

Expansion of Early Learning and Childcare - Reinstatement of 1140 statutory duty

Equalities Impact Assessment (EQIA)

January 2021

Title of Impact Assessment	Equalities Impact Assessment
Title of Policy	Expansion of early learning and childcare – The Children and Young People (Scotland) Act 2014 (Modification) Order 2021 - Reinstatement of 1140 statutory duty
Summary of aims and desired outcomes of Policy	<p>The Scottish Government and local authorities have committed to almost double the funded entitlement to early learning and childcare (ELC) from 600 to 1140 hours from August 2021 for all 3 and 4 year olds and eligible 2 year olds. This will be high quality, flexible early learning and childcare that is accessible and affordable for families.</p> <p>The expansion will deliver three main benefits for children and families:</p> <ul style="list-style-type: none"> • 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 children.
Directorate: Division: team	Early Learning and Childcare Programme Directorate: Strategy and Delivery Unit

Executive Summary

- On 29 April 2020, the duty on education authorities to provide 1140 hours of early learning and childcare (ELC) to eligible children from 1 August 2020 was revoked due to the ongoing pressures of the COVID-19 pandemic. The Scottish Government has now reinstated this duty to come into force from 1 August 2021.
- Throughout the period of the COVID-19 pandemic, the Scottish Government has supported local authorities to continue to deliver, and work towards the delivery of 1140 hours of funded ELC where they are not already doing so. The Scottish Government has worked closely with local authorities to understand the impact that the pandemic has had on delivery plans, and to consider any risks to delivery. Based on this engagement the 1140 Joint Delivery Board, co-chaired by the Minister for Children and Young People and the COSLA spokesperson for children and young people recommended a new delivery date of August 2021.
- A 'provider neutral' Funding Follows the Child approach will still be introduced alongside the national roll-out of the expanded entitlement in 2021. Funding Follows the Child is underpinned by a National Standard¹ that all providers delivering the expanded hours – regardless of whether they are in the public, private or third sector, or childminders – will have to meet. This will provide

¹ <https://www.gov.scot/publications/funding-follows-child-national-standard-early-learning-childcare-providers-principles-practice/>

reassurance to parents and carers that any provider offering the funded hours will be able to offer their child a high quality ELC experience.

- It is recognised that the impact of the COVID-19 pandemic may make it more challenging for providers to meet all aspects of the National Standard. The Care Inspectorate suspended routine inspections as a result of COVID-19 in March 2020 but have since reinstated scrutiny of ELC, including childminders and school aged childcare. Current scrutiny is undertaken on a risk and intelligence based assessment and includes self-evaluation, virtual inspections and on-site inspections. This may mean that some settings who were working towards improving their Care Inspectorate quality evaluations ahead of the introduction of the National Standard in August 2020 will not have an opportunity to complete this work and/or may not have been re-inspected. To support the ELC sector to work towards the implementation of the National Standard during the pandemic Interim Guidance² was published in July 2020.
- This Equality Impact Assessment (EQIA) was undertaken to update the original assessments undertaken in 2019 and to further consider the impact of this policy on people with protected characteristics. It did not identify any direct or indirect unlawful discrimination through the implementation of the ELC expansion in August 2021. While there has been an inevitable impact of the delay of the 1140 expansion policy by one year on all those who access funded ELC, work in the sector and have children in funded ELC, the implementation of the policy in August 2021 will mitigate these impacts.

Background

The Children and Young People Act (Scotland) 2014 (the 2014 Act) made 600 hours of funded ELC per year available for all 3 and 4 year olds, and extended the entitlement to eligible 2 year olds. In a joint agreement with local government, the Scottish Government committed to almost double the entitlement to 1140 hours per year from August 2020. The Children and Young People (Scotland) Act 2014 (Modification) (No.2) Order 2019 put this on a statutory footing.

When the COVID-19 pandemic struck in March 2020, the Deputy First Minister announced that all local authority schools and childcare settings in Scotland, including childminders, would close from the end of Friday 20 March 2020. Childcare providers in the private and third sector were advised they should also close. As a result, Scottish Ministers took the decision to delay the full statutory implementation of the expansion of funded ELC to 1140 hours from August 2020. This was necessary to allow local authorities to deal with the urgent necessities of the pandemic, including the delivery of critical childcare for vulnerable children and the children of key workers. It was also apparent that the national lockdown would have implications on the ability to deliver on key infrastructure projects and recruit the necessary workforce required to deliver the ELC expansion in full. The duty to provide 1140 hours of ELC to eligible children was therefore revoked via the Children and Young People (Scotland) Act 2014 (Modification) (No. 2) Revocation Order

