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Provision of Early Learning and Childcare During the COVID-19 Pandemic

Business and Regulatory Impact Assessment (BRIA)

February 2021



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Business and Regulatory Impact Assessment (BRIA)

Title: Provision of Early Learning and Childcare During the COVID-19 Pandemic – January 2021

Purpose and intended effect:

The objective of the additional restrictions imposed on the ELC and formal childcare sector from 26 December to (at time of writing) at least mid-February 2020, was to combat the spread of a new more transmissible strain of the virus identified in December 2020. As a precautionary measure, in the light of community transmission, new restrictions were imposed on the childcare sector, alongside wider lockdown measures in the community.

This BRIA is focused on the set of Early Learning & Childcare (ELC) and formal childcare measures:

- Nurseries and other registered day care of children providers may only open to children from key worker families, or vulnerable children;
- Childminders currently caring for 12 or more children may only open to children from key worker families, or vulnerable children;
- Childminders caring for fewer than 12 children can operate as normal.

These restrictions constitute an additional level of restriction beyond the Strategic Framework system of Levels introduced in November 2020.

Background

The ELC and formal childcare sector is a very important part of Scotland's economy and society.

Maintaining and widening access to affordable and high quality childcare provision is a critical enabler of economic recovery in the short term in particular through supporting parents and carers to work or study. In the longer term the childcare sector forms a crucial part of a wellbeing economy which provides opportunities for all to flourish.

Regulated childcare services are currently subject to [public health guidance](#) in order to operate. There is a core guidance document for day care of children services. There are separate guidance documents for [childminding services](#), and [school aged childcare services](#). Whilst these documents are aligned with the core guidance document they include variations to reflect the unique nature of these services.

Given the wider benefits, both to children and families and to supporting economic recovery, the Strategic Framework clearly set out an intention to prioritise keeping schools and regulated childcare, including early learning and childcare, open while ensuring the safety of children and young people and the staff who have worked hard to keep settings open.

The measures recommended up to Level 3 of the Strategic Framework enabled ELC and formal childcare services to continue to operate safely without significant impact on accessibility and capacity. At Level 4 the Strategic Framework, while retaining a commitment to keep ELC and formal childcare open, highlighted that there may be measures required which could impact on capacity in ELC and formal childcare, as settings may at this Level be subject to interventions which could include the targeted use of measures previously in force in regulated childcare, from 15 July to 9 August, which may have an impact

on capacity in services. This would be based on the evidence of transmission in ELC and childcare, and the need to protect and support those who are most at risk.

The targeted measures previously in place included:

- Caring for children in small groups
- Minimising contact between those groups
- Strict restrictions on blended placements, whereby children could not access childcare provision in more than one location in a day
- Strict restrictions on staff movement across settings

We know from sectoral engagement (with more information set out below) that these measures had the impact of reducing capacity in individual childcare services, depending on their layout, staffing and delivery model, meaning it could be the case that fewer children and families would be able to benefit from childcare provision at current levels if such measures were reintroduced.

The decision on 19 December 2020 to impose more significant restrictions, and introduce an additional level of constraint on the childcare sector, were driven by concern and caution in response to the identification of a new more transmissible variant of the Coronavirus.

In response to a new Variant of Concern (202012/01), mainland Scotland entered into Lockdown at midnight 4th January and the Scottish Government COVID-19 Advisory Sub-Group on Education and Children's Issues considered the risks of a return to education across all stages, in the context of the new variant of concern, in an extraordinary meeting held on 31 December. The advice from the sub-group was that schools and early learning and childcare settings should remain closed to all but the children of key workers and other priority groups beyond 18 January on a precautionary basis, and that there should be a fortnightly review of that decision.

The Sub-Group has committed to producing and publishing an updated evidence report on children, schools, early learning and childcare and transmission. In the meantime, [the note of the Sub-Group's meeting on 6th January](#) provides an overview of the evidence that has informed the decision to close early learning and childcare settings to all but the children of key workers and other priority groups, in the context of the Variant of Concern 202012/01.

Overview of ELC and the Formal Childcare Sector in Scotland

The childcare sector in Scotland operates as a mixed economy model with a mixture of public, private, third and childminding sector providers. The formal childcare sector delivers services to both children aged 5 and under and to school-aged children (through, for example, out of school care provision and childminders).

There are approximately 1,840 private and third sector childcare settings, including out of school care settings, 1,750 local authority nurseries and around 4,390 childminders registered with the Care Inspectorate.

