

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

**Business and Regulatory Impact Assessment
(BRIA)**

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Business and Regulatory Impact Assessment The Expansion of Early Learning and Childcare (ELC) in Scotland

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Legislation being brought into force:

- Expansion of early learning and childcare – The Children and Young People (Scotland) Act 2014 (Modification) Order 2021 - Reinstatement of 1140 statutory duty

1. Purpose and intended effect

Background

1.1 In June 2019 a Business and Regulatory Impact Assessment was produced to support the introduction of:¹

- The Children and Young People (Scotland) Act 2014 (Modification) (No.1) Order 2019
- The Children and Young People (Scotland) Act 2014 (Modification) (No.2) Order 2019.

1.2 Order (No.1) came into effect from 1 August 2019 and updated the Minimum Framework for delivery to: (1) remove the minimum session length; and (2) extend the maximum session length to 10 hours or less. These changes have supported local authorities to provide more flexibility on session lengths, and to test new delivery models, during the phasing period and in preparation for full implementation of 1140 hours.

1.3 The Children and Young People (Scotland) Act 2014 (Modification) (No.2) Order 2019 (“the Order (No.2)”) was due to come into force from 1 August 2020. It amended the 2014 Act to place a statutory duty on education authorities (i.e. local authorities) to secure 1140 hours of funded ELC in each year for which a child is eligible and a pro-rata amount for each part of a year.

1.4 However, following the impact of the COVID pandemic in late March 2020 the difficult decision to pause the ELC expansion was made. This decision was necessary to allow local authorities and childcare providers to respond to the pandemic and provide critical childcare to key worker families and vulnerable children and because elements of the expansion simply could not proceed during lockdown. As a result, the statutory duty for local authorities to secure 1140 hours of funded ELC from 1 August 2020 was revoked.

1.5 The Children and Young People (Scotland) Act 2014 (Modification) Order 2021 will reinstate the 1140 hours statutory duty, which is proposed to take effect from 1 August 2021.

¹ <https://www.gov.scot/publications/business-regulatory-impact-assessment-expansion-early-learning-childcare/>

Expansion to 1140 hours

1.6 The Scottish Government's ambition is for every single one of Scotland's children to grow up in a country where they feel loved, safe and respected, and able to reach their full potential. It is this ambition that is at the heart of the Scottish Government's commitment to expanding funded early learning and childcare entitlement that is free at the point of access. It is a transformative policy ambition which will secure positive outcomes for children across Scotland and grow Scotland's economy.

1.7 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 has committed to almost double the entitlement to 1140 hours per year from August 2020. This commitment was first made in the 'One Scotland' Programme for Government 2014-2015.² Subsequent Programmes for Government have also reiterated this commitment.

1.8 In April 2018 the Scottish Government and COSLA agreed a multi-year funding package to fully fund the expansion of ELC. The funding package is based on a robust, shared understanding of the costs attached to the expansion. This investment will support the delivery of high quality, flexible ELC that is accessible and affordable for families.

1.9 Local authorities have a statutory duty to ensure that there are funded places available for all eligible children in their area. The funded places are available across a range of providers in the childcare sector, including in local authority run settings and through the local authority commissioning places from providers in the private and third sectors, including childminders.

1.10 To ensure that the funded ELC entitlement is delivered in high quality settings, the sector was working towards the introduction of Funding Follows the Child.³ This was to have been introduced alongside the statutory roll-out of 1140 hours of funded ELC entitlement in August 2020.

1.11 Funding Follows the Child is 'provider neutral' and is underpinned by a National Standard that to be a funded provider – regardless of whether they are in the public, private or third sector, or childminders – settings will have to meet.

1.12 The criteria of the National Standard focuses on what children and their families should expect from their ELC experience, regardless of where they access their funded entitlement.

² [THE GOVERNMENT'S PROGRAMME FOR SCOTLAND 2014-15](#)

³ <https://www.gov.scot/publications/funding-follows-child-national-standard-early-learning-childcare-providers-principles-practice/>

1.13 Interim Guidance on the delivery of Funding Follows the Child was published in July 2020.⁴ This highlighted that in light of the impact of the pandemic it was no longer feasible to set a national requirement for all funded ELC providers to meet the National Standard from August 2020. However, local authorities have continued to use the principles and criteria of Funding Follows the Child and the National Standard as a framework to shape local funded ELC delivery. The national requirement for all funded ELC providers to meet the National Standard will now take effect from August 2021.

