POLICY NOTE

THE CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014 (MODIFICATION) (NO. 1) ORDER 2019

SSI 2019/XXX

The above instrument was made in exercise of the powers conferred by section 51(2) of the Children and Young People (Scotland) Act 2014. The instrument is subject to affirmative procedure.

The purpose of the instrument is to modify the minimum framework for the delivery of funded early learning and childcare (ELC) to:

A. Remove the minimum session length
B. Extend the maximum session length to 10 hours or less.

Policy Objectives

1. 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 the funded early learning and childcare (ELC) entitlement. This transformative policy ambition will help secure positive outcomes for children across Scotland and grow Scotland's economy.

2. As part of the expansion of funded ELC to 1140 hours, local authorities are increasing flexiblity and choice for families by introducing Funding Follows the Child alongside the increase in the statutory entitlement from August 2020. Funding Follows the Child means that parents and carers will be able to choose how and where they use their child's entitlement to 1140 hours of funded ELC provision to best meet their family's needs. From August 2020 any ELC provider that meets the National Standard, has a place available and is willing to enter into contract with the local authority will be able to offer funded ELC.

3. Currently, Section 51 of the Children and Young People (Scotland) Act 2014 (the Act) sets out that funded ELC must be delivered in sessions which are each of more than 2.5 hours but less than 8 hours in duration. They must also be provided over a minimum of 38 weeks a year. This is referred to as the 'minimum framework' for the delivery of ELC.

4. The Children and Young People (Scotland) Act 2014 (no.1) Order 2019 (the Order) is intended to:

- extend the maximum session length to 10 hours or less so that parents and carers can have the option of a full-day 10 hour session (e.g. 08:00 – 18:00) of funded ELC; and
- remove the minimum session length in order to simplify the minimum framework.

Background

5. Research shows that access to high quality ELC that is free at the point of access can enrich children with skills and confidence and contribute to closing the poverty-related attainment gap between our most and least disadvantaged children. Evidence from both UK and international evaluations and studies of ELC programmes shows that all children, especially those from disadvantaged backgrounds, can benefit in terms of social, emotional and educational outcomes from attending ELC.

6. The Scottish Government and local authorities have committed to almost double the funded entitlement to ELC from 600 to 1140 hours from August 2020 for all 3 and 4 year olds and eligible 2 year olds. This will be high quality, flexible ELC that is accessible and affordable for families.

7. In order to ensure that the funded entitlement is delivered in high quality ELC settings, Funding Follows the Child will be introduced in August 2020 alongside the statutory roll-out of 1140 hours. This approach is 'provider neutral' and is underpinned by a National Standard that all settings (e.g. nursery, childminder) that wish to deliver the funded entitlement will have to meet. Details of how Funding Follows the Child will operate were published on 18 December 2018, including operating guidance for local authorities and providers[1].

8. The expansion of funded ELC 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.

9. The Scottish Government has worked in partnership with COSLA and a variety of stakeholders across the ELC sector throughout the development of the 1140 expansion policy and has consulted widely on the expansion of funded ELC. A multi-year funding package was agreed by Scottish Government and local government in March 2018 to fully fund the expansion and local authorities are currently phasing in

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

the expanded entitlement and trialling different models of delivery. A Joint Delivery Board, co-chaired by the Minister for Children and Young People and the COSLA Spokesperson for Children and Young People, has been established to provide joint governance and monitor progress.

10. Funding Follows the Child will mean greater choice and flexibility. Parents and carers will be able to choose how and where they use their child's entitlement to 1140 hours of funded ELC provision to best meet their family's needs. The Order will modify the minimum framework for delivery in order that parents can have the option of a 10 hour (referred to as 'full-day' e.g. 08:00 – 18:00) session of funded ELC. Improving flexibility of access to affordable ELC in this way can support parents who wish to join or return to the labour market or to increase their working hours. It can also support parents who are studying or training.

11. Under the current legislation, the ELC funded entitlement can only be used for 8 hours or less and there is a minimum session length of 2.5 hours. Families that wish to use a 10 hour session have to pay for an additional two hours of ELC, which is referred to as 'wraparound care'. Based on feedback from a number of consultation events on the National Standard, and from our survey on Parents' Views and Use of ELC in Scotland[2] there was wide support to provide more flexibility with session lengths for funded ELC.

12. We have considered whether increasing the maximum session length for funded ELC could have a detrimental impact on children's outcomes. It is important to note that the Parent Survey found that 10-hour sessions are commonly used by families already. Published research measuring outcomes for children in ELC does not gauge the impact of a specific number of hours per day that is the most beneficial for children nor the point at which the length of a session starts to disadvantage children. This means we cannot currently state that a certain number of hours per day is beneficial or detrimental. All credible research which we have reviewed[3] agrees that the most consistent indicator and greatest contributor to improved outcomes for children is high quality.

13. Quality is at the heart of the ELC expansion. The National Standard will ensure that all providers offering funded hours meet the same quality criteria. Our long-term evaluation of the expansion programme, the Scottish Study of Early Leaning and Childcare, will include exploration of the number of hours a child attends a setting per day and the number of days per week. From this we will be able to ascertain whether there are any correlations between session length/frequency and developmental outcomes. If, at any point, evidence comes out of the evaluation process to support a different course of action, we can respond to this in further legislative change.

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2 https://www.gov.scot/publications/exploring-parents-views-use-early-learning-childcare-scotland/
3 http://www.healthscotland.scot/publications/rapid-evidence-review-childcare-quality-childrens-outcomes

14. The Order will also simplify the legislation by removing the minimum session length requirement, which is considered superfluous in the context of the expanded entitlement.

