

Early Learning and Childcare Statutory Guidance

Analysis of Consultation Responses

March 2021

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Executive Summary

Introduction

The Scottish Government updated the Statutory Guidance for Early Learning and Childcare (ELC) to reflect changes in the overarching policy framework for the delivery of ELC since the guidance was first published in 2014 including legislative changes that were planned to come into effect from August 2020. A public consultation was conducted to elicit feedback on the revised Statutory Guidance in order to inform the development of the final version.

The final version was intended for publication by the end of May 2020, however the coronavirus (COVID-19) pandemic necessitated a delay to the statutory roll-out to increase children's ELC entitlement from 600 to 1140 hours from August 2020. Full statutory roll out of 1140 hours is now planned for August 2021, and the final version of the Statutory Guidance is now planned for May 2021.

The consultation ran for 10.5 weeks, opening on 20 December 2019 and closing on 4 March 2020. It asked 5 questions, focussing mainly on the clarity and readability of the revised Guidance. A total of **194** substantive responses were received and included in the consultation data analysis. This included **132** responses from individuals and **62** responses from organisations.

Key Results

Impact on Understanding of the Legislation

The consultation asked two questions in relation to how well the Guidance helped respondents to understand the legislation relating to education authorities' functions in the delivery of ELC, and whether there were any specific aspects of the legislative framework that remained unclear.

Just under three quarters of respondents (73%) indicated that the Guidance had helped their understanding of the legislation, with organisations (81%) more likely to feel that the Guidance was helpful in this regard compared to individuals (69%).

Key areas that were considered to remain unclear or caused concern included:

- the Guidance being subjective and open to interpretation, and specific ambiguity over how local authorities would/could implement provision;
- the treatment of deferrals and, in particular, the availability of discretionary deferrals for children whose birthdays are between August and December. It was felt that the rationale for this was not clear/would be left to the discretion of each local authority¹;

¹ Since the consultation on the revised statutory guidance was carried out, the Scottish Parliament approved [The Provision of Early Learning and Childcare \(Specified Children\) \(Scotland\) Amendment Order 2021](#). This Order amends legislation to provide an additional year of funded ELC to all children who defer their primary 1 start from August 2023.

- the ‘funding follows the child’ aspect of the Guidance was either unclear, provided inconsistent messages, and/or did not match respondents experiences;
- that the Guidance allowed local authorities to treat Private, Voluntary and Independent (PVI) providers differently compared to their own services;
- that greater clarity may be required as to whether blended models of childcare would be possible;
- a need to incorporate greater levels of accountability for both providers and local authorities;
- greater clarity to be provided regarding childminders’ abilities to charge retainer fees; and
- a desire to allow childminders to care for family members within the ELC provision.

A few also suggested that the Guidance needed to better embed the rights of the child and the United Nations Convention on the Rights of the Child (UNCRC), as well as the Education (Additional Support for Learning) (Scotland) Act 2004 and Gaelic Medium Education provision.

Clarity of the Guidance

Again, the consultation asked two questions which sought feedback on the clarity and readability of the Draft Guidance, and any suggestions for improvements.

Around three quarters of those who responded (77%) indicated that they felt the Guidance was clear and readable. Again, organisations (85%) typically felt that the Guidance was clearer and more readable than individuals (73%).

Two key issues were identified by respondents in this respect:

- **Accessibility** - issues with the Guidance were identified for and by lay persons, parents/carers and some ELC practitioners. It was felt that the use of jargon, ‘legal speak’, the length of the document, numerous references and lengthy definitions could make the Guidance less user friendly/accessible. It was suggested that the information should be prioritised using bullet points for key information; that legislative references be included in a table, as a footnote, hyperlink or bracketed text; and that a summary version may be beneficial.
- **Open to Interpretation** - it was felt that much of the Guidance was open to interpretation by local authorities, which respondents expected would lead to differing approaches being adopted and maintained across the country.

Other Comments

The consultation asked one other question to allow respondents to provide any other comments they wished to make in relation to the Draft Guidance.

Some respondents (n=51) adopted a standard/campaign style response, highlighting seven issues largely relating to childminding, as follows:

- ability to charge retainer fees (n=50);
- local authority requirement to promote all partner providers equally (n=33);
- models of ELC being offered by local authorities being too prescriptive and limited, and not flexible enough for parents/carers or modern childminding practices (n=33);
- support for flexibility driven by demand from parents/carers/families (n=32);
- support for blended care models and suggestions that local authorities should not be allowed to only offer single-provider models (n=34);
- that support should be considered to allow childminders to provide their services to family members within the ELC provision (n=32); and
- support for the commitment to play (n=25).

Other respondents raised similar concerns in relation to childminders, as well as perceptions that they were not fully considered and supported in the Guidance. There was also discussion of the potential challenges or loss of business which they perceived childminders may encounter as a result of the changes.

Again, concerns around deferrals were discussed, including a need for a more standard approach to be adopted, for parents/carers to be provided with more information on this and given a greater voice in the decision making process, and for the process to be more transparent and provide the opportunity for appeal. Similarly, respondents repeated the need for greater equality and fairness to be provided between all funded providers, including a need for equal promotion, equality in funding and access to funding for expansion/resources, considering PVI capacity before local authorities embark on expanding their own premises, and more effective consultation with PVI providers.

Support was expressed for blended models, while some were concerned that the desired level of flexibility may not be possible, and others reported a possible reduction in the number of hours that could be provided per day.

It was also suggested that the Guidance should be strengthened to ensure it could not be interpreted in a way that negatively impacted children living in poverty, and ensured that local authorities actively promoted and engaged with families. It was also felt that the Guidance should stress that it is not compulsory for families to take up all or any of their entitlement, and there should be no penalties for not utilising their full entitlement.

Conclusion

Overall, the consultation achieved a relatively high response rate, both in general and to each individual question posed. There was significant consistency in the issues discussed by respondents, both between questions and across respondent groups. Respondent feedback identified several key areas of concern, for parents/carers, PVI providers and local authorities, and provided some constructive suggestions which will help the Scottish Government to further improve the Guidance ahead of its publication.

Introduction

Background to the Research

The provision of accessible, high quality, flexible and affordable early learning and childcare (ELC) is a key focus of early years' policy for the Scottish Government. As such, the Scottish Government and local authorities have committed to almost doubling children's funded ELC entitlement from 600 to 1140 hours. 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. The full statutory roll out of 1140 hours is now planned for August 2021. Under the ELC multi-year agreement, the Scottish Government has committed to provide local authorities with an additional £567 million per year in revenue funding² to support the delivery of this. The expansion will deliver three main benefits for children and families:

- children's development improves and the poverty related attainment gap narrows;
- more parents will have the opportunity to be in work, training or study; and
- increased family resilience through improved health and wellbeing of parents and children³.