The decision to delay 1140 hours

1.14 The UK Coronavirus Act 2020 received Royal Assent on 25 March 2020. The Scottish Government immediately used powers conferred by that Act to bring forward the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (“the first regulations”), to implement physical distancing and impose restrictions on gatherings, events and operation of business activity. They came into force on Thursday 26 March 2020.

1.15 In late March 2020 the difficult decision to pause the ELC expansion was made. This decision was necessary to allow Local Authorities and childcare providers to respond to the pandemic and provide critical childcare to key worker families and vulnerable children and because elements of the expansion simply couldn't proceed during lockdown.

1.16 The Scottish Government has continued to monitor the progress across Scotland to help Scottish Ministers and COSLA Leaders determine when the expansion to 1140 hours could realistically be delivered in full, while ensuring quality of experiences for children remains at the heart of all that we do.

Current figures

1.17 The latest data return from local authorities report indicates that:

- More than 80% of children are receiving more than 600 hours (74,000 children);
- 61% of eligible children – more than 56,000 – are already receiving 1,140 hours of funded ELC, despite the statutory expansion being paused in April;
- More than 93,000 children are benefitting from high quality care and learning;
- 87% of the additional staff forecast to be required for August 2020 are in place; and
- In August 2020, nationally 27% of provision was being accessed in private settings, compared to 72% in local authority settings, with the remainder being accessed with childminders. This is in line with the split of provision that was forecast pre- COVID by local authorities for September 2020.

⁴ <https://www.gov.scot/publications/funding-follows-the-child-and-the-national-standard-for-early-learning-and-childcare-providers-interim-guidance/>

Overview of the childcare market in Scotland

1.18 The formal 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).

1.19 As of 31 October 2020 there were 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.

1.20 Around 60% of private and 40% 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.⁵ 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).

1.21 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, although only around 4% of childminders were actually delivering funded ELC to these children).

1.22 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 services⁶ and 94% of teachers delivering funded ELC are women.⁷

COVID-19 and ELC and the formal childcare sector

1.23 COVID-19 has impacted on formal 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.

⁵ More information can be found at: <https://www.gov.scot/publications/survey-of-childcare-providers-on-impact-of-reopening-guidance-summary/>.

⁶ <https://data.sssc.uk.com/images/WDR/WDR2018.pdf>

⁷ <https://www.gov.scot/publications/summary-statistics-schools-scotland-no-10-2019-edition/>

1.24 The Scottish Government undertook a survey of providers between 19-24 June 2020 in order to better understand the potential impacts of the reopening guidance on their settings.⁸ The survey included questions regarding changes in costs, capacity and private income generation.

1.25 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 settings.⁹ Childminding settings, along with fully outdoor day care of children settings, were able to reopen from 3 June 2020 and separate specific guidance documents for these settings were published on 1 June 2020.

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

- 52% of private and third sector respondents expected an increase in staffing requirements.
- 79% of private and third sector respondents expected average costs to increase upon reopening compared to business as usual.
- 80% of private and third sector respondents expected capacity to decrease upon reopening compared to business as usual.
- 81% of private and third sector respondents expected their capacity for private income generation to decrease upon reopening compared to business as usual.
- 65% of childminder respondents 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.

1.27 An analysis of the survey results is available on the Scottish Government website.¹⁰

Policy Objective - Reinstatement of 1140 hours

1.28 The policy to expand ELC entitlement to 1140 hours via the Children and Young People (Scotland) Act 2014 (Modification) Order 2021 will contribute to the following National Outcomes:

- We grow up loved, safe and respected so that we realise our full potential
- We are well educated, skilled and able to contribute to society
- We tackle poverty by sharing opportunities, wealth and power more equally

⁸ <https://www.gov.scot/publications/survey-of-childcare-providers-on-impact-of-reopening-guidance-summary/>

⁹ This guidance was in place until 9 August 2020.

¹⁰ <https://www.gov.scot/publications/survey-of-childcare-providers-on-impact-of-reopening-guidance-summary/>

- We have a globally competitive, entrepreneurial, inclusive and sustainable economy
- We have thriving and innovative businesses, with quality jobs and fair work for everyone

1.29 The impact of the Coronavirus pandemic on the 1140 expansion programme has been significant. In March it was agreed that the statutory duty on education authorities to provide 1140 hours from August 2020 would be revoked, in recognition of the direct impact on expansion programmes and the likely ongoing impact on service delivery.