In Scotland all children aged 3 and 4, and eligible 2 year olds, are entitled to funded Early Learning and Childcare (ELC). Many providers in the private and third sector deliver this service on behalf of the public sector, and receive payments from their local authority for the delivery of these hours. Local authorities currently have a statutory duty to ensure that 600 hours of funded ELC is available to all eligible children in their area. However, the sector had been working towards the expanded ELC entitlement of 1140 hours

being introduced in August 2020. Following the impact of the COVID pandemic the statutory roll-out of 1140 hours has been paused, however, all local authorities are currently offering more than 600 hours, including the full 1140 hours, to some or all families in their areas. In December 2020 a decision was made by Ministers and COSLA that a new implementation date of August 2021 could be set, an SSI is currently before the Scottish Parliament to reinstate the expansion obligation from that date.

Around 60% of private and 41% of third sector day care of children providers are currently estimated to deliver the funded Early Learning and Childcare (ELC) entitlement. On average the payments that these providers receive from their local authority for delivery of these hours are estimated to account for around a third of a private funded provider's total income, and around 60% of a third sector provider's total income – although there can be significant variations across providers. The remainder of their income comes from fees charged to parents and carers for non-funded hours (e.g. to children aged 0-2 or for additional wrap-around hours for children receiving a funded ELC).

Whilst there have been increasing numbers of childminders offering the funded ELC entitlement the numbers remain relatively low (the Scottish Childminding Association's [Early Learning and Childcare Audit 2019](#) reported that in July 2019 around 13% of childminders had been approved to offer funded ELC to 3 and 4 year olds).

The majority of staff working in ELC and the formal childcare sector are women: around 100% of registered childminders are women, 96% of staff in day care of children services¹ and 94% of teachers delivering funded ELC are women.²

COVID-19 and ELC and Formal Childcare Sector

COVID-19 has impacted on regulated childcare services in a number of ways:

- declines in income from private sources from March 2020 as services either closed or operated at reduced capacity (if they remained open to deliver critical childcare);
- increased costs due to the requirements of the public health guidance for the sector; and
- restrictions on capacity in order to operate in line with public health guidance.

The Scottish Government undertook a survey of providers between 19-24 June in order to better understand the potential impacts of the reopening guidance on their settings. The survey included questions regarding changes in costs, capacity and private income generation. This was intended to focus mainly on the impact of the reopening guidance for day care of children settings published on 15 June (which enabled these services to reopen from 15 July if they chose to do so), but replies were also received from some childminders regarding the impacts of the specific guidance for childminding settings³. Childminding settings, along with fully outdoor day care of children settings, were able to reopen from 3 June 2020 and separate specific guidance for these settings were published on 1 June 2020.

There were 651 responses to the survey with 430 from private and third sector providers, and 221 from childminders and showed that:

¹ [Scottish Social Service Sector: Report on 2018 Workforce Data \(sssc.uk.com\)](#)

² [Summary statistics for schools in Scotland no. 10: 2019 edition - gov.scot \(www.gov.scot\)](#)

³ This guidance was in place until 9 August 2020.

- 52% of private and third sector respondents indicated that they expected an increase in staffing requirements.
- 79% of private and third sector respondents reported that they expected average costs to increase upon reopening compared to business as usual.
- 80% of private and third sector respondents reported that they expected capacity to decrease upon reopening compared to business as usual.
- 81% of private and third sector respondents expect their capacity for private income generation to decrease upon reopening compared to business as usual.
- 65% of childminder respondents indicated that they expected no change in costs or for costs to decrease.
- 49% of childminders responding to the survey expected no change, or an increase, in overall capacity.
- 45% of childminders responding to the survey expected no change, or an increase, in overall private income generation compared to business as usual.

An [analysis of the survey results is available](#) on the Scottish Government website.

Regulated childcare providers, as with organisations in other sectors of the economy, will have been able to access support through a range of measures introduced by the Scottish and UK Governments. The Coronavirus Job Retention Scheme has been a key support measure for the sector. 90% of private and 66% of third sector day care of children respondents to the Scottish Government survey of providers in June 2020 indicated that they had drawn on support from the Coronavirus Job Retention Scheme.