The related Statutory Guidance is targeted towards education authorities and is designed to support them in exercising their functions in relation to the delivery of ELC. However, the current Guidance was published in 2014 and is based on changes relating to ELC made previously by way of the Children and Young People (Scotland) Act 2014. In order to reflect the substantial changes in the policy and legislative framework for the delivery of ELC since 2014, and the forthcoming changes in relation to funding entitlements and how this can be used, the Scottish Government updated the Statutory Guidance. Based on feedback from stakeholders, the document was refreshed to ensure that it was clear and readable and offered improved clarity on specific points. Revised sections included:

- Section 46: Definition of early learning and childcare;
- Section 47: Duty to secure provision of early learning and childcare for eligible children;
- Section 48: Mandatory amount of early learning and childcare;
- Section 49: Looked after 2-year olds: alternative arrangements to meet wellbeing needs;
- Section 50: Duty to consult and plan on delivery of early learning and childcare;

² Scottish Government; 2018: [Minister for Children and Young People, Maree Todd MSP, addresses Parliament about the early learning and childcare expansion.](#)

³ Scottish Government: [Early learning and childcare: policy background.](#)

- Section 51: Method of delivery of early learning and childcare; and
- Section 52: Flexibility in the way in which early learning and childcare is made available.

The Scottish Government conducted a public consultation to elicit feedback on the revised Statutory Guidance in order to inform the development of the final version. The results of the consultation exercise are detailed here.

The Consultation Process

The consultation ran for 10.5 weeks, opening on 20 December 2019 and closing on 4 March 2020. It asked 5 questions, all of which sought free text responses.

Much of the consultation sought feedback on the clarity and readability of the revised Guidance, with questions including:

- Q1a. Does the Guidance help your understanding of the legislation relating to education authorities' functions in the delivery of early learning and childcare?
- Q1b. Are there any specific aspects of the early learning and childcare legislative framework that remain unclear after reading the Guidance?
- Q2a. Do you find the Guidance clear and readable?
- Q2b. Are there any specific areas of the Guidance where we could improve readability?
- Q3. Do you have any other comments on the Early Learning and Childcare Statutory Guidance for education authorities?

Views were sought from both individuals and organisations via the Scottish Government's online consultation tool, Citizen Space.

The publication of this consultation analysis took longer than desirable following the end of the consultation period, due to the impact of the COVID-19 pandemic on capacity within the Scottish Government.

Response Profile

A total of 198 responses were received, with the majority (n=188; 95%) submitted directly via Citizen Space, and 10 (5%) responses submitted by email.

However, two responses were removed from the analysis for being invalid, one of these was blank while the other provided the same response across all questions which was not relevant to the current consultation. A further two respondents were identified as having submitted duplicate responses, these were collated so that one response was generated for each whilst ensuring no content was lost. As such, the final number of substantive responses included in the analysis was **194**. This included **132** responses from individuals, and **62** responses from organisations.

Organisations who responded represented the following sectors:

- local authorities (n=16, 26%);

- ELC providers, including private providers, local authority/school based providers and childminders (n=27, 44%);
- professional bodies (n=9, 14%);
- third sector organisations who support children and young people or represent parents/carers (n=8, 13%); and
- other organisation types (n=2, 3%).

Respondents self-identified as either an individual or organisation. As a result, some childminders were categorised as individuals and others as organisations. A total of 62 childminders were, however, identified within the responses (consisting of five organisations and 57 individuals). Meanwhile, 22 nursery providers responded (all categorised as organisations). It should be noted however, that a higher number of childminders may be represented in the data as some may not have clearly identified their professional interest/role within their response.

Most responses followed the standard format although a few (n=4) were received which did not address the specific consultation questions, but instead provided views in relation to the Guidance more generally, and/or provided comments on specific areas/clauses of the Guidance. There was no word limit for free text responses and the length and level of detail provided in responses varied considerably (with responses from individuals typically being shorter than those from organisations).

Analytical Approach

All responses were logged into a database and screened to ensure that they were appropriate/valid. Feedback was then analysed and is presented under the appropriate sections below.

Comments given at each question were examined to identify the main themes and issues discussed, with analysis conducted to identify any differences in views between respondent groups. The main themes to emerge across the consultation were also recorded and verbatim quotes extracted in some cases to highlight the dominant views that were expressed.

Where questions sought yes/no type answers (i.e. Q1a and Q2a), responses were coded where possible in order to undertake quantitative analysis.

All respondents were asked if they were willing for their response to be published. Two thirds (n=116, 60%) wanted only their response to be published, without their name, while 28% (n=55) were content for their response to be published with their name. The remaining respondents (n=23, 12%) either did not wish their response to be published or did not answer the question, and so were treated as wishing to remain anonymous.

Only extracts where the respondent indicated that they were content for their response to be published have been included in this report. A decision was made to anonymise all responses as part of the reporting process.

Report Presentation and Caveats

Findings are presented as they relate to each question in the consultation. Where views differed significantly between respondent groups, this is picked up narratively in the report.

It should be noted, however, that several core issues were discussed consistently across all consultation questions. While responses have been analysed and discussed under the most relevant question below, some repetition does remain (particularly between Q1 and Q3) in order to highlight the key issues discussed at each question and to reflect those areas that were key concerns for respondents.

A few respondents referenced external sources of evidence within their responses. The content of these external sources was not analysed here but a full list of these references is provided in Appendix A.

Similarly, several respondents provided comments and suggestions related to specific clauses/paragraphs of the Guidance. These were collated and provided separately to the Scottish Government for consideration.

The findings presented here should not be taken as representative of the wide range of stakeholders invited to respond to this consultation, nor should they be generalised too broadly. Rather, they reflect only the views of those individuals and organisations who chose to respond.

Impact on Understanding of the Legislation

The consultation asked two questions to determine whether the draft Guidance helped the reader's understanding of the legislation relating to education authorities' functions, and to identify any areas of the legislative framework that remained unclear. These questions were:

- Q1a - Does the Guidance help your understanding of the legislation relating to education authorities' functions in the delivery of early learning and childcare?
- Q1b - Are there any specific aspects of the early learning and childcare legislative framework that remain unclear after reading the Guidance?

The key issues discussed by respondents at each question are outlined below.

Understanding the Legislation

Q1a - Does the Guidance help your understanding of the legislation relating to education authorities' functions in the delivery of early learning and childcare?

Overall, 152 (78% of all) respondents provided a substantive response at this question, including 99 (75% of all) individuals and 53 (85% of all) organisations.

Nearly three quarters of those who provided an answer (n=111, 73%) indicated that the Guidance had helped their understanding of the legislation relating to education authorities' functions in the delivery of ELC. Organisations were more likely to feel that the Guidance was helpful compared to individuals, with 81% (n=43) of organisations and 69% (n=68) of individuals indicating this.