1.30 The ELC Joint Delivery Board – which is co-chaired by the Minister for Children and Young People and the COSLA Spokesperson for Children and Young People, provides joint governance and monitors progress of the expansion programme – has continued to consider the data and intelligence gathered across all authorities areas, and make an assessment of readiness for 1140 hours delivery in relation to a number of key components. These include uptake and eligibility, capacity, infrastructure, partners, workforce, quality, the impact of COVID guidance on capacity, and the impact of COVID on finance.

1.31 The ELC Joint Delivery Board have noted that since the duty was revoked a significant proportion of the programme has continued to be delivered. In January 2021, 15 authorities were offering 1140 hours to all children and all authorities are offering 1140 hours to some or most children. To do this in the face of the COVID 19 pandemic has required difficult choices about how services are delivered, and in many areas the offer will continue to develop. However, this high level of delivery has been achieved only through extensive effort and commitment from all local authorities and their delivery partners.

1.32 The ELC Joint Delivery Board, on considering the evidence on progress across all local authorities, recommended in December 2020 that the 1140 hours expansion should be implemented across Scotland in August 2021. They considered that the data and intelligence available at the time indicated that delivery risk nationally in August 2021 was lower than eight months out from the original implementation date of August 2020, and that there is confidence in successful delivery at a local and national level. They noted that there is scope in some authorities, or in some localities, to continue to expand provision ahead of the August 2021 date.

Rationale for Government intervention

1.33 The primary driving force behind the expansion of funded ELC is to secure improved outcomes for children in Scotland.

1.34 The provision of high quality ELC is a key contributor to our ambition to close the poverty-related attainment gap. International research and evidence from the Scottish Government's [Growing Up in Scotland study](#) shows that children, particularly those from more disadvantaged backgrounds, can benefit from attending high quality funded ELC.

1.35 Recognising the opportunity ELC provides to improve children’s development and narrow the attainment gap, the expansion to 1140 hours intends to maximise the opportunity to ensure that all children in Scotland get the best possible start in life and receive an equal chance to succeed.

1.36 As part of the expansion, it is also envisaged that an increase in the flexibility of how the funded entitlement is delivered will allow more parents to work, train or study, especially those who will benefit from routes into sustainable employment and out of poverty.

2. Consultation

Within Government

2.1 As highlighted above the Scottish Government has worked closely with local authorities, in particular through the ELC Joint Delivery Board, to inform the decision to reinstate the 1140 hours statutory duty.

2.2 Throughout the development of the policy to expand ELC entitlement to 1140 hours, the decision to delay and the timing of a new date for implementation, the Scottish Government’s Early Learning and Childcare Directorate has engaged with colleagues across the Scottish Government, including:

- Directorate for Children and Families
- Directorate for Learning
- Directorate for Economic Policy and Capability
- Directorate for Housing and Social Justice
- Directorate for Local Government and Communities
- Directorate for Fair Work, Employability and Skills

2.3 Officials have also engaged with Education Scotland, the Scottish Social Services Council and the Care Inspectorate throughout the policy development process to ensure the expanded ELC entitlement is of a high quality.

Public Consultation

2.4 The expansion to 1140 hours, and the development of the supporting policy framework was informed by a number of extensive public consultations. More information is set out in the June 2019 Business and Regulatory Impact Assessment¹¹ which was produced to support the introduction of the Children and Young People (Scotland) Act 2014 (Modification) (No.1) Order 2019 and the Children and Young People (Scotland) Act 2014 (Modification) (No.2) Order 2019.

2.5 More recently over the period 19-24 June 2020, the Scottish Government undertook a survey of childcare providers to better understand the potential impacts of the reopening public health 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 2020, but replies were also

¹¹ <https://www.gov.scot/publications/business-regulatory-impact-assessment-expansion-early-learning-childcare/>

received from some childminders regarding the impacts of the specific guidance for childminding settings (which was published on 1 June 2020).

2.6 The guidance documents at the time of the survey placed more restrictions on regulated childcare services compared to the most recent public health guidance (effective from 2 November 2020).