² [ELC+-+Covid-19+-+Funding+Follows+the+Child+and+the+National+Standard+-+interim+guidance+-+UPDATE+-+21+August.pdf \(www.gov.scot\)](https://www.gov.scot/publications/interim-guidance-21-august/pdf/pages/default.aspx)

2020. This meant that the mandatory amount of early learning and childcare remained 600 hours in August 2020.

The Children and Young People (Scotland) Act 2014 (Modification) Order 2021 will reinstate the 1140 expansion by modifying section 48(1)(a) of the 2014 Act to increase the mandatory amount of early learning and childcare from 600 to 1140 from 1 August 2021.

Between March and December 2020 the Scottish Government has continued to work closely with CoSLA, local authorities and key stakeholders to assess when it would be feasible to reinstate the statutory duty to deliver the funded ELC expansion. The joint recommendation of the all members of the Joint Delivery Board was that August 2021 is the earliest feasible date for the implementation of the full 1140 expansion. The board concluded that it would be challenging to deliver the 1140 expansion earlier than August 2021 and there was no evidence to support a later implementation date. This date was announced on 14 December 2020 and the Children and Young People (Scotland) Act 2014 (Modification) Order 2021 was laid in Parliament on 22 January 2021 to reinstate the statutory duty.

Expansion of Funded ELC to 1140 hours

The Scottish Government and local authorities have now committed to the delivery of 1140 hours of funded ELC from August 2021. This will be high quality, flexible ELC that is accessible and affordable for families.

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 children.

The Scottish Government has worked in partnership with the COSLA and a variety of stakeholders across the ELC sector throughout the development of the 1140 expansion policy and consulted widely on the expansion of funded ELC prior to the original implementation of the statutory duty.

Scope of this update to the EQIAs

Prior to the decision to expand availability of funded ELC from 600 to 1140 hours from August 2020, four separate EQIAs were carried out to ensure a thorough assessment of the impact of this policy change on equalities:

- Early Learning and Childcare Expansion: EQIA (June 2019)³
- ELC Learning and Wellbeing project: EQIA (June 2019)⁴

³ [Early learning and childcare expansion: EQIA \(June 2019\) - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/eqia-2019-06-01/pages/12.aspx)

⁴ [Early learning and childcare expansion - learning and wellbeing project: EQIA \(June 2019\) - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/eqia-2019-06-01/pages/13.aspx)

- Barriers to employment in ELC: EQIA (July 2019)⁵
- 2 year old eligibility: EQIA (June 2019)⁶

In addition, an assessment was carried out on impact of closing childcare during lockdown and reopening in Summer 2020⁷.

This update is intended to supplement those original Equality Impact Assessments (EQIAs) undertaken in 2019 and 2020. Specifically, the EQIA considers impacts on equalities groups based on the three tests it is required to address:

- Does this policy eliminate discrimination for each of the 9 protected characteristics (PC). If not is the discrimination justifiable? Can it be mitigated?
- Does this policy advance equality of opportunity for PC groups?
- Does this policy foster good community relations between people of PC groups?

In addition to this update, updates to the Fairer Scotland Impact Assessment, Business and Regulatory Impact Assessment and Children's Rights and Wellbeing Impact assessment will be published.

Methodology

This impact assessment sought to update the EQIA process carried out in 2019. The impact of the decision to reinstate the legislative duty to deliver 1 140 hours of funded ELC from August 2021 was considered.

Data sources utilised in this process included:

- Previously completed EQIAs as listed above.
- Scottish Government ELC census⁸ which provides information on funded ELC. This includes data on the number of registrations for funded ELC, with information available on numbers by age, disability and additional support needs. Additionally, data on teachers, graduates and staff working towards graduate level qualifications working in funded ELC is provided.
- Scottish Social Services Council: Report on Workforce Data⁹ which provides information on all staff working in the social service sector in Scotland. This includes data on those working in the day care of children sector and provides a breakdown for several equalities characteristics.

