

POLICY NOTE

THE CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014 (ANCILLARY PROVISION) ORDER 2014

SSI 2014/132

1. The above instrument is made in exercise of the powers conferred by section 101 of the Children and Young People (Scotland) Act 2014 (the 2014 Act) and of all other powers enabling them to do so. The instrument is subject to negative procedure.

Policy Objectives

2. The instrument will introduce a temporary suspension of the requirement under the Schools (Consultation) (Scotland) Act 2010 (the 2010 Act) for local authorities to consult on establishing nursery classes and nursery schools providing early learning and childcare where none previously existed.

3. The 2014 Act and its associated subordinate legislation will deliver, among other things, increased and more flexible early learning and childcare of 600 hours per year for:

- 3 and 4 year old children;
- around 15% of all 2 year old children (those in “non-working” households from August 2014), and rising to;
- around 27% of all 2 year old children (those who meet the current free school meal eligibility criteria) from August 2015.

4. In order for education authorities to secure early learning and childcare pursuant to section 1(1) of the 1980 Act and section 47(1) of the 2014 Act, they may require to reconfigure their school estate. The 2010 Act makes provisions for the consultation process that is to apply as respects various relevant proposals (as defined in schedule 1 to the 2010 Act) made by local authorities for their schools, including nurseries. The kind of changes described above would fall within the scope of the 2010 Act and therefore require consultation. However, consultations can take up to 12 months and a temporary suspension of the requirements to consult on new nursery classes or nursery schools would expedite the delivery of the additional capacity which authorities are under a duty to deliver under Part 6 of the 2014 Act from 1st August 2014.

5. The Order will not have the effect of suspending or diluting the need to consult where reconfiguration in order to make early learning and childcare provision available involves relocation and/or closure. The suspension of the 2010 Act requirements will be temporary – until 31st March 2017 which is the expiry of the 3 year period for which funding for providing the additional capacity has been allocated. The Order provides that the suspension of the 2010 Act requirements will continue to apply to any decision to establish a nursery class or nursery school made by an authority before 31st March 2017.

6. The suspension will be restricted to the following relevant proposals:

- The establishment of new stand-alone nurseries (this could include a new building; or, an extension or adaptation to an existing local authority facility); and

- The establishment of new nursery provision (where none previously existed) within an existing school (ie a nursery class).

7. The draft Order does not affect any other relevant proposals. Local authorities will still be required to comply in full with the requirements of the 2010 Act to consult on all other relevant proposals, for example school closures, school relocations, catchment area changes etc.

Consultation

8. There has been extensive and on-going consultation and engagement with key delivery partners including COSLA, local authorities and ADES about the provision of the additional nursery places required as a consequence of the requirements in Part 6 of the 2014 Act. The requirements and obligations for local authorities under the 2010 Act have been raised by those stakeholders as a key issue and potential barrier to positive work to expand and develop early learning and childcare provision. In addition, local authorities have been consulting with local populations on how best to expand and develop nursery provision which will become a statutory requirement under section 50(1) of the 2014 Act which will come into force on 1 August 2014.

Impact Assessment

9. There has been no separate impact assessment on the instrument. The instrument is required to enable education authorities to fulfil their duty to deliver the mandatory amount of early learning and childcare by virtue of the provisions in the 2014 Act. Part 6 of the 2014 Act was subject to extensive impact assessment prior to its passing.

10. A temporary removal of the requirement to consult on establishing new nursery provision will have a positive impact on local authorities by enabling them to deliver such provision more quickly than would have been the case had the 2010 Act provisions applied.

11. As the instrument is limited in scope, it will have no impact on those relevant proposals under the 2010 Act to which it does not apply. For those relevant proposals, the requirements of the 2010 Act will continue to apply in full.

Financial Effects

12. The Cabinet Secretary for Education and Lifelong Learning confirms that no BRIA is necessary as the instrument has no negative financial effects on the Scottish Government, local government or on business. However, some small savings may be made by local authorities by not having to undertake 2010 Act consultations in the specific circumstances described for the period of the temporary suspension.

Scottish Government
School Infrastructure Unit
19 May 2014

