

# Final Business and Regulatory Impact Assessment

## **Title of Proposal**

**The Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2015**

## **Purpose and Objectives**

- The purpose of this instrument is to amend the Provision of the Early Learning and Childcare (Specified Children) (Scotland) Order 2014 (“the Specified Children Order”) to specify under section 47(2)( c )(ii) of the Children and Young People (Scotland) Act 2014 additional young children eligible for early learning and childcare.

## **Background**

- The Children and Young People (Scotland) Act 2014 (“the Act”) extended the mandatory hours (600 per annum) of early learning and childcare that local authorities must make available to eligible young children. Section 47(2) of the Act defines eligible young children as those who are:
  - under school age (i.e. under 5);
  - have not commenced attendance at a primary school (other than a nursery class); and,
    - either those specified under an order made by Scottish Ministers;
    - or, the most vulnerable 2 year olds: those aged 2 or over who are (or have been at any point since turning 2) either looked after by a local authority, the subject of a kinship care order or a child with a parent-appointed guardian under section 7 of the Children (Scotland) Act 1995.
- The purpose of the order making powers under section 47(2)( c )(ii) is to expand the entitlement of young children; and, to ensure that expansion is sustainable, manageable and affordable, while remaining high quality.
- The Specified Children Order 2014 identified 2 year olds as eligible where their parents are receipt of certain (out of work) benefits (around 15%).
- It is the responsibility of local authorities as education authorities to secure early learning and childcare through their own provision or through partner providers from the private or third sectors, or childminders.

## **Objective**

- This amendment will extend eligibility further to 2 year olds where they would qualify for free school lunches (around 27%). The additional criteria will those 2 year old children who have a parent in receipt of:

- Child Tax Credit based on an annual income not exceeding the income threshold determined for the purposes of section 7(1)(a) of the Tax Credits Act 2002 (currently £16,105); and is not in receipt of working tax credit (defined in sections 10 to 12 of the 2002 Act) unless:-
  - (i) the award of working tax credit is based on an annual income not exceeding the income threshold for working tax credit determined for the purposes of section 7(1)(a) of the 2002 Act (currently £6420); or
  - (ii) the parent is entitled to the award of working tax credit by virtue of being treated as engaged in qualifying remunerative work<sup>1</sup> under the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002; or
- Support under Part VI of the Immigration and Asylum Act 1999; or
- Universal Credit.

### **Rationale for Government intervention**

- The Scottish Government's policy is to develop a universal system of high quality early learning and childcare which is accessible and affordable for all families, focusing, in the first instance, on those who are most vulnerable or disadvantaged. Early learning and childcare improves outcomes for those children as well as removing barriers to parents seeking work or study; and creates wider opportunities for local authorities to engage and support parents with work related activity or family support.
- To this end, from August 2015, around 27% of 2 year olds will be entitled to 600 hours of early learning and childcare. This will prioritise our most vulnerable and disadvantaged 2 year olds including those who are looked after, under a kinship care order or with a guardian; those who are disadvantaged as a result of parents having no sustainable employment and living in poverty; and, those in low income families.

### **Consultation Within Government**

- There was extensive consultation on the Early Learning and Childcare Provisions of the Act; including the completion of a Business and Regulatory Impact and Equality Impact Assessments. There was wide consensus around the desire to extend the additional early learning and childcare provisions to more vulnerable 2 year olds.
- The expansion to 15% of 2 year olds from August 2014, followed by 27% from August 2015 was announced by the then First Minister in January 2014 in the context of then Children and Young People (Scotland) Bill.
- There has been on-going consultation within Government and with key delivery partners on the implications and support for implementation. This has included within Government finance, local government, and learning divisions; and, with Education Scotland and the Care Inspectorate.

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<sup>1</sup> A person is entitled to working tax credit under regulation 7D of the 2002 Regulations during the 4 week period immediately after (a) his or her employment ceases; or (b) he or she starts to work less than 16 hours per week.

Externally, there has been consultation with local authorities, the third sector and the private sector.

- A multi-agency group of key delivery partners was established to develop statutory guidance on the early learning and childcare provisions, including the order making powers and initial cohort of 2 year olds. This group will be re-instated between April to July 2015 to revise the guidance on the proposed additional cohort of 2 year olds under this amendment.

### **Public Consultation**

- *Consultation on A Scotland for Children: A Consultation on a Children and Young People Bill* ran for 12 weeks from July to September 2012. On the question of additional priority for looked after 2 year olds, 75% of respondents agreed with this, but many agreed only on the basis that additional priority be applied to all vulnerable 2 year olds such as those in kinship care, in poverty, or with additional support needs.<sup>i</sup>
- In addition, Save the Children published a report Give Us A Hand with Childcare which published the views of parents, the vast majority who were living on low incomes, based on 'childcare conversations'. Quality, affordability and availability were identified as key messages<sup>ii</sup>.
- The Act also introduced a requirement on local authorities to consult with their local populations on how the increased hours and flexibility should be delivered, establishing a long term dialogue between local authorities and parents.

### **Business**

- We have on-going discussions with the following organisations that represent a wide range of private and third sector members and services across Scotland:
  - National Day Nurseries Association (NDNA) (most recently 1 April 2015)
  - Scottish Childminding Association (SCMA) (most recently 22 October 2014)
  - Care and Learning Alliance (CALA) (most recently 2 April 2015)
  - Early Years Scotland (EYS – formerly SPPA) (most recently 21 August 2014)

### **Options**

- One option is to do nothing. This would limit the benefits of additional early learning and childcare for additional 2 year olds who are more vulnerable and disadvantaged. The initial cohort included those children who are living in poverty, and with parents in no sustainable employment. This additional option will cover those children from low income families and support more sustainable employment as well as support with the costs of early learning and childcare.

