health and social inequalities. Additional support therefore must be provided, over the short or the long term, to overcome needs arising from the care and learning environment, family circumstances, health needs or disability or social and emotional factors.

¹⁰ Draft Statutory Guidance for ELC: <https://consult.gov.scot/children-and-families/early-learning-and-childcare-statutory-guidance/>

¹¹ Education (Additional Support for Learning) (Scotland) Act 2004: <https://www.legislation.gov.uk/asp/2004/4/contents>

¹² Public Services Reform (Scotland) Act 2010: <https://www.legislation.gov.uk/asp/2010/8/contents>

¹³ Equality Act 2010: <https://www.legislation.gov.uk/ukpga/2010/15>

¹⁴ Children and Young People (Scotland) Act 2014: <http://www.legislation.gov.uk/asp/2014/8/contents/enacted>

¹⁵ Standards in Scotland’s Schools etc. Act 2000: <https://www.legislation.gov.uk/asp/2000/6/contents>

Potential Impacts on Advancing Equality of Opportunity

Protected characteristic - Age¹⁶

In the Scottish Government's 'The Tackling Child Poverty Delivery Plan' 2018-2022¹⁷, there is a focus on 'priority families' at high risk of poverty, this includes families with young mothers (where the mother is under 25 years of age) as 44% of children of mothers under 25 years of age are likely to live in relative poverty. Under the current system, parents who share this protected characteristic may therefore face financial barriers when considering deferral for their child, as ELC for children who defer with an August to December birth date, is not a statutory entitlement.

This Order will mean that children who defer in this age group do have a statutory entitlement to funded ELC, removing potential financial barriers some families may currently face, as the long-standing legislative position is that funded ELC hours must be free at the point of access regardless of which setting the hours are being delivered in.

The parent survey exploring uses of ELC in Scotland¹⁸ showed that household income and parent age showed the closest correlation with parents' awareness of the planned ELC expansion in Scotland. Lower income households and parents aged under 35 were less likely to be aware.

Although these findings are related to awareness of the ELC expansion specifically as opposed to awareness of ELC access for deferred children, we are taking actions to ensure that all parents and carers are able to make informed decisions about deferral. National and local government both have a role to play in making sure parents/carers are aware of their child's funded ELC entitlement.

Before the amended duty commences, we will develop a new page on Parentclub.scot¹⁹ with information about deferral, and 'things to consider' for parents and carers. We will also provide a PDF of this resource to local authorities, to share locally if required. We will also examine where other materials and resources could be made available.

Protected characteristic - Disability

In the Scottish Government's 'The Tackling Child Poverty Delivery Plan' 2018-2022²⁰, there is a focus on 'priority families' at high risk of poverty, this includes families which include a disabled adult or child as 30% of children from a family with a disabled adult or child are likely to live in relative poverty. Under the current system, parents from families with an adult or child with a disability may therefore

¹⁶ Under the Equality Act 2010, age as a protected characteristic does include the age of children eligible to funded ELC. Impact of policy on the protected characteristic of age therefore only considered in terms of parent(s)/carer(s) of children who are eligible for funded ELC.

¹⁷ Scottish Government: Every child, every chance: tackling child poverty delivery plan 2018-2022; 2018: <https://www.gov.scot/publications/child-chance-tackling-child-poverty-delivery-plan-2018-22/>

¹⁸ Scottish Government: Exploring parents' views and use of early learning and childcare in Scotland; 2018: <https://www.gov.scot/publications/exploring-parents-views-use-early-learning-childcare-scotland/>

¹⁹ Parent Club: <https://www.parentclub.scot/>

²⁰ Scottish Government: Every child, every chance: tackling child poverty delivery plan 2018-2022; 2018: <https://www.gov.scot/publications/child-chance-tackling-child-poverty-delivery-plan-2018-22/>

face financial barriers when considering deferral for their child, as ELC for children who defer with an August to December birth date, is not a statutory entitlement.

This Order will mean that these children do have a statutory entitlement to funded ELC, removing potential financial barriers some families may currently face, as the long-standing legislative position is that funded ELC hours must be free at the point of access regardless of which setting the hours are being delivered in.

Data from the Scottish Study of Early Learning and Childcare²¹ show that at age four- and five-years old children with a long-term health condition or disability were more likely to demonstrate delayed development and to be assessed as having some behavioural difficulties than those without.