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

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

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

2.10 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).

2.11 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.

Business

2.12 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 Group¹²) and childcare providers.

2.13 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. This feedback has focussed in particular on the importance of making sure that the guidance documents are clear and in helping to understand key practical constraints and challenges for providers resulting from the guidance.

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

¹² 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.

3. Options

3.1 This section sets out the range of options that have been considered for the reinstatement of 1140 hours.

3.2 Two options are considered:

- **Option 1: The reinstatement of the statutory duty to deliver 1140 hours to be set for August 2021**
- **Option 2: Statutory duty to deliver 1140 hours reintroduced at a later date than August 2021 (and will remain at 600 hours in August 2021)**

3.3 The following sectors and groups will be affected under Options 1 & 2

- Children and their families – under Option 1, from August 2021 all 3 and 4 year olds and eligible 2 year olds will be entitled to 1140 hours of funded ELC. Families will benefit from the increase in the number of hours that are free at the point of delivery from August 2021, which could influence household budgets and decisions regarding work and/or study. Children will also benefit from the increase in funded entitlement. This option will maximise the positive impacts high quality ELC has on children’s wellbeing, educational and developmental outcomes, particularly for those children from disadvantaged backgrounds. Parents will also benefit from the changes to the maximum session length for funded ELC as this provides further flexibility for parents wishing to access their child’s funded entitlement over full day sessions more closely tied to the working day.
- Private and Third Sector childcare providers, including childminders – there is an expectation that, under Option 1, these providers will continue to play an important role in the delivery of the funded hours. Introduction of the expanded funded entitlement will, in general, require providers to consider how to evolve their business models. The sustainable rate will include funding to enable payment of the real Living Wage to childcare workers delivering the funded entitlement. However, funded providers will face a business decision as to whether they provide the additional resource to uplift salaries for all workers in their settings, including those not engaged in delivery of the funded entitlement, to the real Living Wage from August 2021 (the funding provided by the Scottish Government and local authorities is only for the funded hours, as if funding were provided for non-funded hours then this could be interpreted as a subsidy).¹³
- Public sector ELC settings – continued development of delivery models to provide flexibility and to offer provision over longer days and the full year in some settings.

¹³ Further information on the real Living Wage commitment can be found in Section 3 of the [Funding Follows the Child and National Standard for Early Learning and Childcare Providers Frequently Asked Questions](#) document.

- Local authorities – Development of expansion plans to set out how the expanded entitlement will be delivered. Exploring new delivery models to meet local demands, and to offer choice and flexibility to families. Oversight of local workforce expansion and capital investment programmes.
- Construction sector – Option 1 is supported by £476 million of capital investment to support the increase in capacity across the sector through refurbishments and expansions of existing settings and the construction of new builds where there are identified gaps in local sectoral capacity.

Benefits

Option 1: The reinstatement of the statutory duty to deliver 1140 hours to be set for August 2021

3.4 There are a number of potential benefits associated with Option 1:

Benefits to Children

- Evidence from the UK, including the [Growing Up in Scotland Study](#), and international evaluations and studies of early learning and childcare programmes support the fact that all children, and especially those from disadvantaged backgrounds, can benefit in terms of social, emotional and educational outcomes from attending ELC.
- Contributing to closing the poverty-related attainment gap between the most and least advantaged children.
- By helping to close the attainment gap and contributing to our preventative actions to reduce child poverty, the expansion of ELC entitlement has the potential to generate long-term benefits to the public finances and to economic and labour market outcomes.

Benefits to Parents and Carers

- Expanding the funded ELC entitlement and introducing Funding Follows the Child offers parents and families an increased choice of settings where they can access their child's funded ELC entitlement.
- Parents and carers would benefit from a high quality, flexible system as it helps to support people into work, training or further study which may not have previously been accessible due to prohibitive childcare costs.
- The benefits of increasing the funded ELC entitlement to 1140 hours will also be felt in household budgets (for those families who are not currently receiving 1140 hours of funded ELC). Providing 1140 hours of early learning and childcare entitlement is estimated to save a family, on average, around £4,500 per child per annum compared to a scenario where these hours would have to be paid for (when compared to the current statutory funded entitlement of 600 hours the additional saving would be around £2,000 per child per annum).