15. 'Day care of children' is required to be registered with the Care Inspectorate where the service meets the minimum service duration of more than two hours in any day. While there is currently no legislative requirement that all funded ELC should be registered with the Care Inspectorate, in practice the Scottish Government and local authorities require it to be so.

16. The National Standard for becoming a funded provider requires settings to achieve minimum Care Inspectorate inspection grades and so assumes that services are registered and therefore regulated with the Care Inspectorate and meet the minimum service duration and a defined quality standard.

Consultation

17. The Scottish Government has consulted widely on the commitment to expand funded ELC to 1140 hours. These consultations have provided views relating to patterns of funded ELC delivery and session length.

    - **1140 Hours Expansion – Programme of trials** [2016] [4]. This consultation gathered views on the Scottish Government's programme of trials to test a variety of models for delivering the expanded ELC commitment. This consultation received 73 responses. Responses considered flexibility of provision for parents to be an essential feature of Scotland's ELC model. Respondents noted that ELC provision should accommodate and cater to parents' variable work and study patterns.

    - **A Blueprint for 2020: The Expansion in Early Learning and Childcare** [2016-2017] [5]. This consultation gathered views on the Scottish Government's vision and high-level principles for the expansion as well as the key policy choices that had to be made. It included questions on ensuring equality of access. This consultation received 336 written responses. In addition, a series of consultative events were held across Scotland to raise awareness of the consultation and to seek views of parents directly. Responses to this consultation discussed the opportunities and challenges of moving towards a more flexible ELC offer, for example for parents and carers wishing to work and study. Some responses considered the impact of longer sessions of funded ELC on children's outcomes.

    - **Early Learning and Childcare Service Models consultation** [2018] [6]. This consultation gathered views on a draft version of the National Standard which

4 https://www.gov.scot/publications/early-learning-childcare-programme-trials-analysis-responses-scottish-government-discussion/pages/1/
5 https://www.gov.scot/publications/blueprint-2020-expansion-early-learning-childcare-scotland-consultation-analysis-report/
6 https://www.gov.scot/publications/early-learning-childcare-service-model-2020-analysis-public-consultation/

would underpin the Funding Follows the Child approach to ELC service provision. This consultation was run jointly with COSLA and received 219 written responses. Responses showed a clear preference for flexibility to choose longer funded sessions, while highlighting the potential impact on private providers' business models as parents and carers currently pay 'wrap-around' charges in order to access a 10-hour session. In addition to the online consultation, the Scottish Government held a total of eight consultation events in different locations. Most attendees at the events were ELC providers.

18. In 2017 the Scottish Government commissioned social researchers Craigforth to explore parents' views and use of ELC in Scotland[7]. To take this forward they undertook a nationally representative survey and follow up discussions with parents of children under the age of six. This provided on parents' and carers' current use, views and experiences of ELC. A total of 10,526 valid survey responses were submitted by parents to inform this research. In particular, this research gathered views from parents and carers on the flexibility they would like to have in using their ELC entitlement. It showed an appetite among parents to use all or almost all of their child's 1140 hours entitlement and showed that many of parents surveyed (65%) stated that they would prefer longer funded sessions on fewer days per week.

19. We also understand that local authorities' ELC expansion delivery plans, which should be reflective of local demand and preferences, highlight that many local authorities are looking to increase the provision of 10 hour sessions, alongside other delivery models involving shorter sessions available over a greater number of days.

Impact Assessments

20. An Equalities Impact Assessment (EQIA), a Children's Rights and Wellbeing Impact Assessment (CRWIA) and a Fairer Scotland Duty Assessment (FSDA) have been conducted for the commitment to expand the ELC entitlement to 1140 hours from August 2020.

21. The EQIA did not identify any evidence that this instrument will directly or indirectly unlawfully discriminate. The process also identified a number of areas where increased flexibility can advance equality of opportunity for families with a protected characteristic and promote good relations between those with and those without a protected characteristic. The expansion programme is supported by a benefits realisation strategy and the Scottish Study of Early Learning and Childcare, a new longitudinal study which will evaluate the long term impact of the expansion.

22. The CRWIA found there is no evidence that this instrument will have a negative impact on children's rights or wellbeing and found that high quality is the most

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

consistent indicator and greatest contributor to improved outcomes for children. As published research measuring outcomes for children does not gauge the impact of a specific number of hours per day that is the most beneficial for children nor the point at which the length of a session starts to disadvantage children the CRWIA considered that as the Scottish Study of Early Learning and Childcare will explore the number of hours a child attends a setting per day, it will allow us to identify if any actions need to be taken by the Scottish Government to ensure the rights and wellbeing of children are fully supported.

23. We do not consider there to be any impacts on privacy or the environment as a result of the order.

Financial Effects

24. There are no direct financial costs to the Scottish Government as a result of changes to the minimum delivery framework for funded ELC. The increase in the statutory entitlement to funded ELC from 600 to 1140 hours from August 2020 is fully funded through a multi-year funding agreement between the Scottish Government and COSLA.

25. A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The BRIA considered that 'whole-day' sessions are already part of the core offer for many providers in the private and third sectors, and as such, it is expected that in the majority of funded providers there is existing capacity to provide 10 hour sessions. It identified that the increase in maximum session length may impact on ELC providers' opportunity to charge for additional wraparound hours as happens presently when parents or carers want a 10-hour session. The BRIA outlined a series of measures – in particular the multi-year funding agreement which enables the payment of a sustainable rate to funded providers – that are in place to mitigate this impact.

Scottish Government

Early Learning and Childcare Programme Directorate

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