Evidence shows that children with a disability are more likely to defer P1 entry. In 2018, data from the pupil census²² shows that:

- The estimated deferral rate is higher for pupils with a recorded disability (38%) than for those without (15%). 19% of pupils with a disability born in August to December and 77% born in January and February deferred, compared with 4% and 44% for pupils born in the same months without a recorded disability.
- Deferred pupils are more likely to have a disability than other P1 pupils. 1.0% of all deferred pupils in P1 have a disability. The rate of disability in this group is around six times as high compared to all P1 pupils excluding deferrals, of whom 0.2% have a disability. Among deferred pupils born in January and February, 0.8% have a disability. While for those born from August to December, 1.7% have a disability.

We do not have evidence on if these children accessed ELC in their deferred year and if they did, whether this was funded by the Scottish Government, funded by the local authority on a discretionary basis, or funded by the family. However, as families with a disabled child may be more likely to defer their child's P1 entry, this Order could have a disproportionately positive impact on this protected characteristic.

Protected characteristic - Sex²³

In the Scottish Government's 'The Tackling Child Poverty Delivery Plan' 2018-2022²⁴, there is a focus on 'priority families' at high risk of poverty, this includes families lone parents, 36% of children of lone parents are likely to live in relative poverty. Data from Scotland's census shows that women accounted for 87% of lone parent families in Scotland.²⁵

Under the current system, lone parent families, the majority of which are headed by women, may therefore face financial barriers when considering deferral for their

²¹ Scottish Government: Scottish Study of Early Learning and Childcare - ELC leavers: phase 2 report; 2020: <https://www.gov.scot/publications/scottish-study-early-learning-childcare-etc-leavers-phase-2-report/>

²² Scottish Government: Deferred entry to primary school statistics: [file:///C:/Users/U444661/Downloads/deferred-entry-primary-school-statistics-2018%20\(4\).pdf](file:///C:/Users/U444661/Downloads/deferred-entry-primary-school-statistics-2018%20(4).pdf)

²³ Sex is the protected characteristic and where appropriate, it would be preferred if all data referred to sex. However, where data is currently collected on gender, we have referred to gender.

²⁴ Scottish Government: Every child, every chance: tackling child poverty delivery plan 2018-2022; 2018: <https://www.gov.scot/publications/child-chance-tackling-child-poverty-delivery-plan-2018-22/>

²⁵ [Household composition for specific groups of people in Scotland](https://www.gov.scot/publications/household-composition-for-specific-groups-of-people-in-scotland-2011/), Scotland's census 2011.

child, as ELC for children who defer with an August to December birth date, is not a statutory entitlement.

This Order will mean that children who defer in this age group do have a statutory entitlement to funded ELC, removing potential financial barriers lone parent families (typically headed by women) may currently face, as the long-standing legislative position is that funded ELC hours must be free at the point of access regardless of which setting the hours are being delivered in.

Evidence also shows that women generally carry out the majority of childcare and other caring responsibilities in the family.²⁶ In the current system, we do not have evidence on if and how children with August to December birth dates who defer access ELC in their deferred year. We also do not have information on whether deferring children in this age-group, has an impact on the time the parent or carer spends caring for the child, and their subsequent ability to work or increase their hours of work. If in the current system, deferring children with August to December birth dates does impact on the time the parent or carer spends caring for the child, we would expect this Order to have a greater impact on women, as they typically take on the majority of the caring roles in the family. We know that when the ELC 1140 hour expansion is rolled out that families will generally have more flexibility with their ELC hours, compared to school hours, which may therefore benefit women's ability to work.

Data from the Scottish Study of Early Learning and Childcare²⁷ show that at age four- and five-years old boys were more likely to demonstrate delayed development and to be assessed as having some behavioural difficulties than girls.

Evidence shows that P1 pupils who deferred in 2018, were more likely than other P1 pupils to be male. In 2018, data from the pupil census²⁸ shows that 61% of deferred pupils were male, compared with 50% of all P1 pupils excluding deferrals.

We do not have evidence on if these children accessed ELC in their deferred year and if they did, whether this was funded by the Scottish Government, funded by the local authority on a discretionary basis, or funded by the family. However, as male pupils may be more likely to defer, this Order could have a disproportionately positive impact on families with a male child.