Updated key findings

⁵ [Barriers to employment in early learning and childcare: EQIA \(July 2019\) - gov.scot \(www.gov.scot\)](http://www.gov.scot)

⁶ [Early learning and childcare expansion - 2 year old eligibility: EQIA - gov.scot \(www.gov.scot\)](http://www.gov.scot)

⁷ [Early Learning and Childcare – re-opening childcare – impact assessment – gov.scot \(www.gov.scot\)](http://www.gov.scot)

⁸ [Schools in Scotland: summary statistics - 2020 - gov.scot \(www.gov.scot\)](http://www.gov.scot)

⁹ [Scottish Social Service Sector: Report on 2019 Workforce Data | Scottish Social Services Workforce Data \(sssc.uk.com\)](http://sssc.uk.com)

The Scottish Government have reviewed all of the previous EQIAs, as set out above, and all of the impacts previously assessed remain relevant. We have additionally considered the impact of the delay in implementing the 1140 expansion until August 2021 taking account of the new evidence outlined above, and find the following impacts:

Characteristic: Age

Under the Equality Act 2010, age as a protected characteristic does not include the age of children eligible to access funded ELC. However, children within the age bracket of 2-5 were impacted as a result of the decision to revoke the statutory duty on education authorities to deliver 1140 hours of funded ELC for all eligible 2, 3 and 4 year olds from August 2020, as their access to the benefits of expanded hours of ELC was delayed by a year.

The decision to reinstate the statutory duty will mean that children in this age group will be able access the benefits of expanded hours of ELC from August 2021. The positive impacts that this policy will have on young children remain as set out in the EQIAs undertaken in 2019.

Data from the Scottish Government's ELC census¹⁰ published in December 2020 shows that there has been a decrease in the percentage of children accessing their funded ELC entitlement. The 2020 results show that 95% of eligible three and four year olds were registered for funded ELC, down from 98% the previous year, and that 9% of two year olds were registered, down from 11% in 2019. There are a number of reasons that this may be the case, including that parents do not currently feel confident to send their child to an ELC setting during the COVID-19 pandemic. The Public Health Scotland (PHS) (COVID-19 Early years resilience and impact survey (CEYRIS) found that just under half of parents of 2-7 year old children surveyed in June-July 2020 were concerned about their child becoming ill with coronavirus (41%) or their passing coronavirus to someone else (49%).¹¹ The Scottish Government will seek to mitigate this impact by continuing to engage parents on the benefits of ELC through the parental engagement project detailed in the EQIA dated 28 Jun 2019¹².

Throughout the period that the ELC expansion has been paused, the Scottish Government has sought to mitigate the impact of this decision by continuing to support local authorities to provide more than the statutory 600 hours. Funding for 1140 expansion was continued, with additional flexibility introduced around how this funding could be spent. This resulted in local authorities being able to continue to develop and deliver their expansion plans. As of December 2020, 14 local authorities were delivering 1140 hours of funded ELC to all eligible children in their area, and all local authorities were offering 1140 hours to some or most children. This high level of delivery has helped to mitigate the impact of the pause on young children and their parents/carers by allowing access to expanded hours where possible.

¹⁰ [Summary statistics for schools in Scotland \(www.gov.scot\)](http://www.gov.scot)

¹¹ [COVID-19 Early years resilience and impact survey \(CEYRIS\) - Report 3 - The experience of parents and carers](#)

¹² [Early learning and childcare expansion: EQIA - gov.scot \(www.gov.scot\)](http://www.gov.scot)

It is also important to recognise that if the Scottish Government had not delayed the implementation of the statutory duty to deliver the ELC expansion, this would have put significant pressure on local authorities during the pandemic. Although some local authorities are already offering 1140 hours to some or all families, we know that most authorities do not expect to complete expansion work before August 2021. Engagement with authorities shows that seeking a date earlier than August 2021 is not realistic and this is therefore agreed to be the earliest feasible date to reinstate the duty so that children can benefit from expanded hours of funded ELC at the earliest opportunity.

Characteristic: Disability

In relation to the protected characteristic of disability, the ELC census collects data on whether a child is recorded as disabled and whether the child has an additional support need (ASN). Data from the 2020 ELC census shows that 1% of children registered for ELC had a declared disability and 14% of children were assessed as having an additional support need, in line with figures for the previous year.

The key findings under the heading of disability in the 2019 EQIA are still valid. Children who are disabled or require additional support have not been detrimentally impacted by the decision to reinstate the 1140 duty from August 2021. The impact of the implementation of the duty having been revoked, such as the ability to access extended hours of funded ELC, will be mitigated when the duty comes into force as all eligible children will then be able to access the benefits of 1140 hours of funded ELC entitlement. In the meantime, mitigations as outlined above have been ongoing.

We are aware that children may have presented at ELC with new needs as a result of the COVID-19 pandemic. To ensure that children are supported with these needs the ELC Inclusion Fund¹³, which supports children with ASN to access their funded ELC entitlement, expanded its application criteria to support children who have new needs as a result of the pandemic.