While many did not provide any further comments in this regard, those who did typically felt the Guidance was clear, easy to understand, helpful, and outlined the legislation/requirements appropriately:

“Clear, easy to read and supports the implementation and delivery of ELC.” (Individual)

“Yes, it is clear and easy to understand.” (Organisation)

“...the Early Learning and Childcare Statutory Guidance very clearly outlines and explains the legislative framework underpinning the delivery of Early Learning and Childcare, and Education Authorities' statutory functions arising from the legislation.” (Organisation)

Conversely, 17 (11%) respondents indicated that they did not feel that the Guidance had helped their understanding, while a further 20 (13%) suggested it had only been partially helpful (the remaining four (2%) respondents provided more neutral comments which did not identify whether the Guidance had been helpful or not). Individuals were more likely to feel the Guidance was either only partially or not helpful, with 30% (n=30) of individuals and 13% (n=7) of organisations

indicating this. Some suggested that the Guidance was vague/lacked clarity, and was very complex for parents/carers or lay persons to understand:

“Very legalistic and difficult for the ‘person in the street’ to understand.” (Individual)

Respondents’ main concern appeared to be that the Guidance was subjective and open to interpretation, as written. Many individuals and organisations (including those who felt the Guidance was helpful and those who felt it was not or only partially helpful) felt that there was still ambiguity over how local authorities would/could implement provision. It was felt that, as this was Guidance and not policy or a requirement, different local authorities could interpret this differently, leading to inconsistency in terms of the nature or application of provision:

“...as it is only guidance, much isn't mandatory and therefore LAs [local authorities] aren't required to abide by it. It therefore doesn't help parents to work out what their rights are and what they can force councils to do.” (Individual)

“It is being interpreted differently by 32 different LAs, therefore, no consistency creating confusion.” (Organisation)

Remaining Ambiguity

Q1b - Are there any specific aspects of the early learning and childcare legislative framework that remain unclear after reading the Guidance?

Overall, 146 (75% of all) respondents provided a substantive response at this question, including 95 (72% of all) individuals and 51 (82% of all) organisations.

Around a third of those who answered the question (n=49, 34%) stated that there were no specific aspects which remained unclear, including 35 individuals (or 37% of those individuals who answered the question) and 14 organisations (or 27% of organisations who provided an answer). The remaining 97 (66%) respondents, however, identified areas where they felt additional detail or clarity would be beneficial.

Deferrals

One of the main areas which individuals (and a few organisations) felt was still unclear was the treatment of deferrals and, in particular, the availability of discretionary deferrals for children whose birthdays were between August and December. It was felt the Guidance was unclear in relation to the eligibility/funding criteria for deferral and that this would remain open to interpretation by local authorities which would result in different policies and practices being implemented across the country:

“The legislation around funding for P1 deferral for August - December born children remains unclear. Whilst funding remains at the discretion of each council, there is an inequitable delivery of early years’ childcare across Scotland.” (Individual)

It was felt that, in such circumstances, deferral decisions could be made for financial reasons and not in line with Getting it Right For Every Child (GIRFEC) or the child's best interests. Further, it was suggested that there was not enough emphasis given to the parent's/carer's rights/voice in relation to deferral decisions, that there was a lack of an appeal process in some areas, and that greater information and support needed to be provided to parents/carers who chose to defer their child's entry to school:

“Leaves it too ambiguous and open for councils to do as they please to meet funding targets rather than a truly needs based and child centred approach.” (Individual)

“It seems that the Guidance says you do not have to send your child to school until after their 5th birthday which is a clear message, but then it is unclear whether funding will be granted and what specific factors are to be considered in granting additional funding.”
(Individual)

“The process is a shambles and there is no clear route to take when choosing to defer your child's start date for school. We got passed from pillar to post... we were given no information, no help or support and nobody seemed to know what we could do next.”
(Individual)

Some also felt that the system would most negatively impact vulnerable families/children, with only those who could afford to self-fund being able to defer their child's school start date. Rather, it was suggested that the Scottish Government should require that automatic guaranteed funding be implemented for all legal deferrals:

“The current policy of discretionary funding is unfair and inequitable because there are different policies between councils. The only way to make things right for our children is to grant AUTOMATIC funding to all 4-year olds who do not wish to start school until they are 5. This would negate all the stress, time wasting and money that parents, nursery staff and council staff have to go through.”
(Individual)

It should be noted, however, that since the consultation on the revised statutory guidance was carried out, the Scottish Government's policy on funded ELC access for children who defer has been updated. In January 2021, the Scottish Parliament approved The Children and Young People (Scotland) Act 2014 (Modification) (No. 1) Order 2021. This Order amends legislation to provide an additional year of funded ELC to all children who defer their primary 1 start from August 2023⁴.

⁴ Scottish Government; 2020: [Early learning and childcare access in a deferred year: joint implementation plan](#).

Funding Follows the Child

Some respondents (including both individuals and organisations) felt that the 'funding follows the child' aspect of the Guidance was either unclear, provided inconsistent messages, and/or did not match their personal experiences. A few individuals considered that the differing per child funding being applied by local authorities for children across the different settings was not in keeping with the ethos of funding 'following the child' and placed a different value on each child/environment depending on the ELC setting. Instead, several respondents felt that the same level of funding should be available to each child irrespective of the childcare setting. A few individuals also noted the impact this approach could have on staffing availability and the sustainability of the Private, Voluntary and Independent (PVI) sector, which they felt risked creating a two-tier system:

"It makes a complete mockery of funding follows the child as each child is valued differently depending upon the setting they are in. PVI settings are being funded below the level available within the model.

The rates range from £5ph [per hour] to £6.50ph whilst council settings are funded at £7.31ph at least. This has led to displacement of staff - authorities offering significantly enhanced terms, conditions and salaries than PVI settings can afford on the rates paid or proposed." (Individual)

"Funding follows the child, what does that truly mean? If it truly followed the child the same amount of funding would be allocated no matter where the child attends." (Individual)

One individual suggested that clearer guidance on charging fees to parents/carers who wish to secure a funded placement from a partner provider was required. A few individuals also noted that they had been denied the ability to choose a private provider or a childminder, despite the Guidance making such provisions.

Further, several organisations (including one local authority) discussed limitations in funding being seen to follow the child in cross-boundary situations. It was suggested that clarification was required on how local authorities, who develop different models or policies on funding decisions and start/end dates for funding can support provision (or not) when a resident parent/carer chooses to utilise provision in a neighbouring authority.

Differing Funding for PVI and Local Authority Providers

In addition to the concerns raised above by individuals, the main concern for organisations was that the Guidance was open to interpretation by local authorities and allowed them to treat PVI providers differently compared to their own services. It was suggested that funding was not being shared fairly between all providers, and that the discrepancies in the funding being provided to local authority providers and PVI providers resulted in unequal terms and conditions for staff working in the various sectors, as well as sustainability and fairness issues for PVI providers.