Childminders have been able to draw on support from the Self-employed income support scheme or the Scottish Government's Newly Self-employed hardship grant. We do not have figures for the number of childminders who have been able to draw on support through these schemes, however a survey by the SCMA indicated that some childminders struggled to access support or received relatively low levels of support through the SEISS

In order to support the childcare sector, additional specific support has been made available:

- The Scottish Government and Local Authorities guaranteed that payments for the statutory early learning and childcare entitlement continued for the duration of closures, regardless of whether providers were open or closed (up until 10 August 2020).
- To support day care of children providers in the private, voluntary/not for profit sectors with additional costs associated with meeting the public health guidance the Scottish Government introduced a £11.2 million Transitional Support Fund.
- Support has also being provided to childminders through the Childminding Workforce Support Fund (CWSF), which has provided grants up to a maximum of £350 to help support childminders who have struggled to access support through other routes. The Scottish Government has provided £420,000 to the Scottish Childminding Association to support delivery of this Fund.

Policy Objective

The objective of the additional restrictions is to ensure that we can suppress the transmission of the virus, including the new strain of the virus, by limiting the number of interactions in the community ultimately minimising transmission rates, hospital admissions, deaths and the potential overwhelming of the NHS.

Rationale for Government Intervention

Strategic Intent

COVID-19 threatens health and life, but also how we live our lives, and our shared prosperity. The Scottish Government, in common with other UK Nations, is committed to suppressing the virus to the lowest possible level, and keeping it there, until we have a vaccine and/or effective treatments, and the virus is no longer the threat it is now. There is no acceptable number of people we are willing to let become infected.

The evidence base around transmission for this new virus is still emerging as is evidence about the different strains which continue to be identified, so we are committed to taking decisive action based on the best evidence available to us, while keeping this under constant review.

We considered evidence of experts in public health and children's issues in coming to the decision to adopt a precautionary approach and restrict attendance in childcare settings from 26 December 2020, and to extend those restrictions to at least mid-February.

Transmission

SARS-CoV-2 can be transmitted by three main routes: close-range respiratory droplets and aerosols, longer range respiratory aerosols, and direct contact with surfaces contaminated with virus. Transmission is strongly associated with proximity and duration of contact in indoor environments. It is possible for SARS-CoV-2 to be transmitted at distances of more than 2 metres.⁴

We know from contact tracing, international evidence and scientific research that a wide range of social, residential and workplace settings have been associated with transmission. The highest risks of transmission, including those from super-spreading events, are associated with poorly ventilated and crowded indoor settings with increased likelihood of aerosol emission and no face coverings are worn such as bars, nightclubs, parties/family gatherings, indoor dining, gyms and exercise classes, choirs and churches. Poor ventilation and crowding have been suggested to be factors in numerous transmission clusters^{5,6}.

Scientific evidence on coronavirus transmission and children shows that younger children appear to have a limited role in the transmission of the virus, however early evidence in regards to Variant of Concern (202012/01) suggested that transmission was higher in all age ranges. Nevertheless, evidence to date has shown that the risk of Covid-19 transmission from children to children and children to adults in primary school and day care settings appears low, particularly when infection control measures are in place.

⁴ [Transmission of SARS-CoV-2 and Mitigating Measures. SAGE EMG June 2020](#)

⁵ Leclerc QJ FN, Knight LE. What settings have been linked to SARS-CoV-2 transmission clusters? [version 1; peer review: 1 approved with reservations]. Wellcome Open Res **2020**; 5:83

⁶ Dillon Adam PW, Jessica Wong et al. Clustering and superspreading potential of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) infections in Hong Kong

Current position of Early Learning and Childcare and Formal Childcare

Childminding settings caring for fewer than 12 children can continue to operate their settings based on their normal attendance.

Day care of children settings and childminders caring for 12 or more children are currently asked to limit attendance in their settings to children of key workers and vulnerable children. Guidance is available to support setting level decision making about who should be in attendance.

Educational Continuity Directions have been in force in respect of ELC settings managed by an education authority, others have been covered by guidance only.

Conclusion

Maintaining and widening access to affordable and high quality childcare provision is a critical enabler of economic recovery in the short term in particular through supporting parents and carers to work or study. In the longer term the childcare sector forms a crucial part of a wellbeing economy which provides opportunities for all to flourish.

The current restrictions will impact negatively on individual provider income and could have consequences for the sustainability of some businesses. In the short term restrictions will also impact on parents and carers and their ability to work or study.

