

# **Expansion of Early Learning and Childcare – Reinstatement of 1140 statutory duty**

**Children’s Rights and Wellbeing Impact  
Assessment (CRWIA)**

**January 2021**



**Scottish Government**  
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<b>Title of Impact Assessment</b>	Children's Right's and Wellbeing Impact Assessment
<b>Title of Policy</b>	Expansion of early learning and childcare – The Children and Young People (Scotland) Act 2014 (Modification) Order 2021 - Reinstatement of 1140 statutory duty
<b>Summary of aims and desired outcomes of Policy</b>	<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"> <li>• children's development improves and the poverty related attainment gap narrows;</li> <li>• more parents will have the opportunity to be in work, training or study; and</li> <li>• increased family resilience through improved health and wellbeing of parents and children.</li> </ul>
<b>Directorate: Division: team</b>	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authorities to provide 1140 hours of Early Learning and Childcare (ELC) to eligible children from 1 August 2020 was revoked due to the ongoing pressures of the COVID-19 pandemic.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 Standard<sup>1</sup> that all providers delivering the expanded hours – regardless of whether they are in the public,

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

private or third sector, or childminders – will have to meet. This will provide 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 Guidance<sup>2</sup> was published in July 2020.
- This Children's Rights and Wellbeing Impact Assessment (CRWIA) was undertaken to update the original assessment<sup>3</sup> undertaken in 2019. It did not identify any direct or indirect unlawful impacts as a result of implementation of the ELC expansion policy to August 2021. While there has been an inevitable impact of the delay of the statutory duty on some who access funded ELC, work in the sector and have children in funded ELC, mitigation has taken place during the past year and implementation of the policy from 1 August 2021 will further 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 full 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

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<sup>2</sup> [ELC++Covid-19++Funding+Follows+the+Child+and+the+National+Standard+-+interim+guidance+-+UPDATE+-+21+August.pdf \(www.gov.scot\)](#)

<sup>3</sup> [Early learning and childcare expansion: CRWIA - gov.scot \(www.gov.scot\)](#)

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 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 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 CRWIA**

Prior to the decision to expand availability of funded ELC from 600 to 1140 hours from August 2020, a CRWIA was undertaken to assess the impact of the policy on children's rights and wellbeing. In addition, an assessment was carried out on the impact of closing childcare during the initial lockdown (from March 2020) and reopening in Summer 2020<sup>4</sup>.

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<sup>4</sup> [Early Learning and Childcare – re-opening childcare – impact assessment – gov.scot \(www.gov.scot\)](https://www.gov.scot/Early-Learning-and-Childcare-re-opening-childcare-impact-assessment-gov.scot)

This update is intended to supplement the original CRWIA undertaken in 2019. Updates to the Fairer Scotland Impact Assessment, Business and Regulatory Impact Assessment and Equalities Impact Assessment will also be published.

## **Methodology**

This impact assessment sought to update the CRWIA process carried out in 2019. The impact of the decision to reinstate the legislative duty to deliver 1140 hours of funded ELC from August 2021 was considered. In undertaking this update, the questions used as part of the CRWIA Stage 2 have been considered. These questions are presented below, along with an updated summary of key findings.

Data sources utilised in this process included:

- The original CRWIA undertaken in 2019.
- The CRWIA on re-opening ELC setting undertaken in 2020.
- The updated EQIA for the reinstatement of the legislative duty.
- The latest Scottish Government ELC Census<sup>5</sup> which provides information on funded ELC.
- Available sources of up to date research and evidence which reflect the picture post March 2020.

## **Updated key findings**

- This updated CRWIA confirms the scope and positive impacts of the 1140 expansion policy on children's rights and wellbeing.
- The reinstatement of the legislative duty will be even more important due to the wider impact of the COVID-19 pandemic since March 2020. Available evidence used to inform this CRWIA suggests that the pandemic has had an impact on several aspects of children's rights and wellbeing. These include physical and mental health, education, poverty, food and digital access and play. There is also some evidence that the pandemic has had a differential impact on some children and families, such as those on lower incomes or those with a long-term health condition.
- There is also evidence of a slight fall in the proportion of parents accessing their funded ELC entitlement between 2019 and 2020. We anticipate there will be significant changes to the number and spread of families in receipt of 'qualifying benefits' as a result of the pandemic. This may in turn have an impact on numbers of eligible 2 year olds accessing a funded place in ELC.
- Many of the likely negative impacts of the suspension of the legislative duty on children's rights and wellbeing will be mitigated by the decision to reinstate the statutory duty to deliver 1140 hours of funded ELC for eligible children from August 2021.

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<sup>5</sup> <https://www.gov.scot/publications/summary-statistics-schools-scotland-2020/>

## **CRWIA – key questions considered**

### **1. Which UNCRC Articles are relevant to the policy/measure? List all relevant Articles of the UNCRC and Optional Protocols.**

The UNCRC Articles set out in the 2019 CRWIA remain relevant to the reinstatement of the legislative duty to deliver 1140 hours of funded ELC to eligible children. These Articles are as follows.