In particular, it was noted that the lower per child funding rates for PVI providers were unsustainable, often not covering costs and making it difficult for PVI

providers to pay staff the Scottish Living Wage (SLW) as required (and that inflation within the SLW was not taken into account with funding being fixed over several years). Rather, it was felt that the rate per child needed to be increased to match the rates allocated within local authority provision in order to cover costs and allow them to pay staff wages which were competitive with local authority provision. Respondents felt that the higher wages being offered by local authority providers meant that PVI providers were experiencing staff retention issues. It was also suggested that the PVI sector and public sector appeared to have to compete with each other and that capital funding was often more difficult for PVI providers to access:

“...it is very open to interpretation as is evident in how LAs are rolling out their services, increasing their staffing, building brand new nurseries next to PVI providers and not sharing the funding equally amongst all providers.” (Organisation)

“...this is going to end up with a divided workforce, inequalities between LA and PVI sectors, a fall in quality in the PVI as they cannot compete with the salaries or maintenance of standards with a rate that does not even support SLW and the true cost of service delivery.” (Organisation)

Issues for Childminding Services

Generally, it was felt that the Guidance lacked clarity and/or detail for childminders, and the methods for the introduction of new childminders in particular.

A few organisations and local authorities felt that the Guidance suggested that childminders would be able to charge a retainer fee for parents/carers opting for blended models, meaning they would be charged a fee while their child is accessing another provider. While two childminders welcomed this opportunity and stated that retainer fees were often vital in ensuring a viable business, this appeared to be a cause for concern for others as it was considered to place more financial onus on parents/carers by making them pay for hours/services that are not used. This also raised questions over other services being able to adopt retainer fees, with one local authority suggesting that the Guidance needed to make clear that no sector or provider should be able to charge retainer fees within ELC provision.

Managing Provision and Operational Issues

Several organisations and local authorities identified areas linked to managing provision and operational issues where they felt that further detail/clarity was needed or would be helpful, including:

- information on whether it is possible to utilise some of the 1140 hours to work with parents/carers for all two year olds, and possibly for some aged three and four;

- further guidance on the minimum length of a session, and session length to be kept under review to assess effects on children’s wellbeing (and clarity on who would be responsible for such monitoring and reporting);
- information on local authorities’ obligation to ensure, manage and monitor quality in all partner settings, and what actions should be taken when a service falls below the required standard;
- whether local authorities must enter into arrangements with providers who meet the standard in localities/areas where there is excess capacity, even where to do so may affect the viability of existing partners;
- clarification on whether a local authority must enter into an agreement with any partner that meets the standard;
- clarification on the extent to which a local authority must follow the Guidance or whether they can adapt their own terms for private partnerships;
- clarification about which body will be responsible for overseeing and monitoring to ensure that local authorities do not intervene in other areas of a funded providers’ business arrangements outside that of the funded entitlement, and provide details on how this will be done;
- consideration of possible impacts on limited and mixed provision in remote and rural areas, e.g. where only one childcare provider exists the service may become full with ELC provision resulting in no provision for other age groups;
- guidance on what is required of local authorities to provide equal promotion of all providers and service types;
- clarification on whether ‘holiday cover’ refers to holidays taken by a childminder or by parents/carers during funded hours; and
- clarification on which settings need to provide evidence of all ten criteria⁵.

Providing Transparency

A few organisations and local authorities felt that additional information or clarity could be provided in relation to consultation activities and/or consulting with parents/carers. It was suggested that greater clarity could be provided on the duty to consult every two years and publish a plan, and it was suggested that longer term plans (e.g. 3-5 year plans) plus biannual consultation on progress would be more beneficial and achievable. It was also suggested that consultation should include parents/carers, funded providers, and practitioners, as well as capture children’s voices. Also that guidance to local authorities on how to communicate their delivery plans to ensure they are accessible to parents/carers would be helpful. One respondent also noted that, while the Guidance stated that the school consultation process would be altered for opening new nurseries in schools, it did not change the process for closing nurseries for consolidation purposes.

⁵ More information about the National Standard and the ten criteria for funded providers can be found at [Funding follows the child and the national standard for early learning and childcare providers: principles and practice](#).

Further, a few suggestions were made in relation to the information provided to parents/carers and processes that would be needed. Firstly, it was considered important to clarify to parents/carers that not everyone will be able to receive the exact model that they want as providers must fit with local ELC delivery plans. It was also suggested that information was needed in relation to any recourse available for parents/carers, e.g. if the provision they are offered does not meet their needs or they cannot access this, and that it would be necessary to provide a clear and easily accessible process for parents/carers who wish to challenge/discuss further/raise issues with their local authority about their place offer, with transparency around admissions policies, place offering, waiting lists, etc. It was felt that there should be a clear process for parents/carers who do not wish to take up all of the 1140 hours and local authorities must not penalise parents/carers for not taking up their full entitlement.

A few also suggested that additional clarification was required over charges, including when parents/carers may have to make their own financial contribution above the 1140 funded hours, and that funded providers should not charge extra for the start/end of the day or over lunchtimes.

The need to incorporate some level of accountability was also discussed by a few individuals and organisations, with respondents highlighting a need for both local authorities to monitor and enforce best practice among providers, and for local authorities to be accountable and scrutinised/audited in relation to delivery with parents/carers being involved in such processes:

“...the Guidance needs to include aspects of audit, scrutiny and evaluation with parents leading on this.” (Individual)

Incorporating the Education (Additional Support for Learning) (Scotland) Act 2004

Respondents highlighted that the Guidance did not fully explain, incorporate and highlight the duties that education authorities, practitioners and service providers have under the Education (Additional Support for Learning) (Scotland) Act 2004 ('the 2004 Act'). A few suggested that the Guidance should more fully embed the 2004 Act duties throughout, and ensure that language around ASN is clear with no ambiguity.

Areas where it was perceived that the duties and relationship between the ELC framework and additional support for learning framework could be highlighted included:

- acknowledge that deferred placement may be a form of 'adequate and efficient' support under the 2004 Act to meet additional support needs;
- acknowledge or reiterate in the Guidance that the right to 'additional support' can cover support beyond learning support, for example it can include feeding, intimate care, sleeping and medical needs;
- highlight that children who are too unwell to attend early years' settings, are still entitled to receive ELC and additional support;

- emphasise that children with ASN have the same right to access their entitlement, and the adequate and efficient support benefit from entitlement, as any other child;
- provide guidance for parents/carers, providers and local authorities on how separate decisions on discretionary funding from ASN will happen or be monitored; and
- in line with 'Included, Engaged and Involved'⁶⁷ this Guidance should set out that exclusion should be a last resort as well as the duties in place when this does occur.

It was also noted that, while the duty lies with Local Authorities, all funded providers have a responsibility to meet the needs of children and young people. However, it was felt that this can be challenging to implement in practice, and can result in a drift of children with ASN to local authority provision. It was felt that the Guidance needed to show greater understanding of the implications of meeting such needs now and in future.

Incorporating Gaelic Medium Education

It was also noted that the Guidance failed to reference Gaelic Medium ELC and its specific requirements. Two organisations outlined suggestions to assist the Guidance to more fully incorporate Gaelic Medium Education providers.