The Scottish Government has announced Temporary Financial Support to providers who remain open during this period to care for eligible children, recognising that opening for small numbers is likely to be financially challenging. The Scottish Government and COSLA have also agreed that funded payments will continue to those providers who normally receive them, whether or not children are in attendance, replicating the approach taken in Spring 2020. Other economy wide support is also available including the Coronavirus Job Retention Scheme, to support businesses with staff costs where furlough is an option.

Consultation

Public Consultation:

The Scottish Government undertook, over the period 19-24 June, a survey of childcare providers to better understand the potential impacts of the reopening guidance for childcare services. This was intended to focus mainly on the impact of the reopening guidance for day care of children settings that was published on 15 June, but replies were also received from some childminders regarding the impacts of the specific guidance for childminding settings (which was published on 1 June).

The guidance documents at the time of the survey placed more restrictions on regulated childcare services compared to the current public health guidance. However, the new additional temporary restrictions in respect of permitted attendance at settings are more significant in terms of impact on capacity.

The survey included questions regarding expected changes in staffing, costs, capacity and private income generation.

The survey results formed an important part of the evidence base used to determine where additional support for providers, to meet the requirements of the public health guidance, may be required. In particular the creation of the [Transitional Support Fund](#) for day care of children providers.

There were 651 responses to the survey with 430 from private and third sector day care of children providers, and 221 from childminders.

The Scottish Government prepared the survey in collaboration with the Scottish Early Years member organisations: Care and Learning Alliance (CALA), Early Years Scotland (EYS), National Day Nurseries Association (NDNA), Scottish Childminding Association (SCMA), and Scottish Out of School Care Network (SOSCN).

These member organisations have been working closely with the Scottish Government and COSLA, through the ELC and Childcare Sector Recovery Group, to look closely at the financial sustainability of the sector throughout the pandemic response, and to inform guidance for the sector.

A summary analysis of the survey responses is available on the [Scottish Government web site](#).

Business:

In addition to the June 2020 survey of childcare providers the Scottish Government has continued to engage with childcare provider representative bodies (both individually and through the ELC and Childcare Sector Recovery Working Group⁷) and childcare providers.

This has included receiving comments and input from these groups, and a small number of providers, on drafts of the various public health guidance documents for the sector and input on the response to decisions including the decision of 19 December. An extraordinary meeting of the ELC and Childcare Sector Recovery Working Group was held to discuss the decision and next steps on 21 December 2020, and the group has met weekly throughout January 2021.

The Scottish Government will continue to engage with the representative bodies and, where possible, providers on any further updates to the guidance documents.

Options:

This section sets out the range of options that have been considered in response to the new strain of the virus, and we continue to work constructively with the sector and public health experts to explore and assess alternatives as we progress towards a full reopening. We will update guidance for regulated childcare services, if required, in line with scientific and public health advice.

The key measures relating to ELC and formal childcare in the Strategic Framework are set out in the table below:

⁷ The ELC and Childcare Sector Recovery Working Group membership comprises Care and Learning Alliance (CALA), Early Years Scotland (EYS), National Day Nurseries Association (NDNA), Scottish Childminding Association (SCMA), and Scottish Out of School Care Network (SOSCN), as well as Scottish Government, COSLA and Care Inspectorate.

Early Learning & Childcare and formal childcare Measures (socialising rules apply)	Level 0 (Baseline)	Level 1	Level 2	Level 3	Level 4
ELC/Formal Childcare	Open – with standard protective measures in place	Open – with standard protective measures in place	Open – with standard protective measures in place	Open – with enhanced protective measures in place	Open – subject to targeted intervention which may impact on capacity

The additional restrictions imposed from 26 December to at least mid-February mean that day care of children services, and childminding settings caring for 12 or more children, are open only for children of key workers and vulnerable children. While operating for children in these circumstances, settings must continue to follow the Level 4 guidance.

Childminders caring for fewer than 12 children continue to follow the Level 4 guidance and are able to operate as normal.

Our approach to assessing options

Within this BRIA we have compared the additional restrictions imposed from 26 December, to continuing to operate in accordance with the Levels framework at Level 4. The new strain of the virus required precautionary action, and therefore the options available were to maintain the Level 4 approach with childcare open to all but subject to local targeted intervention, or to require additional restrictions on attendance to reduce overall numbers of interactions across the community.

Our objective is to suppress the virus, and ensure that our response to the new strain of the virus is robust enough to manage and reduce increased rates of transmission. This will ensure that the Levels Framework can be applied once again.