Benefits to Providers

- Enables a system that is provider neutral with the focus on the settings best placed to deliver quality outcomes for children. Funding Follows the Child

will ensure the expanded entitlement is delivered on a 'provider neutral' basis allowing providers in the private and third sectors to become a funded provider, so long as they meet the National Standard and are willing to enter into a contract with their local authority.

- There is a commitment to simplifying the process for, and reducing the burden on, providers who wish to deliver the funded entitlement. This is expected to make it easier for ELC providers in the private and third sectors (including childminders) to become a supplier of funded ELC (as long as they meet the criteria in the National Standard).
- The multi-year funding agreement between the Scottish Government and COSLA provides the funding to enable the payment of a sustainable rate to providers from August 2020.
- Provide the opportunity for an enhanced role for childminders in delivering the funded entitlement through the introduction of Funding Follows the Child.
- The long-term impacts of the pandemic on the demand for childcare are currently uncertain. The increase in the funded ELC entitlement is expected to result in increases in the proportion of a provider's income that is accounted for by these hours. This will provide a key, and relatively stable, income stream for those providers delivering funded ELC.

Economic Benefits

- Funding is provided to local authorities to ensure that hourly funding rates paid to providers are sufficient to enable payment of the real Living Wage to those workers delivering funded ELC, and the promotion of Fair Work practices across settings.
- The sector is very close to having the workforce it needs to deliver 1140 hours flexibly with local authorities having continued recruitment over summer 2020, including via video interviews.
- The latest data from the Improvement Service, published in September 2020, indicated that the additional workforce in place in August 2020 was 6,575, out of an estimated required workforce of 8,244 FTE staff.
- There will be a need for some further recruitment to enable rollout of the 1140 hours expansion across Scotland. Local authorities are reviewing their total staffing needs for 1140 delivery, and information on this will be set out in the next national progress report in early 2021.
- These employment opportunities will be spread across all local authority areas and within many of our most disadvantaged communities, with a range of roles across different qualification levels presenting a considerable opportunity to support inclusive growth.
- The expansion could increase the supply of labour, either by allowing more parents and carers to increase their hours of work or by more parents and carers entering the labour market. Increases in the supply of labour can contribute to long-term economic growth performance.
- The expansion is underpinned by a substantial programme of infrastructure development, which will help to support employment across the construction sector.

Option 2: Statutory duty to deliver 1140 hours reintroduced at a later date than August 2021 (and will remain at 600 hours in August 2021)

3.5 Under Option 2 it is possible that even in the absence of the 1140 hours statutory duty being reintroduced in August 2021 some local authorities would continue to expand the number of funded hours available to eligible children in their area (including potentially increasing the number of children who can access the full 1140 hours), as has been witnessed in the period to November 2020.

3.6 Where this is the case some, or all, of the benefits described in Option 1 could be witnessed to some degree from August 2021.

Costs

Option 1: The reinstatement of the statutory duty to deliver 1140 hours to be set for August 2021

3.7 As set out in the June 2019 BRIA,¹⁴ the Scottish Government has worked with COSLA and local authorities to identify the costs of delivering the expansion to 1140 hours (and all the associated policy elements that are part of the wider supporting policy framework). A multi-year funding agreement was reached to meet the full revenue and capital costs of the expansion.

3.8 Table 1 sets out the additional revenue funding requirements for local authorities from 2019-20 to 2021-22, which formed the basis of the multi-year funding agreement between the Scottish Government and COSLA to fully fund the expansion of ELC. The funding agreement will see the Scottish Government provide local authorities with total recurring revenue funding of £567 million per year by 2021-22, relative to funding provided for ELC in 2016-17.

Table 1 – Revenue allocations to local authorities for early learning and childcare 2019-20 to 2021-22

	2019-20	2020-21	2021-22
Scotland	£307,000,000	£508,000,000	£566,656,000

3.9 Local authorities have also received £476 million of capital funding to support the expansion over four financial years from 2017-18 to 2020-21 inclusive. This is to cover the costs of any refurbishments, expansions or new builds where gaps in local capacity have been identified by local authorities.

3.10 All the additional funding provided since 2017-18 for the expansion to 1140 hours has been allocated as a specific grant to local authorities. This is to ensure that it is protected for investment in ELC.

3.11 The Scottish Government is working with COSLA and Local Authorities to identify ongoing funding requirements from 2022-23 onwards.