Protected characteristic - Race

In the Scottish Government's 'The Tackling Child Poverty Delivery Plan' 2018-2022²⁹, there is a focus on 'priority families' at high risk of poverty, this includes minority ethnic families as 37% of children from minority ethnic families are likely to live in relative poverty.

²⁶ [Time use survey 2014-2015: results for Scotland](#)

²⁷ Scottish Government: Scottish Study of Early Learning and Childcare - ELC leavers: phase 2 report; 2020: <https://www.gov.scot/publications/scottish-study-early-learning-childcare-etc-leavers-phase-2-report/>

²⁸ Scottish Government: Deferred entry to primary school statistics: [file:///C:/Users/U444661/Downloads/deferred-entry-primary-school-statistics-2018%20\(4\).pdf](file:///C:/Users/U444661/Downloads/deferred-entry-primary-school-statistics-2018%20(4).pdf)

²⁹ Scottish Government: Every child, every chance: tackling child poverty delivery plan 2018-2022; 2018: <https://www.gov.scot/publications/child-chance-tackling-child-poverty-delivery-plan-2018-22/>

Under the current system, minority ethnic families may therefore face financial barriers when considering deferral for their child, as ELC for children who defer with an August to December birth date, is not a statutory entitlement.

This Order will mean that children who defer in this age group do have a statutory entitlement to funded ELC, removing potential financial barriers minority ethnic families may be more likely to face, as the long-standing legislative position is that funded ELC hours must be free at the point of access regardless of which setting the hours are being delivered in.

The estimated rates of deferral are similar for White – Scottish, White - other British, White – other and all other ethnic groups for pupils born between August and December at around 4%.

For those born in January and February, the estimated deferral rate for all other ethnic groups (41%) is slightly lower than the rates for White – Scottish (45%), White – other British (43%) and White – other (47%).

Protected characteristic – Religion or belief

There is evidence that Muslim families, are at a higher risk of poverty. Data for 2013-18 for Scotland showed that Muslim adults were more likely to be in relative poverty than adults overall. 41% of Muslim adults were in relative poverty after housing costs, where the proportion for adults overall is 18%.³⁰ All other religious groups and those with no religion had a relative poverty rate after housing costs similar to that found for the whole population.

Under the current system, Muslim families, may therefore face financial barriers when considering deferral for their child, as ELC for children who defer with an August to December birth date, is not a statutory entitlement.

This Order will mean that children who defer in this age group do have a statutory entitlement to funded ELC, removing potential financial barriers Muslim families may currently face, as the long-standing legislative position is that funded ELC hours must be free at the point of access regardless of which setting the hours are being delivered in.

Protected characteristics – Pregnancy and Maternity; Gender reassignment; and Sexual orientation

This EQIA process did not identify any positive or negative impacts relating to advancing equality of opportunity based on the protected characteristics sexual orientation, gender reassignment, and pregnancy and maternity. However, as we continue through the policy development, this will be kept under review.

Potential Impacts on promoting good relations

39. This EQIA process did not find any particular positive or negative impacts related to promoting good relations between groups who share and those who do not share particular protected characteristics as a result of this policy.

³⁰ Scottish Government: Poverty & Income Inequality in Scotland: 2015-18:
<https://www.gov.scot/publications/poverty-income-inequality-scotland-2015-18/pages/9/>

Key Findings – potential impacts on people living on low income or living in poverty

40. This legislative change will align children’s funded ELC entitlement more closely to the existing right parents’ have to defer for children who turn five years old between the August and December after the school commencement date.
41. As is the long-standing legislative position, funded ELC hours must be free at the point of access regardless of which setting the hours are being delivered in. This Order will therefore mean that families of children with a birth date in August to December who defer will be able to make decisions for their children, based on what they feel is in the best interests of the child, without the financial barrier of additional ELC costs. The impact on families with children with August to December birth dates who defer who are on low income or live in poverty, will therefore be positive, as in the current system, they will be less likely to be able to afford an additional of funded ELC in a deferred year where discretionary funding was not granted by the local authority.
42. Evidence on deferral from the Scottish pupil census³¹ shows that 20% of deferred pupils in 2018, were from SIMD 1 (20% most deprived areas in Scotland), however, for all P1 pupils excluding deferrals, 24% of pupils are from SIMD 1. In contrast, a higher proportion of deferred pupils (22%) were from SIMD 5 (20% least deprived areas in Scotland) than for all P1 pupils excluding deferrals which was 19%.
43. This analysis also indicates that the rate of deferral increases as the area deprivation of a pupil’s home postcode decreases for those with a birth date in January and February (the age group who are already entitled to funded ELC in a deferred year), whereas the rate is consistent across all SIMD levels for children with an August to December birth date (the age group that is not currently entitled to funded ELC in a deferred year).
44. In addition, deferred entry for pupils born in January and February increases as the area deprivation of the pupil’s home postcode decreases, from 35% in the 20% most deprived areas to 55% in the least deprived areas. For pupils born from August to December, the estimated rate of deferral was the same (4%) for pupils’ whose home postcode was in the least deprived and those from the most deprived areas. We do not have data on why this difference exists, however, evidence regarding parental awareness of the ELC expansion³² indicated that lower income households, single earners and those in the most deprived areas were less likely than others to be aware of the planned expansion in funded hours, therefore the difference in deferral rate for children who already have an automatic entitlement to ELC in the deferred year, could be related to parents in more deprived areas having less knowledge of their children’s funded ELC eligibility.