In assessing the options current and previous restrictions were taken into account, as was the approach being taken across the four UK nations to the new variant, clinical and sectoral input, and proposals from policy colleagues, industry, and experts.

Option 1 – No Change to Levels Approach

No change to the levels approach in respect of childcare would have resulted, broadly speaking, in most areas of Scotland seeing all childcare treated as level 4 for the duration of the lockdown period, with some islands in Level 3.

While levels 3 and 4 see some additional requirement for risk assessment in relation to clinically vulnerable staff and children, additional protective measures are not otherwise automatic and would be considered locally by Directors of Public Health.

The enhanced measures for level 3 are:

- parents or guardians should discuss with their GP or clinician whether children with the highest clinical risk should still attend.
- the majority of workplaces can be made safe for staff. To ensure this remains the case, employers should ensure that individualised risk assessments for setting staff members with the highest clinical risk are in place and updated appropriately, and staff should speak to their employer to ensure all appropriate protections are in place.
- decisions on appropriate protections should be informed by individual risk assessments, and may include protective measures in the workplace, mitigations such as working remotely (e.g. at home or in different settings), or carrying out different tasks within their usual workplace. If protections cannot be put in place, they can discuss whether they need a fit note with their GP or clinician.
- settings should review use of peripatetic staff, to ensure that staff who by nature of their role support multiple settings only attend settings in person where it is demonstrably in support of the health and wellbeing of young children.
- staff with a single employer should only work across more than one childcare setting or service when it is absolutely necessary. Risk assessments should be carried out where staff are employed by more than one childcare provider.

The enhanced measures for level 4 are:

- Settings should be prepared to engage with enhanced testing responses to COVID-19 outbreaks, where recommended by the Incident Management Team. This may include more testing of people who do not have symptoms to support outbreak management, and address areas where we are concerned about transmission. This includes undertaking more testing of close contacts of confirmed cases when recommended by our local health protection teams and more intensive use of other asymptomatic testing.
- The CMO will issue an automatic two week fit note to give shielding staff protection while they speak to their GP.
- Children on the shielding list should not attend in person.
- Settings in areas in level 4 may be asked to implement additional public health measures that may affect capacity. These may include for example, consistent small cohorts, minimising contact between cohorts, and restriction of blended placements. Moving to level 4 does not automatically require the use of these additional measures. The measures put in place in wider society at different levels of the Strategic Framework have been designed to reduce community transmission sufficiently to allow settings to continue to operate. However, there may be circumstances in which, based on clear evidence and public health considerations, these measures will be required. All such decisions will be made in line with the independent advice of local Directors of Public Health.
- The majority of workplaces can be made safe for staff. To ensure this remains the case, employers should ensure that individualised risk assessments for school staff members with the highest clinical risk are in place and updated appropriately, and staff should speak to their employer to ensure all appropriate protections are in place.
- Decisions on appropriate protections should be informed by individual risk assessments, and may include protective measures in the workplace, mitigations such as working remotely (e.g. at home or in different settings), or carrying out different tasks within their usual workplace.

Option 2 – further additional restrictions on attendance

In the light of the increased transmissibility of the new Variant of Concern reducing the overall number of interactions between different households is a priority. Although there is limited evidence that childcare settings themselves drive transmission, the interactions resulting from more movement in the wider community could have an impact.

As a precautionary measure, until more is known about the transmissibility and impact of the new variant, attendance can be reduced in settings. In order to do so, priority on attendance could be decided based on the same approach to providing critical childcare during the Spring 2020 lockdown. That is that only children of key workers and vulnerable children most in need can be in attendance at childcare settings.

Individual settings are therefore permitted to remain open, but must restrict the attendance of children to these categories based on the [supplementary guidance provided](#).

Children who do attend would benefit as normal from their funded entitlement or privately paid for hours as relevant.

Such restrictions could apply to all or any of:

- Day care of children services of all registered capacities
- Childminding Services of a registered capacity of 12 or more (considered larger services)
- Childminding services of a registered capacity of fewer than 12

Option 3 – closure of the sector

In the light of the increased transmissibility of the new Variant of Concern reducing the overall number of interactions between different households is a priority. Although there is limited evidence that childcare settings themselves drive transmission, the interactions resulting from more movement in the wider community could have an impact.

As a precautionary measure, until more is known about the transmissibility and impact of the new variant, one option would be to close the sector and require all children to be cared for at home.