One suggested that the Guidance should make clear that, when local authorities are considering implementation of the extended hours, Gaelic has equal status with English. This respondent noted that Section 2.5 - 2.8 of the Statutory Guidance on Gaelic Education provides information to education authorities regarding Gaelic Medium ELC. Therefore, it was recommended that a section on Gaelic Medium ELC be included within this Guidance, along with a link to the Statutory Guidance on Gaelic Education. They also recommended that links to the following documents prepared by Education Scotland should be included:

- 'Advice on Gaelic Education'; and
- 'Advice on Gaelic Education: Total Immersion'.

It was also highlighted that draft Guidance on Gaelic Medium ELC had been prepared and would go to consultation in February 2020. They suggested that it would be useful if this could be referenced within the Statutory Guidance on Early Learning and Childcare to enable education authorities to access more information around the delivery of Gaelic Medium ELC.

Further, it was suggested that the Statutory Guidance should:

- refer to the duties incumbent on local authorities under the Education (Scotland) Act 2016 to promote and support Gaelic Medium Education;

⁶ Scottish Government; 2019: [Included, Engaged and Involved Part 1](#).

⁷ Scottish Government; 2017: [Included, Engaged and Involved Part 2](#).

- advise that as education includes the provision of ELC, education authorities should promote and support Gaelic early years provision, in line with the Education (Scotland) Act 2016;
- include information on the importance of ‘total immersion’ in early years’ settings;
- include information on the importance of fluent Gaelic speaking staff in early years settings to ensure the delivery of high quality provision; and
- advise on opportunities for professional learning available to Gaelic Medium practitioners.

Additional Suggestions

Other areas of clarity sought by **individuals**, typically by one or two respondents each, included:

- greater clarity regarding the flexibility of the 1140 hours, what choices parents/carers have regarding how many hours nursery they want for their child, and parents’/carers’ ability to choose hours to suit their needs;
- a child's minimum entitlement to funded preschool education over the whole period. It was not clear whether this was 1.5 years or 2 years;
- a desire for further information about the private sector and what they have to offer;
- recognition of the need to consider infants born preterm who may need to be assessed for developmental readiness to enter formal school education;
- more specific detail in relation to children absent due to illness;
- advice relating to young children living in remote areas where travel time to early years’ provision may be very tiring for a young child;
- information about grants or other financial support for resources or equipment for new providers and information on how payment for funded providers will be made;
- reference to the responsibility of the Education Authority to record education and care arrangements in a child's plan;
- non-statutory guidance on duties to consult and plan in relation to discretionary ELC; and
- guidance on mandatory and discretionary day-care and out of school care for children in need and not in need.

A few individuals also questioned whether **blended models** of childcare would be possible, i.e. mixing the use of nurseries and childminders either throughout the year, or utilising different providers in term time compared to the school holidays. A few organisations also suggested that it was important for blended models to be supported and promoted.

Other areas where further clarity was considered necessary by **organisational respondents**, again typically mentioned by just one or a few each, included:

- the guidance should fully reflect a human rights-based approach and, in particular, provide a greater focus on the rights of the child and having their best interests as the primary consideration, as per the requirements of the United Nations Convention on the Rights of the Child (UNCRC). It was suggested that the UN Committee on the Rights of the Child's General Comment No 7 (2005) on Implementing child rights in early childhood⁸ further outlines the State's role in relation to community-based and private providers of early education, and should be referenced in the Guidance;
- clarification and further explanation on eligible two year olds, as well as on how education authorities and services providers should communicate and promote the eligible two year old entitlement to increase uptake;
- providing a definition of 'care experienced' and 'looked after children', and clarification on whether the qualifying criteria extends to those in informal kinship care;
- clarification on the need for welfare foods/healthy snack provision, and information on any administrative changes that will be required for the Nursery Milk Scheme (NMS);
- clarification on the term 'flexible';
- providing some additional detail of the Care Inspectorate's responsibility to register or vary the registrations of care services;
- providing detail of the Children (Scotland) Act 1995 (section 22);
- strengthening the Guidance to place an emphasis on education authorities to ensure that Continuing Professional Development (CPD) is available and accessible to all providers across all sectors; and
- providing clarity around whom and for what purpose SEEMiS⁹ is not used and how consistency will be maintained across sectors, and provide timely guidance for funded providers around how to work efficiently during the switch over from the Nursery Application Management System (NAMS) to SEEMiS.

Finally, a few organisations suggested additional resources which may be useful to support the Guidance. This included:

- an appendix which provides an overview of models across the country;
- appropriate toolkits as to how each education authority should exercise their functions in relation to their discretionary powers to provide ELC for children outwith the eligibility criteria; and
- smaller, separate documents in relation to key themes, for example legislation with regards to looked after children and the relevant statutory obligations around this, as well as a summary version of the Guidance for providers.

⁸ UN committee on the Rights of the Child; 2005: [General comment No 7 \(2005\) Implementing child rights in early childhood](#).

⁹ [SEEMiS](#) is a Management Information System (MIS) for the Education sector.

Clarity of the Guidance

Two questions were asked to determine whether the draft Guidance was clear and readable, and to identify any areas that could be improved in this respect. These questions were:

- Q2a - Do you find the Guidance clear and readable?
- Q2b - Are there any specific areas of the Guidance where we could improve readability?

The key issues discussed by respondents at each question are outlined below.

Clarity and Readability of the Guidance

Q2a - Do you find the Guidance clear and readable?

A total of 147 (76% of all) respondents provided a response to this question, including 95 (72% of all) individuals and 52 (84% of all) organisations.

Around three quarters of those who responded to the question (77%, n=113) indicated that they felt the Guidance was clear and readable. However, 17% (n=25) either stated they did not find the Guidance clear and readable and/or identified readability issues, and the remainder either provided mixed views or provided a comment which did not clearly identify whether they perceived the Guidance was clear and readable or not.

Organisations typically indicated that the Guidance was clearer and more readable than individuals, with 85% (n=44) of organisations who responded indicating the Guidance was clear and readable compared to 73% (n=69) of individuals.

A few organisations identified several specific points that they considered helpful in ensuring the Guidance was clear and readable, including: the use of dedicated sections; the use of examples, which was seen as helpful and assisted in clarifying points; the use of tables, which was considered to provide a clear format for information; the inclusion of short succinct points (with less direct reference to legislation); and the Glossary to enable a common and consistent understanding of the terminology used:

“It is clearly laid out, very readable and clearly explains our statutory duties in relation to the delivery of Early Learning and Childcare. The sections are well laid out and easily referenced.” (Organisation)

Two key issues, however, were identified by respondents, including accessibility issues and that the Guidance was open to interpretation. These issues were discussed by both those who felt the Guidance was clear and readable and those who did not.