¹⁴ <https://www.gov.scot/publications/business-regulatory-impact-assessment-expansion-early-learning-childcare/>

Costs

Option 2: Statutory duty to deliver 1140 hours reintroduced at a later date than August 2021 (and will remain at 600 hours in August 2021)

3.12 There are no increased direct financial costs to the Scottish Government associated with this option, as funding has already been provided to local authorities for implementation of the ELC provisions in the Children and Young People (Scotland) Act 2014. In addition all capital funding and all revenue funding up to 2020-21 for the expansion of 1140 hours has been provided to local authorities.

4. Scottish Firms Impact Test

4.1 The consultation section above describes the range of engagement activity undertaken with business through the policy development for the ELC expansion. This includes formal written responses and views gathered from supporting consultation events. Feedback from these consultations has shaped the development of the policy and the support put in place for providers in the private and third sectors, including childminders.

4.2 For each consultation, an analysis report of the responses to the questions has been produced and the individual responses (including from providers, where permission was given) have also been published. Table 2 provides links to the Analysis Reports and full consultation responses for each of the consultation exercises. The reports also reflect the key messages emerging from supporting programmes of consultation engagement events.

Table 2 – Public Consultation; links to published responses

Consultation	Analysis Report and Responses
Early Learning and Childcare 1140 Hours Expansion - Programme of Trials Consultation	Consultation Hub: https://consult.gov.scot/digital-communications/childcare-expansion/ Analysis Report link
A Blueprint for 2020: The Expansion of Early Learning and Childcare in Scotland Consultation	Consultation Hub: https://consult.gov.scot/creating-positive-futures/expansion-of-early-learning-and-childcare/ Analysis Report link
Early Learning and Childcare Service Model for 2020 Consultation	Consultation Hub: https://consult.gov.scot/children-and-families/service-model-for-2020/ Analysis Report link

How has the feedback from providers informed the development of the policy?

4.3 The feedback gained from providers through written responses to the consultations and surveys, particularly post-Covid, has informed the development of the policy framework that will support delivery of the expanded entitlement.

4.4 The June 2019 Business and Regulatory Impact Assessment,¹⁵ which was produced to support the introduction of the Children and Young People (Scotland) Act 2014 (Modification) (No.1) Order 2019 and the Children and Young People (Scotland) Act 2014 (Modification) (No.2) Order 2019, sets out details on how the potential impacts on providers from the expansion to 1140 hours were being addressed. This focused on: (1) the need for payment of a sustainable rate for delivering the funded entitlement (and the real Living Wage Commitment); (2) workforce retention challenges; and (3) strengthening meaningful and genuine partnership working.

4.5 Since March 2020 a key focus has been on understanding the impact of the pandemic on providers. Childcare providers, like many sectors of the economy, have experienced considerable financial pressures since March 2020 due to the 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.

4.6 To better understand these impacts for the sector, and in particular the specific impacts of the reopening public health guidance, the Scottish Government undertook a survey of providers between 19 and 24 June 2020. The survey included questions regarding changes in costs, capacity and private income generation. More details on this survey are highlighted in paragraphs 1.24 to 1.27.

4.7 Formal 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.

4.8 Childminders have been able to draw on support from the Self-Employed Income Support Scheme (SEISS) 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 the Scottish Childminding Association (SCMA) have indicated that some childminders struggled to access support or received relatively low levels of support through the SEISS.

¹⁵ <https://www.gov.scot/publications/business-regulatory-impact-assessment-expansion-early-learning-childcare/>

4.9 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 ELC entitlement continued for the duration of the closures period, 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 Transitional Support Fund to provide one-off grants (ranging from £1,500 to £8,000 depending on the size of the service) to eligible services.
- Support has also been 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.
- The share of providers' income accounted for by the funded entitlement is expected to increase with the roll-out of 1140 hours as settings allocate more of their capacity towards delivering the funded hours.

4.10 The payment of sustainable rates to providers who are delivering funded ELC is vital to supporting financial sustainability, and is a key aspect of Funding Follows the Child. The Interim Guidance on Funding Follows the Child,¹⁶ published in July 2020, included updated guidance on the setting of sustainable rates in light of COVID-19. This highlights that when setting sustainable rates local authorities are expected to continue to use Funding Follows the Child and the National Standard for ELC providers (guidance for setting sustainable rates from August 2020 is the main source of guidance for this). However, it is expected that local authorities, in line with the principles for setting sustainable rates, will work with their funded providers to understand the extent to which the costs of delivering funded ELC have changed due to COVID-19.