Scottish Firms Impact Test:

How many businesses and what sectors is it likely to impact on?

The majority of regulated childcare businesses are registered in Scotland. Most of the businesses operating in the regulated childcare sector are small or medium sized. There are a small number of larger number of businesses who operate a number of regulated childcare services across the country. The sector also includes around 4,500 childminders who are self-employed.

Table 1 provides an overview of the different types of regulated childcare services in Scotland.

Table 1: Registered childcare services as at 31 December 2020

Type of service	Number of registered services
Day Care of Children services	
Health Board	3
Local Authority	1,756
Private sector	1,058
Voluntary or not for Profit	766
Total Day care of children services	3,583
Childminding Services	
	4,305

Source: Care Inspectorate

The Scottish Social Services Council (SSSC) [Report on 2019 Workforce Data](#) reports that at the end of 2019 there were 37,370 people employed in day care of children services in Scotland (excludes childminders). This comprises of 17,520 employed in local authority services; 13,730 in private sector services, and 6,120 in voluntary/not for profit services.

Additional restrictions on attendance at regulated childcare services could have direct impacts on these providers through reductions in capacity and income generation, as well additional costs.

Further targeted interventions on regulated childcare services would also be expected to impact on businesses in other sectors if they reduce workers' ability to access childcare.

What is the likely cost or benefit to business?

Interventions which restrict which children can attend a childcare setting will result in impacts on regulated childcare businesses in line with those identified in the survey of providers in June 2020. These results indicated that most private and third sector day care of childcare providers would expect to see their average costs of delivery increase, and for their capacity and income generation to decrease. The size of these impacts vary across different types of providers, including whether or not they deliver the funded ELC entitlement.

The regulated childcare sector, like many sectors of the economy, has experienced considerable financial pressures since March 2020 due to the substantial reductions in private income flows in this period. The pandemic also hit at a time when the sector was in the final stages of preparing for the statutory roll-out of the expanded ELC entitlement of 1140 hours in August 2020. As part of this preparation a number of providers offering funded ELC will have undertaken additional investment to expand their settings in order to deliver the increased entitlement.

The introduction of new restrictions, requiring providers to limit access to their settings to only those who meet the criteria as children of key workers or vulnerable children, will exacerbate the challenges these businesses faced in 2020 and were still recovering from.

Support for businesses facing restrictions

There is a comprehensive package of financial support from the UK Government and the Scottish Government for businesses to mitigate the negative impacts of the restrictions.

Through the UK government Coronavirus Job Retention Scheme employees working for businesses will receive 80% of their salary paid for by government.

This applies to all countries and regions of the UK and is not linked to specific tiers or restrictions.

- The Government will fund 80% of wages for hours not worked with employers' contributions initially limited to employers' NICs and pension costs – reflecting the terms and conditions of the CJRS applicable in August 2020. Employer contributions will be reviewed in January.
- All employees who were on the payroll as of 30th October are now eligible.
- Employees that were on the payroll as at 23 September but have since been made redundant can be re-employed and claimed for
- The UK Government also announced increased support for the self-employed who will also receive 80% of their average trading profits for November to January, with a further, as yet unspecified, grant to follow covering February to April.

The UK Government also announced (2 November)

- An extension of the coronavirus business interruption loan schemes until the end of January.
- Additional funding for Local authorities to support their local health response worth £500 million
- An extension of mortgage and consumer credit payment holidays, lasting 6 months

All these support measures are designed to support businesses and mitigate the negative impacts of the restrictions which have been identified and considered. We will continue to engage with the businesses affected on the impact of the measures, and the level of support available, as they are implemented.

It is also important to note that we have set out a comprehensive package of financial support for businesses in the Early Learning and Childcare and formal childcare sector to mitigate the negative impacts of the restrictions both in 2020, and a new package of support in 2021 in response to the additional restrictions imposed from 26 December 2020.

Specific support for regulated childcare providers has previously been made available:

- To support providers the Scottish Government and Local Authorities guaranteed that payments for the statutory early learning and childcare entitlement continued for the duration of closures, regardless of whether providers were open or closed (up until 10 August 2020).
- To support day care of children providers in the private, voluntary/not for profit sectors with additional costs associated with meeting the public health guidance the Scottish Government introduced a £11.2 million Transitional Support Fund. The Fund closed to applications on 9 October 2020.
- Support has also been provided to childminders through the Childminding Workforce Support Fund, which has provided grants up to a maximum of £350 to help support childminders who have struggled to access support through other routes. The Scottish Government has provided £420,000 to the SCMA to support delivery of this Fund. The second round of applications to the Fund closed on 19 October 2020.