Some respondents (including individuals and organisations) suggested there may be possible accessibility issues with the Guidance for lay persons, parents/carers and some ELC practitioners. It was felt that the use of jargon, ‘legal speak’, the

length of the document, and numerous external references and lengthy definitions could make the Guidance less user friendly and accessible to some. It was also felt the reader required some background knowledge of legislation and/or childcare in order to easily follow the document:

“...too much legal speak. Long winded and unless you have a prior knowledge it’s difficult to track.” (Individual)

Similar to the issues discussed at Q1 above, some respondents (mainly individuals, although several organisations also discussed this) felt that much of the Guidance was open to interpretation by local authorities, which they expected would lead to differing approaches being adopted/maintained across the country. Specific issues discussed, as for Q1 above, included both the discrepancy in funding between local authority and PVI settings and discretionary funding for those with August-December birthdays who defer:

“It is clear and readable, but allows LAs to interpret and implement as they wish.” (Organisation)

“Even after August 2020 we will still have a postcode lottery in relation to how each child is valued within each authority. That is not fair, equitable or in line with the policy objectives.” (Individual)

“We feel the Guidance requires more of mandatory, compulsory and required statements for councils who are not complying with Scottish Government outcomes for our children.” (Individual)

Areas for Improvement

Q2b - Are there any specific areas of the Guidance where we could improve readability?

A total of 127 (65% of all) respondents provided a response to this question, including 76 (58% of all) individuals and 51 (82% of all) organisations. Of these, 50% (n=64) said ‘no’ or could not think of any way to improve the readability of the Guidance.

Of those who provided suggestions, the key area for improvement in relation to readability was to make the Guidance more user friendly and accessible for parents/carers, the general public, and practitioners. This included:

- concerns over the length and ‘wordiness’ of the Guidance, with suggestions for improvement being to use plain English and less legal language;
- that the information/statements should be prioritised, using bullet points for key information;
- a need to reduce or find a more manageable way to reference the various legislation, with suggestions including the use of tables, footnotes, hyperlinks or bracketed text for legislative references/information; and
- a summary version may be beneficial for some audiences:

“It is essential that the information provided in the Guidance can be fully understood by partner providers, families and other relevant organisations to ensure transparency and equality of access.”
(Organisation)

“It was felt that a ‘more user friendly’ and abbreviated version would be beneficial for Heads [service provider managers].” (Organisation)

Other suggestions to improve readability or add clarity, mentioned by just a few respondents each, included:

- defined parameters in relation to the increased flexibility to be available for eligible 2s, and whether this will be updated and extended, for example, to include working families;
- make charges for, and opting out of, optional extras clearer in the Guidance;
- provide clarity around whether food/meals will be free or chargeable across all providers, and more detail regarding healthy snacks;
- specify if kinship care is only for those registered as official kinship carers or to include informal kinship care;
- provide clearer guidance about the terminology to be used in relation to transitions and split placements i.e. ‘split’ or ‘blended’, and if both are acceptable. Ideally, this would include an outline of how they are defined, and provide clearer information in relation to the management and support, and the need to promote the child's wellbeing in such models;
- provide clarity over key phrases of particular relevance to parents/carers earlier in the document, specifically on what flexibility and choice mean. It was expected that, in most cases, this would be restricted by what local authorities can and will offer, and so it was suggested it may be more factual to revise statements relating to choice and flexibility e.g. ‘depending on the model delivered, the availability of spaces, if the provider meets the National Standard and is in contract with the local authority, parents/carers may have choice and flexibility about how they use their entitlement’;
- explaining in more detail the areas of the Children and Young People's Act 2014 that is referred to;
- making consistent all references to the type of provision offered by childminders. At present, the Guidance includes references to childminders both as being part of the private sector and as additional to the private and third sectors;
- being clearer what elements are mandatory and what is advisory; and
- explain how parents/carers can complain when local authorities are not complying with the Guidance.

Again, several respondents also suggested that it would be helpful for the Guidance to be provided in alternative formats and supportive information, including hard copies, leaflet form, summary documents, best practice information and toolkits.

Other Comments

The consultation also provided respondents with the opportunity to identify and discuss any other issues that they wished to raise, as follows:

- Q3 - Do you have any other comments on the Early Learning and Childcare Statutory Guidance for education authorities?

In total, 171 (88% of all) respondents provided substantive comments at this question, including 122 (92% of all) individuals and 49 (79% of all) organisations.

The feedback outlined below details both responses provided at this question specifically, as well as other common issues discussed across earlier questions (which did not directly address those consultation questions).

Campaign Responses

A total of 51 responses were submitted which showed strong similarities and consistency at this question, with responses linked to seven key issues. Although there was some divergence, with not all responses commenting on all seven elements, those which were included tended to provide a standard text (although a few also provided additional context or personal experience to complement their response).

Responses largely focused on issues for childminders or childminding services and were submitted largely by individuals (n=46) and a few organisations (n=5). Findings from these consultation style responses are presented first, before the more general feedback that was received, and any areas of repetition between this cohort and the rest of the respondents are highlighted, as appropriate.

Retainer Fees

Most of the campaign style cohort (n=50) were concerned that the National Standard for ELC did not currently allow for the charging of retainer fees and noted that this could have a significant adverse effect on the viability of childminding businesses. These respondents, therefore, welcomed the inclusion of paragraph 61 within the Guidance which will enable childminders to make optional service charges “such as the provision of localised cover arrangements required by parents and carers (for example, acting as the emergency contact for a child, cover for shift patterns, holiday cover, etc.) which requires the setting to retain a place in order to meet this demand during the hours that the child is receiving part of their funded ELC entitlement at another setting as part of a split placement”. Respondents also welcomed the recognition that such arrangements are outwith the scope of ELC.

Promotion of All Partner Providers

Some campaign respondents (n=33) also welcomed the requirement at paragraph 90 for local authorities to consider how they make parents/carers aware of their child’s entitlement, of the range of provision available, and how to access this. However, it was felt this did not go far enough and respondents suggested that the Guidance should explicitly require local authorities to clearly promote all partner

providers (including childminders) in their area, equitably alongside their own local authority nursery provision.

Method of Delivery

Some campaign respondents (n=33) noted that, while section 51 (paragraphs 107-112) of the Guidance provides examples of the models which local authorities could offer, and includes term-time, full-time, half days and part days, some of the models being offered by local authorities to parents/carers and providers can be too prescriptive and sometimes limited to particular times of the week. As such, it was felt that this did not reflect the increasingly flexible nature of modern childminding services or the increasing demand from parents/carers for flexibility. It was also suggested that some of the models being offered may disadvantage childminding services from operating competitively alongside nursery provision.

