

# Final Business and Regulatory Impact Assessment

## **The expansion of Early Learning and Childcare (ELC) in Scotland**

Legislation being brought into force

- The Children and Young People (Scotland) Act 2014 (Modification) (No.1) Order 2019
- The Children and Young People (Scotland) Act 2014 (Modification) (No.2) Order 2019

### **1. Purpose and intended effect**

#### Background on expansion to 1140 hours

1.1 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 funded early learning and childcare entitlement that is free at the point of access. It is a transformative policy ambition which will secure positive outcomes for children across Scotland and grow Scotland's economy.

1.2 The Children and Young People Act (Scotland) 2014 (the 2014 Act) made 600 hours of funded ELC per year available for all 3 and 4 year olds and extended the entitlement to eligible 2 year olds. In a joint agreement with local government, the Scottish Government has committed to almost double the entitlement to 1140 hours per year from August 2020. This commitment was first made in the 'One Scotland' Programme for Government 2014-2015.<sup>1</sup> Subsequent Programmes for Government have also reiterated this commitment.

1.3 In April 2018 the Scottish Government and COSLA agreed a multi-year funding package to fully fund the expansion of ELC. The funding package is based on a robust, shared understanding of the costs attached to the expansion.

1.4 This investment will support the delivery of high quality, flexible ELC that is accessible and affordable for families.

1.5 Local authorities have a statutory duty to ensure that there are funded places available for all eligible children in their area. The funded places are available across a range of providers in the childcare sector, including in local authority run settings and through the local authority commissioning places from providers in the private

<sup>1</sup> [THE GOVERNMENT'S PROGRAMME FOR SCOTLAND 2014-15](#)

and third sectors, including childminders. The Scottish Government understands from local authority Finance Templates, which were submitted in March 2018, that currently, around 77% of funded hours are delivered in local authority settings, with around 23% delivered in settings in the private and third sectors, including childminders.

1.6 Settings which offer the funded entitlement are referred to as funded providers.

1.7 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 who wish to deliver the funded entitlement will have to meet. Details of how Funding Follows the Child will operate were published on 18 December, including [operating guidance for local authorities and providers](#).

1.8 Other key aspects of Funding Follows the Child include:

- Local authorities will set a rate locally that is paid to funded providers in the private and third sectors, including childminders, to deliver the funded entitlement. This rate should be sustainable and reflect national policy priorities, including funding to enable payment of the real Living Wage to all childcare workers delivering the funded entitlement.
- Every child receiving a funded ELC session will receive a free meal.
- A commitment to simplifying the process for, and reducing the burden on, providers to deliver the funded entitlement.
- Local authorities and providers should work together meaningfully and in genuine partnership in delivering flexible ELC provision, while continuing to ensure that a high quality experience for children is maintained and accessible to all.
- Settings must ensure that the funded hours are free at the point of access and parents and carers are not required to purchase additional hours beyond the funded entitlement in order to access their child's funded hours at a setting.

1.9 Further supporting technical guidance on [establishing sustainable rates for funded providers; meeting the business sustainability in the National Standard](#), and on [transition options on contracting](#) was published on 29 April 2019.

#### Changes to Minimum Framework for Delivery

1.10 The ELC expansion prioritises the delivery of high quality provision, which will help to play a vital role in closing the poverty-related attainment gap. However, it is

also expected that there will be increases in the flexibility and choice offered to families with regards to how they access their child's funded ELC entitlement.

1.11 Local authorities have a statutory duty to consult parents and carers in their local areas about how they should make ELC available. This is to ensure that funded ELC is delivered through an appropriate mix of providers and patterns of delivery within their authority area and is delivered in a way which is responsive to parental demand.

1.12 1140 hours is equivalent to 30 hours per week over term time (38 weeks per annum – the same number of hours a child attends primary school), but families will have a choice of different patterns of provision including provision over a full year. The offer available across a local authority area will be informed by the local authorities consultation with families.

1.13 In some cases the offer may include longer sessions. Currently Section 51 of the 2014 Act sets out that funded ELC must be delivered in sessions which are no less than 2.5 hours and no more than 8 hours in duration. This is referred to as the minimum framework for the delivery of ELC.

1.14 As set out in the [Funding Follows the Child Frequently Asked Questions](#) document the Scottish Government is confident that providers are able to offer a high quality experience over longer sessions and the National Standard will offer opportunities to measure this over time through Care Inspectorate quality evaluations.