4.11 From Boxing Day 2020 day care of children providers and childminders delivering to 12 or more children should only open to key worker and vulnerable children. At the time of writing these restrictions are in place until at least the middle of February.

4.12 In order to support providers over this period it was announced that:

- Up to £3.8 million will be made available for every 4 week period for grants to be paid to private and third sector day care of children providers and childminders currently providing to 12 or more children, to support them to remain open for key worker and vulnerable children during the period of the temporary restrictions.

¹⁶ See the Annex (Payment of sustainable rates for the delivery of funded early learning and childcare) in: <https://www.gov.scot/publications/funding-follows-the-child-and-the-national-standard-for-early-learning-and-childcare-providers-interim-guidance/>.

- Whilst the majority of childminding services are not subject to the same temporary restrictions as day care of children providers and are currently able to remain open to all children, targeted financial support will be made available to those childminding services experiencing challenges.
- Providers will continue to receive payments for funded ELC, even if children are unable to attend, for the period of the restrictions.

5. Competition assessment

5.1 As highlighted in section 1, the ELC sector operates as a mixed economy model with a mixture of public, private and third sector providers. For many private and third sector providers their business model is built around offering a mixture of funded hours and paid for hours (or non-funded hours), with the latter estimated to account for, on average, the majority of income for private sector providers (on average, around two thirds of total income).¹⁷

5.2 As set out in the June 2019 Business and Regulatory Impact Assessment,¹⁸ which was produced to support the introduction of the Children and Young People (Scotland) Act 2014 (Modification) (No.1) Order 2019; and the Children and Young People (Scotland) Act 2014 (Modification) (No.2) Order 2019, the key potential impacts on competition in the sector, with regards to where the funded hours are delivered, will be determined by:

- how local authority plans for expanding capacity in their own settings takes account of the local market for ELC and in particular, overall capacity across all sectors;
- the full introduction of Funding Follows the Child, which will see all providers having to meet the same National Standard in order to offer funded ELC; and
- the ease with which providers can apply to deliver funded ELC.

5.3 In addition the impact of the pandemic may have disproportionate impacts on some providers, which could, for example, reflect variations in underlying financial positions prior to the onset of the pandemic.

5.4 The latest evidence from local authorities indicates that, in November 2020, the proportion of funded ELC hours delivered by providers in the private, third and childminding sectors had increased to 27% from 23% in 2017-18. However, it will not be until 2022-23 (the first full financial year of 1140 hours being available to all eligible children) that a full assessment of changes in market share can be made.

6. Consumer Assessment

6.1 As set out in the 2019 Business and Regulatory Impact Assessment, the impact on consumers is expected to be largely positive. The parent survey¹⁹ conducted in 2017 suggested that most parents (73% of those surveyed) combined the current statutory entitlement of 600 hours with paid and/or informal provision. Through the expansion programme, families will be able to access an

¹⁷ <https://www.gov.scot/publications/survey-of-childcare-providers-on-impact-of-reopening-guidance-summary/>

¹⁸ <https://www.gov.scot/publications/business-regulatory-impact-assessment-expansion-early-learning-childcare/>

¹⁹ <https://www.gov.scot/publications/exploring-parents-views-use-early-learning-childcare-scotland/>

increased amount of ELC which is free at the point of access, reducing the need to purchase unfunded provision.

6.2 It is also important that the roll-out of the expanded entitlement and the introduction of Funding Follows the Child is supported by clear and accessible information for families to ensure that parents' and carers' know what their child is entitled to and how the new approach will operate. This will form a key part of the work in the remainder of 2019 to develop additional supporting materials to aid implementation of the expanded hours and Funding Follows the Child.

7. Test run of business forms

7.1 There may be some changes to the forms that providers are required to complete in order to become, or remain, a funded provider.

7.2 Any changes to forms will be within the context of the commitment to simplifying the process for, and reducing the burden on, providers to deliver the funded entitlement.