For example, a few noted that they were being asked to provide just a lunch service where they pick a child up from one nursery, give them lunch and then take them to another nursery to complete their funded hours, while others were being asked to only provide limited wrap-around care. These limited hours, along with the limitations on the number of children who can be cared for by a childminder, made it challenging and not financially sustainable for all childminders and did not, it was suggested, provide a viable business model:

“I am offering funded places at the moment but most of the parents are wanting to use most of their hours at the local nursery, leaving just enough hours to pay for wrap around care. I obviously cannot run my service with so little hours.” (Individual)

Flexibility and Parental Demand

Some campaign respondents (n=32) expressed support for specific elements of the Guidance that seek to ensure flexibility is provided in line with the needs and demands of parents/carers:

“I strongly support the recognition that “flexibility should be driven by local demand from families regarding the nature, and type, of provision they require” (paragraph 124) and that “there will be an ongoing need to review and change models in response to demand from parents and carers within their area” (paragraph 130).”
(Individual)

Blended Care

Similarly, some campaign respondents (n=34) advocated support for blended models of provision in the Guidance and, in particular, the recognition in paragraph 131 that “a mixed model of provision can be beneficial for children and parents, and education authorities should accommodate split placements across different providers where this meets the needs of the child and parents or carers”. They felt that catering for blended models of childcare should be standardised across Scotland and suggested that local authorities should not be allowed to only offer single-provider models.

Caring for Relatives Children

Another common concern raised (by 32 campaign respondents) was the legal restrictions on childminders providing childminding services (ELC or other) to their own children or their relatives' children. It was suggested that there may be circumstances where such provision should be considered, for example, in remote and rural areas where childcare provision is more limited and relatives may be involved in the paid care of children. As such, respondents felt that the Scottish Government should consider how support could be provided in such circumstances.

Recognition of Play

Some campaign respondents (n=25) also commended the Guidance for its recognition of play:

“I welcome the commitment that play, as outlined in ‘Building the Ambition’, will continue to be an essential and fundamental part of children’s learning and happiness (paragraph 24). This is an important part of learning which deserves wider recognition.”

(Individual)

Other Concerns for Childminders

In addition to the campaign style responses outlined above, a number of other respondents also highlighted concerns in relation to childminders, their consideration within the Guidance, and the potential impact the ELC provision will have on their businesses.

It was felt that childminders were not well reflected or considered within the Guidance and, again, the issue of retainer fees (and the current inability to charge these) was discussed, as well as the need for consideration for childminders to be able to provide services to family members. This latter issue was considered important for childminders in rural areas where other childcare options may be limited, as well as for the provision of consistency in care for the child, and to support more informal one-to-one arrangements:

“Please include us from the beginning, we [childminders] are a valued childcare provider for families who need flexible care. We give a more 1 to 1 service which is invaluable for younger children.”

(Individual)

“Unfortunately, the Guidance does not go anywhere near far enough in supporting childminders. Although it does state that Local Authorities should include childminders, the Scottish Government does not go into detail in how childminders will be supported. Unfortunately, childminders are undervalued and deemed of little importance in the Early Learning and Childcare sector.” (Individual)

While childminders were generally in favour of the provision of blended models, a few noted that the drop in the number of hours pre-school children were likely to be placed with childminders in such a model (e.g. half a day, wraparound hours, or

lunch provision only) and the cap on the number of children which childminders can accommodate, would result in significant drops in their earnings and mean their service was no longer viable:

“I would like to be part of blended childcare, however, if operating on a half day basis around council nurseries my income would nearly half.” (Individual)

“All this has done is take work away from childminders.” (Individual)

Standardised Provision

Similar to concerns raised in response to the earlier consultation questions, some respondents reiterated perceptions that local authorities have interpreted the Guidance differently resulting in a ‘postcode lottery’ in the provision of local ELC models. The key issues (as discussed in detail at Q1) related to discretionary deferrals, differing funding being available depending on the setting, and PVI providers being treated differently to local authority providers. Other specific discrepancies which were noted, typically by one respondent each, included:

- where provision for two year olds was only being offered in local authority settings;
- childminders having to bank unused hours and provide these to families at a later date while nurseries do not; and
- different, inflexible models being provided within/between areas meaning true choice is not being offered to parents/carers.

Again, both individuals and organisations called for less discretion/interpretation to be afforded to local authorities and a greater national standard established in the delivery of ELC across the country:

“SG [Scottish Government] needs to step in as the blueprint is being interpreted 32 ways...” (Organisation)

“It should not have been guidance but a policy which must be adhered to.” (Individual)

Other Issues/Comments

Blended Models

Again, blended models of care were supported, with respondents suggesting that this would provide parents/carers with the desired/necessary level of flexibility. It was felt that blended models should be made available and supported by all local authorities.

Creation of Less Suitable/Flexible Models

A few individuals noted that, as a result of the increase in funded hours, there had been/could be a reduction in the number of hours available per day, with a requirement to spread the available funded hours across the full week rather than condensed over fewer days. This was considered unsuitable for working

parents/carers who previously had access to full day care, and was seen as less flexible than the previous system.

Local Authorities Prioritising their Own Services

Throughout the responses at all consultation questions, a few respondents' highlighted concerns and perceptions of local authorities prioritising their own services over PVI providers and childminders. In addition to the differing funding levels discussed above, other issues included:

- the promotion of available services;
- access to other funding to support expansion;
- local authority providers offering top-up hours at rates which were considered to be below cost/unsustainable and which PVI providers could not compete with;
- expanding local authority based services while the PVI sector still has capacity to meet demand; and
- in either not consulting, or not effectively/impartially consulting parents/carers on need and preferences in order to suit their own services/agenda.

Such comments were made by individuals and organisations:

“How are the public of Scotland [to] realise the fantastic opportunities in their area of choice if their own councils are not promoting it to the public at large... We are Partner Providers however it does not feel like an equal partnership.” (Individual)

“LAs are using guidance to increase their estates and workforce to the detriment of existing PVI sector, building new nurseries in areas where there is already existing PVI provision. Rates offered by LAs to PVI are inconsistent, unsustainable, unfair, don't allow for sector neutral provision and don't create a level playing field.”
(Organisation)

Areas for Further Consideration

While a few **local authorities** provided supportive comments in relation to the clarity and helpfulness of the Guidance, and several provided comments and suggestions in relation to specific paragraphs within the Guidance, several also outlined more general areas where greater consideration or clarification would be helpful. These included:

Deferrals and Transitioning

- That any changes to eligibility criteria for discretionary deferrals needs to allow appropriate lead in times and for resources to be available as this could lead to a significant increase in funded places and therefore funding challenges for local authorities. Clarity on roles and expectations would also be welcomed in such circumstances;

- Improved information sharing between all agencies, e.g. Health Visiting Pathways¹⁰ and the 27-30 month review¹¹ information would support robust decision making in relation to deferrals;
- Further guidance was needed on the sharing of 27-30 month review data; and
- Health visitors' capacity to ensure early identification of needs for children transitioning into ELC was a concern.

Optional Extras/Food Provision

- In relation to charges for optional extras, the inclusion of 'snack' created concern/confusion for several local authorities due to the poverty agenda, as well as the food entitlement and additional fruit and milk offer; and
- To provide clarity around whether it is acceptable for nurseries to offer children a free lunch as part of the entitlement through school catering arrangements, or whether there are plans for specific nursery menus to be developed in line with the refreshed Setting the Table guidance¹².