- A further option is to increase eligibility to more than 27% of 2 year olds. The initial commitment to 15% of 2 year olds was extremely challenging within the bounds of a sustainable, manageable and affordable approach to increasing and improving early learning and childcare. 27% is considered as affordable within Budget consequentialities that enabled this expansion, while remaining sustainable and manageable; and, local authorities are already preparing for this commitment.

### **Sectors and groups affected**

- National School Statistics published every December based on an annual census each September indicate that around 40% of early learning and childcare settings are partner providers for 3 and 4 year olds; and, around 27% of registrations for early learning and childcare are with partner providers.
- There are potential impacts on all partner providers, including private nurseries, third sector nurseries and centres, playgroups, and childminders.
- Private and third sector nurseries could benefit from additional 2 year old placements, funded by local authorities. Local authorities estimated that they would use 20% of partner provider settings for 2 year olds, rather than 40%, for 3 and 4 year olds, as there are less private nurseries in areas of deprivation. NDNA estimate around 17% of settings for 2 year olds are partner providers. 2 year olds placements may not suit the business and operating models in terms of working parents being able to purchase additional hours; or, hours and sessions for 2 year olds that fit in with the same hours as other children.
- This second cohort of 2 year olds will be from families in work, but relatively low paid. Therefore there should be greater uptake across a wider range of geographical areas, but again there may be an affordability issue for purchasing additional wrap around hours from private or third sector nurseries.
- NDNA has raised concerns that nurseries are raising fees due to funding levels of partner providers by local authorities. They claim that 84% of nurseries have funding shortfalls for 3 and 4 year olds; and, 75% for 2 year olds. (NDNA Annual Nursery Survey Scotland 2015). If funded places are commissioned from partner providers but are continually underfunded by local authorities this could affect the sustainability of partner provision.
- Playgroups are less likely to have 2 year olds; and, are therefore less likely to be affected by increased numbers of 2 year olds.
- Childminding and community childminding models may be particularly appropriate for younger children and may be set to benefit from additional places secured by local authorities.

## **Benefits**

- It is unlikely at this stage that partner providers will find a decrease in registrations; some private and third sector provision may benefit slightly; and, childminders may be particularly appropriate for younger children and set to benefit from more placements. It is not possible to quantify this; and, this will vary across local authority areas.

## **Costs**

- It is the responsibility of local authorities to determine fair and sustainable settlements locally with partner providers, while securing high quality provision. Partner providers are an essential and integral part of our current system of early learning and childcare; and, it is essential that provision is high quality and sustainable. It is in the interest of the local authority to reflect costs of providers in their local settlements if they are to receive high quality and sustainable services. This will impact on staff salaries and pensions, and, the quality and stability of staff themselves. It is essential that local authorities have open, transparent and collaborative relationships and arrangements with partner providers.
- The full estimated costs have been allocated, with distribution across local authorities agreed. The cohort is in line with families supported throughout the education system.

## **Scottish Firms Impact Test**

NDNA, SCMA, and CALA were all members of the Statutory Guidance Group on Early Learning and Childcare published in August 2014; and, which will be updated for August 2015 to reflect additional eligible 2 year olds in consultation with those stakeholders. They represent hundreds of nurseries, childminders and children's services. They will be involved in the updated statutory guidance to support implementation of this order; and, to ensure guidance meets the needs of all those sectors as well as best practice.

## **Competition Assessment**

The proposal will not directly or indirectly limit the number or range of partner providers; or, their ability to compete. The partner providers are not significantly in the market for those vulnerable 2 year olds.

There are potential indirect effects where the public sector expands to accommodate increasing 2 year olds; and, the private or third sectors lose staff to the public sector, including any training invested in those staff.

There are no new forms that need to be used.

### **Legal Aid Impact Test**

- It is unlikely that this amending order will give rise to the increased use of legal processes. Any concerns around whether the local authority is fulfilling its legal obligations should be pursued through the local authority complaints process, the Scottish Public Service Ombusman and section 70 of the Education (Scotland) Act 1980.

### **Enforcement, sanctions and monitoring**

- It is unlikely that this amending order will give rise to the increased use of legal processes. Any concerns around whether the local authority is fulfilling its legal obligations should be pursued through the local authority complaints process, the Scottish Public Service Ombusman and section 70 of the Education (Scotland) Act 1980.

### **Implementation and delivery plan**

- The proposal will be implemented by local authorities from August 2015. As this has already been announced, local authorities are planning and preparing for delivery. We have provided estimated numbers of 2 year olds to support this planning; and, capital and revenue funding and allocations have been agreed with COSLA.
- We will develop statutory guidance to support implementation; and, we will continue to work with key delivery stakeholders to create positive impacts where we can; and, support those sectors going forward.

### **Post-implementation review**

- Annual national school statistics will continue to monitor uptake of the extended entitlement; and, the use of public, private, third sector provision for delivery.
- There are commitments to expand early learning and childcare further, informed by reviews of current legislation and policy.

**Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:**

**Date:**

**Minister's name: Fiona McLeod MSP**

**Minister's title: Minister for Children and Young People**

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<sup>i</sup> Analysis of responses to the Children and Young People Bill Consultation, November 2012.

<sup>ii</sup> [http://www.savethechildren.org.uk/sites/default/files/images/Give\\_Us\\_A\\_Hand.pdf](http://www.savethechildren.org.uk/sites/default/files/images/Give_Us_A_Hand.pdf)