Specific support for childcare providers which has been made available in response to the additional restrictions brought in from 26 December 2020:

- To support providers the Scottish Government and Local Authorities guaranteed that payments for the statutory early learning and childcare entitlement will again continue for the duration of restrictions,

regardless of whether providers were open or closed, and regardless of whether children are in attendance or otherwise.

- Day care of children providers, and childminders caring for 12 or more children, will be supported to remain open recognising the additional cost of doing so for very small numbers. Up to £3.8m will be available to provide grants to open settings in each four week period of the restrictions starting from 4 January 2021.
- Additional financial support of £1m has been announced for childminders, to support their business sustainability in the light of the ongoing impact of the pandemic on their services.

Competition Assessment:

As highlighted above the childcare sector operates as a mixed economy model with childcare providers in the public, private, third and childminding sectors.

All regulated day care of children services are subject to the same public health guidance regardless of whether they are in the public or private/third sector.

While childminding settings caring for fewer than 12 children are exempt from these restrictions, their capacity is limited to the maximum registration on their Care Inspectorate certificates. Therefore, these settings are unlikely to gain any significant competitive advantage as a result of the restrictions.

Consumer Assessment:

The following sets out the Scottish Government's initial view on the impact of the Early Learning and Childcare and formal childcare additional restrictions on consumers.

The restrictions on attendance are expected to impact on the level of paid for childcare provision that families can access. It will also impact on the amount of funded ELC that can be accessed.

Charging practices are for individual businesses, and we have encouraged businesses to be reasonable in their dealings with families in relation to ongoing fees and retainers for services not currently being accessed. However, we are aware that some providers are seeing to continue charging in some form, this may result in parents or carers making complaints to trading standards or through the courts if they consider that the charging practice is in breach of consumer protection laws.

The Competition and Markets Authority (CMA) has published a [statement](#) setting out its views on how the law applies to cancelled consumer contracts and refunds during the COVID-19 pandemic. The CMA has also provided [advice](#) and published an [open letter](#) to early years settings providing its views on the way consumer protection law applies where services cannot be provided due to public health restrictions.

Test run of business forms: N/A

Digital Impact Test: N/A

Legal Aid Impact Test: N/A

Enforcement, sanctions and monitoring: Monitoring and enforcement of compliance with the guidance will be undertaken by Local Authority Environmental Health Officers and, in some cases, Police Scotland.

Implementation and delivery plan and post-implementation review:

Guidance has been put in place to support the implementation of the restrictions and we are continuing our constructive engagement with the sector.

Summary and recommendations:

Introduction

This BRIA has examined the Early Learning & Childcare and formal childcare additional restrictions imposed from 26 December 2020 and compared these measures with the baseline option of maintaining the Levels 0-4 Framework with no further measures imposed, or alternatively with closure of the sector as a whole.

Background

The Scottish Government’s decision to impose additional restrictions was designed to suppress transmission of the virus, and ensure that the new variant of concern does not result in significantly increased transmission within communities.

Whilst this BRIA is focused on Early Learning & Childcare and formal childcare, measures are also being taken to reduce opportunities for transmission across a range of settings by imposing a stricter ‘lockdown’ across the economy and social interactions. It is important to view Early Learning & Childcare and formal childcare measures in the context of this wider package of restrictions.

Options Appraisal

In taking action a careful balance needs to be struck between protecting health and minimising the negative impacts on business, jobs and livelihoods.

The text and table below brings together the benefits and costs by option as set out in this BRIA.

The summary table below brings together the benefits and costs of:

- additional restrictions on who can attend settings; and
- closure of the childcare sector.

It compares these measures against the baseline option of maintaining the levels framework, where childcare is open at all levels but may operate with enhanced protective measures at levels 3 and 4.

	Benefits	Costs
Additional Restrictions on who can attend settings	<p>This would allow regulated childcare services to continue to remain open, and to deliver childcare safely and in-line with the latest scientific and public health advice to some children.</p> <p>This will provide benefits to some children by enabling them to continue to</p>	<p>Services will experience impacts on capacity and income as a result of</p> <ul style="list-style-type: none">• Lost parental fees for children not in attendance who pay privately for childcare hours• Increased costs of caring or small numbers of children while maintaining adult:child ratios and

attend childcare services, in line with whether they are the child of a key worker family, or considered vulnerable.