Other Elements

- Further clarification around supporting transitions and split/blended placements. It was felt that some mention of the number of settings impacting on the child may be helpful, and/or that the Guidance should include a recommendation that local authorities can set a maximum of providers for this as part of their local delivery model. Local authorities considered this necessary as they noted that, while in most cases the split is between two settings, some families are seeking more, thus making the arrangements more complex and potentially more negative for the child. It was felt this would need careful management;
- Greater clarity was required in relation to parents/carers paying for additional hours beyond the funded element of ELC; and
- To provide a simple leaflet on what parents/carers can expect to receive through the National Standard and ELC Expansion Programme.

Additional comments and suggestions provided by **other organisations** included:

- reference should be made to the new Best Start Early Learning and School Age payments, placing a requirement on education authorities to promote these grants to eligible families;
- in order to improve uptake among eligible families, the Guidance could support greater and more effective promotion, and expand its consideration of consultation with parents/carers and, in particular, those living in poverty.

¹⁰ The Health Visiting Pathway incorporates the various assessments and contact that an infant and their family will have with health visitors until the age of five.

¹¹ [The 27-30 month review](#) is an assessment conducted by health visitors when infants have reached 27-30 months.

¹² NHS Health Scotland; 2018: [Setting the Table](#).

This included consideration of barriers to uptake and participation in consultation;

- the Guidance should also set out to local authorities that they must make it clear to parents/carers that the 1140 hours is not compulsory/mandatory and is an entitlement which parents/carers may or may not use, all or in part, voluntarily;
- it was suggested that the relevance of educational psychology in assessment of concerns was important if early intervention was to be offered. It was felt that the current CAMHS referral was not always effective or appropriate;
- provide more detail about how looked after children will be helped by starting nursery at an earlier age. It was also considered vital that early years' staff are appropriately trained and paid if the system is to promote recovery for these children;
- provide greater connection between the Guidance and relevant targets set by the Scottish Government. For example, the Child Poverty (Scotland) Act 2017 and the targets set within this would tie in to the framework as to how education authorities can use such guidance in the elimination of child poverty and the furtherance of equality. It was felt this could be further emphasised with the placement on a legislative footing of access to childcare provision as a human right. Using the framework of the enshrinement of the Social Security Charter within the Social Security (Scotland) Act 2018, for instance, as a mode of best practice for this; and
- any future changes to nursery milk provision should be transparent and inclusive, with the industry being comprehensively consulted, and must be set out clearly in advance.

Conclusion

The Consultation Process

Overall, the consultation achieved a relatively high response rate, both in general and to each individual question posed. A wide range of respondents contributed, including local authorities, nursery providers and childminders, parents/carers and a range of other stakeholder groups.

There was significant consistency in the issues discussed by respondents, both between questions and across respondent groups. There was also considerable repetition in the main issues raised in response to different questions, with some clear themes emerging in terms of the additional clarity required both now and in the future to ensure transparency, consistency and accountability.

Key Findings

Many areas of the draft Guidance were welcomed and supported, including the need to consult parents/carers from a range of backgrounds, to provide clear and accessible information for parents/carers, for blended models to be provided, to accommodate flexibility in care arrangements, and ensure the inclusion of children with ASN and/or ASL.

Encouragingly, around three quarters of respondents felt the Guidance helped their understanding of the legislation relating to education authorities' functions in the delivery of ELC, and had found the Guidance clear and readable. Many constructive comments and suggestions were also made in relation to the document in general, and in relation to specific sections and paragraphs of the draft Guidance.

One key area for consideration is the need to make the Guidance more accessible for the lay reader, parents/carers and ELC practitioners. It was suggested that the draft Guidance, as currently written, may be too long and complex, with some respondents suggesting that more work is needed to simplify the Guidance and/or to improve its accessibility to a wide audience.

Several key issues/concerns were repeated by respondents throughout the consultation, including:

- concern that the Guidance would continue to allow a 'postcode lottery' situation where each local authority is able to interpret the Guidance, and implement ELC systems, differently. Respondents felt there was a need for the Guidance to be implemented consistently across the country, with some calling for local authorities to have less scope to interpret the Guidance in different ways;
- the need for stricter guidance or a more prescriptive approach to be taken regarding funding for discretionary deferrals, particularly for those children with birthdays that are between August and December;

- for parents/carers to be given a greater voice and participation within the deferral decision making process;
- for more information to be provided to parents/carers regarding the deferral process, for the process to be transparent and provide the opportunity for appeals;
- for PVI providers and childminders to be treated equally and fairly with local authority providers - this included:
 - equal funding to be provided regardless of the ELC setting;
 - equal promotion of all ELC services to parents/carers;
 - for greater, and more appropriate, consultation to be undertaken with PVI providers and parents/carers; and
 - for PVI providers be allowed equality in access to funds for expansion and resources;
- for childminders to be given greater consideration throughout the Guidance.

It was also suggested that the Guidance should be strengthened to ensure it cannot be interpreted in a way that negatively impacts any children living in poverty/ material deprivation, and to ensure that local authorities actively promote and engage with families. It was also felt that the Guidance should stress that it is not compulsory for families to take up all or any of their entitlement, and that there should be no penalties for not utilising their full entitlement.

Further, a few respondents suggested that the Guidance needed to better embed the rights of the child and the UNCRC, as well as the 2004 Act and Gaelic Medium education provision throughout.

Overall, the consultation feedback was effective in identifying key areas of concern, for parents/carers, PVI providers and local authorities, and provided numerous constructive suggestions which will help the Scottish Government to further improve the Guidance ahead of its publication.

Appendix A Respondents References

Education Scotland (2020), Realising the Ambition: Being Me

<http://change-childcare.org/>

<https://mars.northlanarkshire.gov.uk/egenda/images/att93495.pdf>

<https://takingparentsseriously.wordpress.com/2020/02/24/my-four-year-old-started-primary-one-but-wasnt-ready/>

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https://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180215_early_learning.pdf

<https://www.childrenshealthscotland.org/childrens-healthcare-rights/learn-about-the-healthcare-rights-of-children-and-young-people/>

NLC Report of 21.2.2020, referring to draft ADES 2019 Deferral report (compare to 2001 guidance, attached):

<https://mars.northlanarkshire.gov.uk/egenda/images/att93495.pdf>

Ref Dan Hughes and the Dyadic Developmental Psychotherapy (DDP) model.

<https://ddpnetwork.org/about-ddp/dyadic-developmental-psychotherapy/>

Scottish Government and COSLA (2018), Learning together: national action plan on parental involvement, engagement, family learning and learning at home 2018 - 2021



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The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80004-764-8 (web only)

Published by The Scottish Government, March 2021

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS841666 (03/21)

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