³¹ Scottish Government: Deferred entry to primary school statistics:

[file:///C:/Users/U444661/Downloads/deferred-entry-primary-school-statistics-2018%20\(4\).pdf](file:///C:/Users/U444661/Downloads/deferred-entry-primary-school-statistics-2018%20(4).pdf)

³² Scottish Government: Exploring parents' views and use of early learning and childcare in Scotland; 2018: <https://www.gov.scot/publications/exploring-parents-views-use-early-learning-childcare-scotland/>

45. National and local government both have a role to play in making sure parents/carers are aware of their child's funded ELC entitlement. Although there is no obligation for parents to take up their child's ELC entitlement, it is important that all parents are aware of their children's entitlement and can make an informed decision for their child. Before this Order commences, we will work with partners to develop a new page on Parentclub.scot³³ with information about deferral, and 'things to consider' for parents and carers. We will also provide a PDF of this resource to local authorities, to share locally if required and to aid discussion with families (particularly those who are less likely to use online resources). We will also examine where other materials and resources could be made available, particularly working with local authorities that are already implementing this policy in part or in full.

Key Findings – potential effects on an island community which are significantly different from the effect on other communities

46. Evidence on deferral from the Scottish pupil census³⁴ shows for pupils born in January and February, some of the highest deferral rates in 2018 were in Island authorities (or authorities with significant island communities, which are listed as relevant authorities that must have regard to Island communities in carrying out its functions³⁵): Shetland Islands (89%); and Orkney Islands (86%). Highland (64%) also had relatively high rates of deferral for this age group in 2018. The rate of deferral for pupils born in January and February for Scotland in 2018 was 44%.

47. North Ayrshire (25%), another island authority was one of the authorities with the lowest rates of deferral for pupils born in January and February. Deferral rates in the other island authorities for January and February were:

- Argyll and Bute Council (42%)
- Comhairle nan Eilean Siar (54%)

48. For pupils born from August to December, Orkney Islands (37%), Shetland Islands (17%) also had the highest deferral rates for Scotland. The rate of deferral for pupils born in from August to December for Scotland in 2018 was 4%. Deferral rates in remaining Island authorities for January and February were:

- Argyll and Bute Council (3%)
- Comhairle nan Eilean Siar (7%)
- Highland Council (8%)
- North Ayrshire Council (3%)

³³ Parent Club: <https://www.parentclub.scot/>

³⁴ Scottish Government: Deferred entry to primary school statistics: [file:///C:/Users/U444661/Downloads/deferred-entry-primary-school-statistics-2018%20\(4\).pdf](file:///C:/Users/U444661/Downloads/deferred-entry-primary-school-statistics-2018%20(4).pdf)

³⁵ Islands (Scotland) Act 2018: <https://www.legislation.gov.uk/asp/2018/12/enacted#:~:text=An%20Act%20of%20the%20Scottish%20Parliament%20to%20make,in%20respect%20of%20marine%20development%20adjacent%20to%20islands.>

49. Data from the Scottish ELC census³⁶, shows a similar pattern. As set out in Table 1, all island authorities, excluding North Ayrshire, have percentages of those eligible for deferred entry (i.e. children with a birth date between mid-August and February) registered for an additional year of funded ELC, higher than the overall proportion for Scotland:

Table 1: Percentage of those eligible for deferred entry by local authority, 2019