As regulated childcare services can remain open it is expected that there will be continued, if limited, economic benefits from continuing to support key worker parents to work, and support families of vulnerable children.

By enabling regulated childcare services to remain open this will continue to benefit some children and families, whilst ensuring the safety of children and young people and the staff who have worked hard to keep settings open by reducing overall numbers at this time.

In this scenario, childminders caring for fewer than 12 children would not be required to restrict the number of children in attendance. Therefore they can maintain their service as normal.

flexibility to ensure families have their normal pattern

Some of the cost pressures associated with meeting the guidance requirements in the Levels framework should already have been met by most providers due to physical adaptations that they will already have made – and support to help them meet these cost pressures has been provided through the Transitional Support Fund. However, the Transitional Support Fund was not intended to cover lost income.

Attendance at settings would be restricted to very small numbers of children. This would result in a cost to the children and their families, in economic terms that cost would include:

- Any fees which continue to be charged despite not accessing services;
- Parents and carers may not be able to work or study while taking on childcare responsibilities full time.

The additional funding available to support providers during these restrictions would be focused on those who are remaining open, but therefore incurring losses which might otherwise have been eased by closing entirely and benefitting from the CJRS and the continued funded payments as in the Spring 2020 closure period.

In this scenario, childminders caring for fewer than 12 children would not be required to restrict the number of children in attendance. Therefore they can maintain their service as normal. However, they may still be expected to see an impact on the number of families wishing to use their services, in particular where care is normally provided as wrap around in addition to school or nursery.

Closure of the Childcare Sector	<p>The main benefit of this approach would be in public health terms, it would eliminate any household interaction as a result of attendance in childcare settings.</p> <p>There would be no economic or social benefit for businesses or families.</p>	<p>Services will experience a income as a result of lost parental fees for children not in attendance who pay privately for childcare hours. For providers who do not offer funded ELC provision, their only income stream will be curtailed or lost all together.</p> <p>Some of the cost pressures associated with meeting the guidance requirements in the Levels framework should already have been met by most providers due to physical adaptations that they will already have made – and support to help them meet these cost pressures has been provided through the Transitional Support Fund. However, the Transitional Support Fund was not intended to cover lost income.</p> <p>This may be a cost to families, in economic terms that cost would include:</p> <ul style="list-style-type: none"> • Any fees which continue to be charged despite not accessing services; • Parents and carers may not be able to work or study while taking on childcare responsibilities full time.
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As a result, the option to allow Early Learning & Childcare and formal childcare settings to remain open, imposing restrictions only on larger settings to keep numbers low, offers a balance between allowing businesses to continue to operate where they can, allowing key worker parents to continue to benefit from their normal childcare arrangements, supporting vulnerable children, and meanwhile suppressing the risks of transmission by reducing overall numbers of interactions between households.

The additional financial support announced by the Scottish Government in January 2021 will help those settings which remain open to support small numbers of children specifically, recognising that by doing so they are supporting families and incurring losses. Both open and closed settings will be able to benefit from the commitment to continue funded payments for settings whether open or closed in the case of funded partners. All settings will be able to utilise the CJRS to furlough staff, although this is more likely to be a support to settings which close entirely rather than remain open.

Conclusion

This BRIA has set out the relative costs and benefits of options with the intended effect of suppressing the virus whilst acknowledging and minimising the economic harms faced by businesses.

It is also important to note that we have set out a comprehensive package of financial support for businesses in the Early Learning & Childcare and formal childcare sector to mitigate the negative impacts of the restrictions.

As set out in the Scottish Firms Impact Test section of this BRIA there is a comprehensive package of financial support from the UK Government and the Scottish Government for businesses to mitigate the negative impacts of the restrictions.

Additional targeted support has also made available by the Scottish Government for regulated childcare providers in direct response to the new restrictions imposed for the start of 2021 in order to help those which remain open to provide services to families who can access childcare at this time; this is in addition to support to the sector which was provided in 2020 to adapt their settings to the guidance.

Declaration and publication

Sign-off for BRIA:

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the measures resulting from the additional restrictions and guidance. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: 

Date: 17 February 2021

Minister's name: Maree Todd

Minister's title: Minister for Children and Young People



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