As described above in relation to the protected characteristic of age, seeking to bring back the statutory duty to deliver 1140 hours of funded ELC before it was reasonable would have negative impacts upon children - these would equally apply to children who have this protected characteristic.

Characteristic: Sex

The key findings under the heading of sex in the 2019 EQIA are still valid.

Figures from the Scottish Social Services Council¹⁴ indicate that staff working in the childcare workforce continue to be mainly women. Evidence also shows that outside of formal childcare women generally carry out the majority of childcare and other caring responsibilities¹⁵. This means that women are likely to have been disproportionately affected by the pause in the statutory delivery of 1140 hours of

¹³ [Children in Scotland](#)

¹⁴ [Scottish Social Service Sector: Report on 2019 Workforce Data | Scottish Social Services Workforce Data \(sssc.uk.com\)](#)

¹⁵ [Time use survey 2014-2015: results for Scotland - gov.scot \(www.gov.scot\)](#)

funded childcare. This may have resulted in some women who had planned to join the ELC workforce being unable to take up this work either because it was unavailable due to the delay or because they had their own childcare responsibilities as a result of access to fewer hours of funded ELC. It may also have more generally resulted in women being unable to take up work, study or training due to childcare responsibilities.

The implementation of the statutory duty to deliver 1140 hours of funded ELC from 1 August 2021 will mitigate these impacts. Local authorities and other childcare providers are once again recruiting staff in order to meet the needs of the statutory duty, which will mean that more employment opportunities are available in the sector. The reinstatement of the duty will also mean that all eligible children will be able to access 1140 hours of funded ELC, supporting women to work, train or study if they wish to do so.

Characteristic: Gender Reassignment

The results from the EQIA conducted in 2019 are still valid. There are not considered to be any areas of the reinstatement of the 1140 expansion policy that could disproportionately impact people with this protected characteristic.

Characteristic: Pregnancy and Maternity

The results from the EQIA conducted in 2019 are still valid. Other than the impacts discussed under the Sex heading there are not considered to be any areas of the reinstatement of the 1140 expansion policy that could disproportionately impact people with this protected characteristic.

Characteristic: Race

The results from the EQIA conducted in 2019 are still valid. There are not considered to be any areas of the reinstatement of the 1140 expansion policy that could disproportionately impact people with this protected characteristic.

Characteristic: Religion or belief

The results from the EQIA conducted in 2019 are still valid. There are not considered to be any areas of the reinstatement of the 1140 expansion policy that could disproportionately impact people with this protected characteristic.

Characteristic: Sexual Orientation

The results from the EQIA conducted in 2019 are still valid. There are not considered to be any areas of the reinstatement of the 1140 expansion policy that could disproportionately impact people with this protected characteristic.

Characteristic: Marriage and Civil Partnership

The results from the EQIA conducted in 2019 are still valid. There are not considered to be any areas of the reinstatement of the 1140 expansion policy that could disproportionately impact people with this protected characteristic.

Public Sector Equality Duty

For each of the 8 protected characteristics detailed above, this EQIA process assessed how the Scottish Government is giving due regard to the 'needs' of the public sector equality duty. The 'needs' are to eliminate discrimination, harassment and victimisation; advance quality of opportunity; and foster good relations.

The EQIA conducted in 2019 on the 1140 expansion policy concluded that there are actions within the policy that help to promote good relations between those with and without a protected characteristic. This assessment is still live and valid.

The mitigating actions that the Scottish Government and partners took in order to support the continued delivery of the 1140 expansion during the pause in its statutory implementation have positively impacted on the advancement of equality of opportunity by driving forward the policy to deliver expanded ELC provision to all 3 and 4 year old and eligible 2 year old children. The full implementation will further advance this.

Updated recommendations and conclusions

The conclusions and recommendations in the 2019 EQIAs are still live and valid. This updated EQIA process did not identify any direct or indirect unlawful discrimination through the reintroduction of the statutory duty to deliver 1140 hours of funded ELC from 1 August 2021.

Pausing the implementation of the duty has impacted upon people with a protected characteristic as children may not have been able to access 1140 hours of funded ELC. The Scottish Government has sought to mitigate this impact during the period of the pause. It is recognised that the impact of delaying the statutory implementation of the 1140 expansion will be ongoing until it is reinstated. The reintroduction of the duty in August 2021, which is assessed to be the earliest feasible date for delivery, will have a positive impact by enabling all eligible children to access the benefits of expanded ELC at the earliest possible date. It is therefore recommended that the Scottish Government and local authorities continue work to implement the policy to this new timescale.



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