
EXPLANATORY NOTE

(This note is not part of the Order)

Section 47(1) of the Children and Young People (Scotland) Act 2014 (the 2014 Act) imposes a duty on an education authority to secure, in pursuance of its duty under section 1(1) of the Education (Scotland) Act 1980 (the 1980 Act), that the mandatory amount (as defined in section 48 of the 2014 Act) of early learning and childcare is made available for each eligible pre-school child belonging to its area.

Section 47(2) of the 2014 Act defines “eligible pre-school child”. It means a child who is under school age, has not commenced attendance at a primary school, and either falls within subsection 47(3) of the 2014 Act or is within such age range, or is of such other description, as the Scottish Ministers may by order specify. This Order specifies those children who are eligible pre-school children for the purposes of section 47(2)(c)(ii) of the 2014 Act and therefore entitled to the mandatory amount of early learning and childcare. The Order also sets out the circumstances when a child is no longer an eligible pre-school child and therefore stops being entitled to the mandatory amount of early learning and childcare.

Article 1(1)(a) provides that the Order comes into force for all purposes (other than article 2(2) to (5)) on 1st August 2014. Article 1(1)(b) provides that the Order comes into force for the purposes of article 2(2) to (5) (which relates to children who are aged 2 and whose parents are in receipt of certain qualifying benefits) on 31st October 2014.

Article 2 describes an eligible pre-school child. Article 2(1) provides that children will be eligible pre-school children from the first term after their 3rd birthday (unless the child’s birthday falls in August when they will be eligible from the autumn term). Therefore, those children who turned 3 between 1st March 2014 and 31st August 2014 will be entitled to early learning and childcare from the first day of the autumn term 2014. Those children who were entitled to pre-school education by virtue of being a child of a prescribed description under the Provision of School Education for Children under School Age (Prescribed Children) (Scotland) Order 2002 (which is revoked by article 4 of this Order) will be eligible pre-school children under article 2(1) and therefore entitled to early learning and childcare from August 2014; this is so because such children will satisfy the requirements in article 2(1)(a).

Article 2(2) provides that children are also eligible pre-school children from the start of the term following their second birthday where their parents are in receipt of certain qualifying benefits (as defined in article 1(2)). Article 2(3) provides that children are eligible pre-school children from the start of the term following their second birthday where their parents only start receiving one or more qualifying benefits after the starting point for 2 year olds has occurred and in those circumstances the child will be eligible the term after their parent starts receiving those qualifying benefits (article 2(4)).

Article 1(4) provides that article 2(2) and (3) apply to a child who had their second birthday on or after 1st March 2014. Article 1(5) makes provision in relation to those children whose second birthday falls in the period beginning 1st March 2014 and 31st August 2014; the effect is that the starting point for 2 year olds for those children will be 31st October 2014, albeit that the point at which the parent is in receipt of (or starts receiving) one or more qualifying benefits remains on (or after) the first day of the autumn term occurring in that year.

Article 2(5) provides that a child remains an eligible pre-school child by virtue of article 2(2) and (3) even if the child’s parent, subsequent to the child commencing early learning and childcare, ceases to be in receipt of qualifying benefits.

In terms of section 47(2)(a) and (b) of the 2014 Act, a child remains an eligible pre-school child whilst they are under school age and have not commenced attendance at a primary school. “School age” is defined in section 97(3) of the 2014 Act by reference to section 135(1) of the 1980 Act which requires the term to be construed in accordance with section 31 of the 1980 Act. Section 31 of the 1980 Act defines “school age” as being between the ages of 5 and 16 but is qualified by section 32(3) of the 1980 Act which provides that children who turn 5 during the course of a school year are deemed to be under 5 until the start of the school year following their 5th birthday.

Article 2(6) deals with the situation where children do not attend primary school when they are first eligible to do so. The effect of section 32(6) of the 1980 Act is that children may start school younger than 5 (generally those who turn 5 between August and February) where the child’s parent chooses to do so. Article 2(6) makes provision in relation to children who have their fifth birthday on or after the start of the school year and whose parents opt to defer entry to primary school to the following school year. The effect is that those children whose 5th birthday falls in the period beginning on 1st August and ending on 31st December are not eligible pre-school children and therefore not entitled to early learning and childcare for the deferred year. Those children whose 5th birthday falls in January or February will continue to be eligible pre-school children and entitled to the mandatory amount of early learning and childcare during the deferred year given that they will still be under school age (or deemed to be still be under school age by virtue of section 32(3) of the 1980 Act) and not have commenced attendance at primary school, in accordance with section 47(2)(a) and (b) of the 2014 Act.

Section 47(3) of the 2014 Act provides that subject to subsection (4), a child falls within subsection (3) (and therefore is an eligible pre-school child and entitled to early learning and childcare) if the child is aged 2 or over and is or has been at any time since the child’s 2nd birthday looked after by the local authority, the subject of a kinship care order (defined in section 72(1) of the 2014 Act) or a child falling within section 71(3)(f) of the 2014 Act (that is a child who has a guardian by virtue of an appointment under section 7 of the Children (Scotland) Act 1995).

Subsection (4) of section 47 of the 2014 Act enables the Scottish Ministers by order to provide that a child aged 4 or over does not (or is no longer to) fall within subsection (3) in such circumstances as may be specified in the order. Article 3 specifies the circumstances when a child no longer falls within subsection (3) of section 47. The circumstances are the same as those children who derive eligibility under article 2(1), namely the circumstances set out in article 2(6) of the Order (those children whose 5th birthday falls in the period beginning on 1st August and ending on 31st December will no longer be eligible pre-school children and therefore not entitled to early learning and childcare for the deferred year).

Article 4 revokes the Provision of School Education for Children under School Age (Prescribed Children) (Scotland) Order 2002 and the Provision of School Education for Children under School Age (Prescribed Children) (Scotland) Amendment Order 2007.