- Article 2 – Non-discrimination
- Article 3 – Best Interests of the child
- Article 5 – Parental Guidance and a child’s evolving capacities
- Article 6 – Life, survival, and development
- Article 12 – Respect for the views of the child
- Article 18 – Parental responsibilities and state assistance
- Article 23 – Children with disabilities
- Article 28 – Right to education
- Article 29 – Goals of Education
- Article 31 – Leisure, play, and culture

### **2. What impact will the policy/measure will have on children’s rights?**

The positive impacts of the reinstatement of the duty to provide 1140 hours of funded ELC for eligible children from August 2021 on children’s rights set out in the 2019 CRWIA remain current and relevant. These include: improvements in children’s cognitive development; maximising the time children spend with their parents and carers; and providing economic benefits over time through facilitating parents’ and carers’ opportunities to work or study.

Given the impact of the COVID-19 pandemic since March 2020, these positive impacts on children’s rights are even more relevant. There is evidence that the COVID-19 pandemic has had an impact on some children’s rights in Scotland. The independent CRIA<sup>6</sup> completed by the Observatory of Children’s Human Rights Scotland explored the impact of policy changes in response to the COVID-19 pandemic on children’s rights. This identified impacts across a range of UNCRC Articles covering areas such as physical and mental health, education, poverty, food and digital access and play. The reinstatement of the legislative duty will mitigate many of these impacts. This will have positive impacts on several UNCRC Articles, including: Article 2 – Non-discrimination; Article 3 – Best Interests of the child; Article 6 – Life, survival, and development; Article 12 – Respect for the views of the child; Article 28 – Right to education; Article 29 – Goals of Education; and Article 31 – Leisure, play, and culture.

Children may also have presented at ELC with new support needs as a result of the COVID-19 pandemic, although we have not yet seen this in available evidence. For instance, data from the 2020 ELC census<sup>7</sup> shows that 1% of children registered for ELC had a declared disability and 14% of children were assessed as having an

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<sup>6</sup> <https://cypcs.org.uk/wp-content/uploads/2020/07/childrens-independent-cria.pdf>

<sup>7</sup> <https://www.gov.scot/publications/summary-statistics-schools-scotland-2020/>

additional support need, in line with figures for the previous year. However, the reinstatement of the legislative duty, along with the implementation of minimum National Standards that settings will be required to meet to provide funded ELC, will ensure that any new support needs are effectively addressed. Under the National Standard, providers of funded ELC must comply with the duties under the Equality Act 2010 and the setting must be willing to provide appropriate support, including making any reasonable changes to the care and learning environment, to ensure that children's additional support needs do not create a barrier to them accessing a full range of experiences and meets their individual needs. In turn there will be positive impacts on Article 23 – Children with disabilities.

We know that, as a result of the COVID-19 pandemic, there has been a slight decrease in the percentage of children accessing their funded ELC entitlement. Data from the Scottish Government's ELC census<sup>8</sup> published in December 2020 shows 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. The decrease in the uptake of funded ELC this year may be due to the effects of COVID-19, with some parents choosing not to register their children. 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. A number of non-representative Scottish parent surveys undertaken over summer 2020<sup>9</sup> show reasonable levels of parental concern about children returning to school (approximately 50%), especially among single parents. 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 olds surveyed in June-July 2020 were concerned about their child becoming ill with coronavirus (41%) or their passing coronavirus to someone else (49%).<sup>10</sup> The Scottish Government has sought to mitigate this impact by continuing to engage parents on the benefits of ELC, including through Parent Club, which links directly to local authority ELC pages.

Reinstating the expanded legislative duty, along with associated parental communications activity to encourage uptake, will seek to address any parental concerns around enrolment. In turn, this will have positive impacts on the UNCRC Articles outlined above, as well as Article 18 – Parental responsibilities and state assistance and Article 5 – Parental Guidance and a child's evolving capacities.

### **3. Will there be different impacts on different groups of children and young people?**

The groups of children who will be affected by the reinstatement of the legislative duty to deliver 1140 hours of funded ELC remain the same as in the 2019 CRWIA. These are all 3 and 4 year olds, and eligible 2 year olds. The eligibility criteria for 2 year olds are based on evidence that those children experiencing the most disadvantage will particularly benefit from access to high quality ELC. They include

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<sup>8</sup> [Summary Statistics for Schools in Scotland 2020 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/summary-statistics-for-schools-in-scotland-2020/)

<sup>9</sup> <https://www.gov.scot/publications/report-covid-19-children-young-people-families-september-2020-evidence-summary/>

<sup>10</sup> [COVID-19 Early years resilience and impact survey \(CEYRIS\) - Report 3 - The experience of parents and carers](https://www.gov.scot/publications/covid-19-early-years-resilience-and-impact-survey-ceyris-report-3-the-experience-of-parents-and-carers/)



eligibility for a range of state benefits, tax credits or a child's looked after status<sup>11</sup>. We anticipate there will be significant changes to the number and spread of families in receipt of 'qualifying benefits' as a result of the pandemic. This may in turn lead to an increase in the proportion of 2 year olds who are eligible for a funded place. Reinstating the legislative duty will have particular benefits for these children.