8. Digital impact test

8.1 To support the delivery of the expanded entitlement and the implementation of new models of delivery, a new digital management information system for funded ELC provision is being developed (SEEMiS Early Years). This system will accommodate the increased flexibility of provision being introduced and ease the monitoring and management of the use of blended models and cross boundary provision. The system can be made available to all funded providers including childminders, and aims to allow all funded provision for a child to be recorded in one place.

8.2 Local authorities and providers are involved in the design of the system to ensure it meets the needs of users.

8.3 Local authority development and delivery of the SEEMiS Early Years system continues.

8.4 Local government and the Scottish Government are committed to establishing the new system given the importance of having a robust system in place to effectively manage the delivery of funded ELC and have accurate data available for the sector. COVID-19 and some supplier technical issues have had an impact on progress which has prompted a revision of the delivery date.

8.5 The system is planned to be rolled out to users in July 2021.

9. Legal aid impact test

9.1 The programme to expand the entitlement to funded ELC will not create any new offences.

9.2 The provisions in the order do not create any new decision-making powers to be exercised either by Scottish Ministers or on their behalf that could lead to appeals. There are therefore no impacts on the legal aid fund.

10. Enforcement, sanctions and monitoring

10.1 Education authorities (i.e. local authorities) have a statutory duty to provide the ‘mandatory amount’ of ELC to eligible children within their local area. From 1 August 2021 they will be required to provide 1140 hours of funded ELC to eligible children in their local area.

10.2 To improve the quality of data held on the ELC sector and monitor the impacts of the expansion of ELC, the Scottish Government is developing the ELC Data Transformation Project. This is a long-term data development project that will improve the robustness of ELC census data and expand the analysis that will be possible to support research, planning, management and monitoring of ELC provision.

10.3 The Scottish Study of Early Learning and Childcare has been designed to evaluate whether the ELC expansion to 1140 hours has achieved its objectives by measuring outcomes for children, parents and families. Baseline data was collected during 2018 and 2019 from a sample of children and parents accessing 600 hours of funded ELC. The same data will be collected from a sample of those accessing 1140 hours, allowing for an assessment of the extent to which the expansion’s long-term outcomes have been achieved.

10.4 Annual statistics compiled by the Care Inspectorate and Education Scotland will also provide information on quality evaluations of ELC settings across Scotland.

11. Summary and recommendation

11.1 Based on analysis of the associated costs and benefits, Option 1 (the reinstatement of the statutory duty to deliver 1140 hours to be set for August 2021) is the preferred option.

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
Option 1: The reinstatement of the statutory duty to deliver 1140 hours to be	Summary of benefits: <ul style="list-style-type: none"> • <u>Children</u> - benefit in terms of social, emotional and educational outcomes, in particular those from disadvantaged backgrounds. • <u>Families</u> – choice of high quality settings, potential for parents or carers to increase hours of 	<ul style="list-style-type: none"> • Recurring additional revenue cost of £567 million per annum from 2021-22, in addition to costs incurred to provide 600 hours of funded childcare.

<p>set for August 2021</p>	<p>work, enter labour market, or undertake training/study; total estimated annual saving from 1140 hours of around £4,500 per child (roughly £2,100 compared to the current statutory entitlement of 600 hours)</p> <ul style="list-style-type: none"> • <u>Providers</u> – payment of a sustainable rate, provider neutral approach and simplified (and less burdensome) process for becoming a funded provider. • <u>Economic</u> – new employment opportunities across all of Scotland, funding to support payment of the real Living Wage to childcare workers delivering the funded entitlement, substantial programme of infrastructure development and potential increases in labour supply. 	<ul style="list-style-type: none"> • £476 million capital cost for the four financial years from 2017-18 to 2020-21 inclusive. • No recurring annual capital cost.
<p><u>Option 2:</u> Statutory duty to deliver 1140 hours reintroduced at a later date than August 2021 (and will remain at 600 hours in August 2021)</p>	<ul style="list-style-type: none"> • If some local authorities still choose to roll out the expanded entitlement then some, or all, of the benefits described in Option 1 could be witnessed to some degree. 	<ul style="list-style-type: none"> • No additional costs.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Maree Todd

Date: 20 January 2021

Minister's name: Maree Todd

Minister's title: Minister for Children and Young People

Scottish Government Contact point: ELCPartnershipForum@gov.scot



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Any enquiries regarding this publication should be sent to us at

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