	Percentage of those eligible for deferred entry
Argyll and Bute Council	23%
Comhairle nan Eilean Siar	32%
Highland Council	27%
North Ayrshire Council	12%
Orkney Council	42%
Shetland Council	50%
Scotland	19%

Source: [Scottish Government: Funded early learning and childcare statistics in Scotland](#)

50. The current ELC census does not have data on the birth dates of the children registered for funded ELC to be able to distinguish whether this ELC place was funded by the Scottish Government, or funded by the local authority on a discretionary basis. We also do not have evidence on if, and at what rate families with a deferred child with a Aug-Dec birth date, self-funded an additional year of ELC. As the rate of deferral for Aug-Dec pupils who deferred entry to primary school in island communities is higher than the Scotland average, the Order could have a particularly positive impact on these families, particularly if many families in the current system are self-funding ELC in the deferred year for children in this age group.
51. Overall, the evidence indicates that under the current legislative framework, deferral rates for children in each age category in island communities in general, are higher than deferral rates in non-island communities. The evidence gathered does not indicate why this could be, however we are aware anecdotally, that there can be a distinct approach to deferral in island communities, due to parental concerns about how old children will be when they complete schooling and leave home.
52. The nature of ELC and childcare provision in island communities (and other remote and rural communities) varies from provision in more populous areas. Settings are typically smaller and face higher operating costs due to smaller numbers of children. For ELC, childminding, third sector and local authority-run provision tend to be more prevalent than private settings³⁷.
53. It is difficult to predict the parental response, and subsequent uptake of funded ELC in a deferred year by children with August-December birth dates, once this policy commences. If there is a particularly sharp rise in deferral rates and ELC uptake by these children once the new duty commences, local authorities could face capacity issues, and if these challenges arise, they could be particularly

³⁶ Scottish Government: Funded early learning and childcare statistics in Scotland: <https://www.gov.scot/collections/early-learning-and-childcare-statistics/>

³⁷ Data from the Care Inspectorate Datastore: <https://www.careinspectorate.com/index.php/publications-statistics/93-public/datastore>

acute in an island authority due to the nature of ELC and childcare provision in an island context with a small population and where settings typically rely on a smaller workforce.

54. The extent to which local authorities are able to flex to meet any capacity issues that may arise is likely to be a key concern for island communities, particularly if they have fewer private ELC settings as funded providers to create additional capacity.
55. We have been working with island authorities and other stakeholders to consider implementation of the policy and we plan to continue to work with them to consider any further learning e.g. from authorities that are already delivering this policy in part or in full, or those who adopt the policy in advance of August 2023 as a result of local policy decisions. This will provide us with the opportunity to further explore any effects this policy could have on an island community which is significantly different from the effect on other communities.

Recommendations and Conclusion

56. This EQIA process did not find evidence to suggest that this policy will discriminate against people who share the relevant protected characteristics. In addition, this process identified a number of areas where the Order could advance equality of opportunity for families with particular protected characteristics.
57. The process did identify that current uptake of statutory ELC for deferred children (i.e. children who defer with January and February birth dates) is higher from families from the least deprived areas. National and local government both have a role to play in making sure parents/carers are aware of their child's funded ELC entitlement. Although there is no obligation for parents to take up their child's ELC entitlement and the option to defer may not be taken by all parents, it will be important that all parents are aware of their children's entitlement to funded ELC and can make an informed decision for their child so that families in the least deprived areas are equally able to take up this option if they feel it is right for their child.
58. We will be setting up a Working Group to consider the implementation of the policy and we hope to learn from authorities that are already delivering this policy in part or in full, or those who adopt the policy in advance of August 2023 as a result of local policy decisions. We are considering opportunities to work with any authorities participating in early adoption of the obligation, including potential data collection and evaluation of the implementation process. Part of this work will assess communications and information approaches to support parental choice.
59. When the policy is fully implemented, it is expected that the future ELC census, which will be fully established by 2022, will allow for more substantive research on how different families use ELC in a deferred year and help to identify if there are any particular groups where uptake is significantly different and where the Scottish Government and local authorities may need to further explore why this is in order to establish whether policy adjustments should be made. Where there

are early adopters of this policy we will consider whether an evaluation approach will allow us to gather additional evidence to inform the wider implementation.

60. The Scottish Government will also continue to engage closely with stakeholders and local authorities to ensure that equalities issues are considered during any policy development and implementation.