As noted above, to encourage attendance the Scottish Government will engage parents on the benefits of ELC. We also continue to work across service boundaries to improve access to information for parents and carers to help them make informed decisions about ELC (including through services they already access including Best Start payments and the Health Visiting Pathway). We are continuing to work with national and local government to support increasing uptake and awareness of the 2 year old funded entitlement through securing a legal gateway and data sharing agreement so that local authorities in Scotland can have access to accurate information on their eligible population.

**4. If a negative impact is assessed for any area of rights or any group of children and young people, what options have you considered to modify the proposal, or mitigate the impact?**

N/A

**5. How will the policy/measure contribute to the wellbeing of children and young people in Scotland?**

The ELC expansion policy will support public bodies in Scotland to meet their duties to safeguard, support and promote the wellbeing of children in their area. As set out in the 2019 CRWIA, the expansion will ensure that all of the SHANARRI indicators (safe, healthy, achieving, nurtured, active, respected, responsible, included) are met.

Similarly to children's rights, given the impact of the COVID-19 pandemic, these positive impacts on children's wellbeing are even more important. There is evidence that the wider context of the COVID-19 pandemic has had an impact on some children's wellbeing in Scotland. For instance, Public Health Scotland's COVID-19 Early Years Resilience and Impact Survey (CEYRIS)<sup>12</sup> explored how the pandemic and associated restrictions have affected children's lives. The survey is based on the views of parents of 2-7 year olds. Although the findings should be treated with some caution, as they are not based on a representative sample of parents, they do provide indicative evidence of the views of a large cohort of parents in Scotland. The CEYRIS findings show that restrictions related to COVID-19 have impacted negatively on a range of aspects of children's lives, including play, behaviour, mood and physical activity. The findings highlight that families on lower incomes were generally more negatively affected by COVID-19 restrictions. These included single-adult households, larger families and families with a long-term health condition. Children in these families, on average, were more likely to have behavioural concerns identified than across almost all of the Strengths and Difficulties

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<sup>11</sup> <https://www.mygov.scot/childcare-costs-help/funded-early-learning-and-childcare/>

<sup>12</sup> <https://www.publichealthscotland.scot/media/2934/covid-19-early-years-resilience-and-impact-survey-ceyris-report-4-final-findings-dec2020-english.pdf>



Questionnaire domains (peer problems, conduct, hyperactivity and emotional problems) than children in other families.

As set out above, the planned re-implementation of the legislative duty will help to mitigate any impacts, such as those outlined above, on children not realising any of the SHANARRI indicators as a result of the COVID-19 pandemic.

## **6. How will the policy/measure give better or further effect to the implementation of the UNCRC in Scotland?**

The duty on education authorities to provide 1140 hours to eligible children from August 2021 will continue to address the following recommendation made by the UN committee in its concluding observations on the implementation of the UNCRC in the UK<sup>13</sup>: ‘Taking note of target 4.2 of the Sustainable Development Goals, on access to quality early childhood development services, allocate sufficient human, technical and financial resources for the development and expansion of early childhood care and education, based on a comprehensive and holistic policy of early childhood development, with special attention to the children in the most vulnerable situations’.

## **7. What evidence have you used to inform your assessment? What does it tell you?**

We have reflected the information gathered through research, statistical evidence and data, and information provided by colleagues across the Scottish Government. Footnotes are provided throughout.

## **8. Have you consulted with relevant stakeholders?**

The 2019 CRWIA drew on an extensive range of consultation on the expansion of funded ELC. This included consulting with local government, ELC providers, public bodies and regulators, voluntary organisations, and parents and carers. This consultation remains valid in informing the reinstatement of the 1140 statutory duty. We have not consulted specifically on this CRWIA but ongoing discussions have informed its creation. Throughout the period of the COVID-19 pandemic, the Scottish Government has supported local authorities to continue to deliver/work towards the delivery of 1140 hours of funded ELC. The ELC Strategy and Delivery Unit has engaged with local authorities to understand the impact that the pandemic has had on delivery plans. This engagement has informed the new delivery date of August 2021.

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<sup>13</sup> Convention on the Rights of the Child: Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland. Committee on the Rights of the Child; United Nations. July 2016.

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhskHOj6VpDS%2F%2FJgg2Jxb9gncnUyUgbnuttBweOlyfYpKbbwffitW2JurgBRuMMxZqnGgerUdpjxij3uZ0bjQBOLNTNvQ9fUIEOvA5LtW0GL>

**9. Have you involved children and young people in the development of the policy/measure?**

The 2019 CRWIA was largely informed by engagement with organisations that represent children and families' interests. This engagement remains valid. Given the pace of decision-making, limited resource and limitations of ongoing restrictions, we have not directly involved children in the development of this CRWIA. However, we have drawn on a range of available up to date research and evidence, including the views of children. This evidence has been footnoted above.



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

ISBN: 978-1-80004-587-3 (web only)

Published by The Scottish Government, January 2021

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS819566 (01/21)

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