POLICY NOTE

THE CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014 (MODIFICATION) (NO. 2) REVOCATION ORDER 2020

SSI 2020/XXX

The above instrument was made in exercise of the powers conferred by section 48(2) of the Children and Young People (Scotland) Act 2014 ("the 2014 Act"). The instrument is subject to affirmative procedure.

The purpose of the instrument is to pause the implementation of the Ministerial commitment to expand early learning and childcare (ELC) funded hours from 600 to 1140 by 1 August 2020 in response to the ongoing COVID-19 pandemic.

Policy Objectives

1. This instrument revokes the Children and Young People (Scotland) Act 2014 (Modification) (No. 2) Order 2019 ("the 2019 Order"). This ensures that the duty on education authorities to make available increased hours of funded early learning and childcare ('ELC') from 1 August 2020 will not take effect at a time when their primary focus is and should be responding to the immediate needs of the ongoing COVID-19 pandemic.

2. 'Education authorities' is the term for local authorities exercising their education functions.

Background

3. Section 47 of the 2014 Act states that an 'education authority' must secure the 'mandatory amount' of ELC for each 'eligible pre-school child' belonging to its area (and section 47(2) defines an 'eligible pre-school child').

4. Section 48 of the 2014 Act defines the 'mandatory amount' and section 48(1)(a) sets this at 600 hours in each year for which a child is eligible and pro-rata for each part of a year they are eligible.

5. The 2019 Order amends section 48(1)(a) of the 2014 Act to increase the figure of mandatory ELC hours to 1140 hours and this amendment would have effect from 1 August 2020. The revocation of the 2019 Order by this instrument will ensure that the number of mandatory hours remains at 600 until further legislative provision is made in the future.

6. The impact of the emerging pandemic on the ELC Expansion programme was discussed at a special Joint Delivery Board(**1**) meeting on 17 March.

1 https://www.gov.scot/groups/early-learning-and-childcare-joint-delivery-board/

7. The Deputy First Minister's statement to Parliament on 19 March(**2**) acknowledged the impact the pandemic would have on the ELC expansion programme and recognised that local authority resource would, rightly, be focussed on supporting children, families and childcare providers:

   "Our response to the Covid-19 pandemic will clearly have an impact on the delivery of our early learning and childcare expansion commitment from August. We will provide a more detailed update to Parliament in due course. The Scottish budget delivered additional revenue funding of £201 million in 2020-21 to support local authorities in delivering the expansion to 1,140 hours. I will confirm to local authorities today that they can deploy that funding as flexibly as they need to do, to support families and childcare providers during this period."

8. Scottish Ministers and local government remain committed to delivery of the 1140 hours expansion and the benefits it will bring to Scotland's children and their families. However, in these exceptional circumstances, it is not realistic or reasonable to expect authorities to complete the necessary capital projects, recruitment exercises and induction of new staff by 1 August.

9. Authorities' first priority must remain on supporting families with the impacts of the pandemic, including the provision of critical childcare. Once there is a clearer picture of the impact and duration of pandemic response measures, the Scottish Government will work with local government colleagues to agree the right time to implement these duties across Scotland. When closure measures are lifted, authorities will resume provision of statutory ELC, including phased implementation of the 1140 hours entitlement.

10. The statutory duty on an education authority to secure that 600 hours of ELC are made available to every eligible child will continue to apply but, where an educational closure direction is issued to the education authority by Ministers under the powers contained in paragraph 8 of Part 2 of Schedule 16 of the Coronavirus Act 2020, any failure to discharge that duty is to be disregarded to the extent that it is attributable to the direction.

Consultation

11. While we have not been in a position to formally consult on this measure, discussions have taken place with members of the Joint Delivery Board.

Impact Assessments

12. There are signifcant impacts to society as a result of the COVID-19 pandemic. Delaying the ELC expansion of hours will mean that the following groups will not be able to access the benefits of the expansion from August 2020 as planned: children; individuals that share protected characteristics under the Equality Act 2010; and

2 http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12591&i=113846

individuals, organisations and businesses who deliver childcare services. These impacts are however unavoidable at this time.

13. When we are able to assess the impact of the pandemic on the expansion programme, we will assess the impact of the delay in implementation.

Financial Effects

14. There is a significant financial cost associated with the ongoing pandemic. The Deputy First Minister's statement confirmed that local authorities would have full flexibility in deploying the additional revenue funding of £201 million in 2020-21 set out in Scottish Budget (**3**) to support delivery of the ELC expansion.

15. Additionally, private and third sector providers will be able to access a range of support through UK and Scottish Government initiatives rolled out to mitigate the impact of the pandemic.

Scottish Government
Early Learning and Childcare Programme Directorate
March 2020

3 http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12591&i=113846