1.15 The proposed changes to the minimum framework for delivery are intended to allow funded ELC to be delivered through sessions of 10 hours or less, tying the maximum session length for funded ELC more closely to the working day.

1.16 While flexibility for families is a welcome element of the expansion of hours, the key purpose of the approach is to ensure children have the best start in life. Therefore, the Scottish Government will reserve the right to amend this legislation again if there are concerns that evidence is showing a detrimental impact on children's wellbeing and outcomes.

### Overview of the Childcare Market in Scotland

1.17 The ELC sector in Scotland operates as a mixed economy model with a mixture of public, private and third sector providers. Most of these providers offer the funded entitlement. [Care Inspectorate data](#) shows that in December 2017, 83.2% of private nurseries and 92.8% of third sector nurseries were delivering the funded entitlement. Whilst the number of childminders delivering the funded entitlement has

been increasing in recent years, a survey of members of the Scottish Childminding Association (SCMA)<sup>2</sup> indicates that these increases are from a low base.

1.18 The market is also mixed for providers as they receive income both from delivering the funded hours and from fees paid by parents and carers for non-funded hours.

1.19 The [Financial Review of Early Learning and Childcare in Scotland: The Current Landscape](#), published in September 2016, set out more context on the structure of the childcare market in Scotland and the sources of income for providers. This report highlighted for ELC providers in the private and third sectors the majority of income (around 77%) in 2016 came from the fees that they charge to parents and carers for non-funded hours. This could cover fees for non-eligible children (for example those aged 0-2) or for additional hours that parents of eligible children require (e.g. non-funded hours or 'wrap-around' hours).

1.20 The share of providers' income accounted for by the funded entitlement is expected to increase with the roll-out of 1140 hours as settings allocate more of their capacity towards delivering the funded hours.

1.21 The Financial Review Analysis highlighted that, in 2016, the funding rate paid by local authorities to around 40% of funded providers in the private and third sectors did not cover the funded providers' costs for delivering the funded hours. In 2016 the average (mean) reported rate paid to providers by local authorities for delivery of the funded hours (for 3-5 year-olds) was £3.59 per hour. This compared to an overall estimated average (mean) cost to providers of £3.70 for providing one hour of ELC to 0-5 year-olds. Given different staff ratios by age, it is estimated, in the Financial Review, that costs for providing ELC to three and four year olds could be up to 15 per cent lower than this and costs for 2 year olds up to 20 per cent higher<sup>3</sup>.

## **Objective**

1.22 The Children and Young People (Scotland) Act 2014 (Modification) (No.1) Order 2019 ("the Order (No.1)") is intended to modify the current minimum framework to

- a) Remove the minimum session length (currently 2.5 hours);
- b) Extend the maximum session length to 10 hours or less (currently less than 8

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<sup>2</sup> The [SCMA Early Learning and Childcare Report](#) was published in September 2018.

<sup>3</sup> In ELC settings, different practitioner to child ratios are required depending on the age of the children being cared for. [Recent Care Inspectorate guidance](#) sets the out an expectation that for children aged 2 to under 3 years the staff ratio should be 1 adult to 5 children. For children aged 3 to under 8 years the staff ratio should be 1 adult to 8 children

hours)

1.23 It is important to note that the effect of the Order (No.1) will only be to change the minimum and maximum session length for funded ELC provision. It is intended that Order (No.1) will come into force from 1 August 2019. Bringing this change in from 1 August 2019 will support local authorities to provide more flexibility on session lengths, and to test new delivery models, during the phasing period and in preparation for full implementation of 1140 hours.

1.24 The Children and Young People (Scotland) Act 2014 (Modification) (No.2) Order 2019 (“the Order (No.2)”) will amend the 2014 Act to place a statutory duty on education authorities (i.e. local authorities) to secure 1140 hours of funded ELC in each year for which a child is eligible and a pro-rata amount for each part of a year. It is intended that this will come into force from 1 August 2020.

### **Rationale for Government intervention**

1.25 The primary driving force behind the expansion of funded ELC is to secure improved outcomes for children in Scotland.

1.26 The provision of high quality ELC is a key contributor to our ambition to close the poverty-related attainment gap. International research and evidence from the Scottish Government’s [Growing Up in Scotland study](#) shows that children, particularly those from more disadvantaged backgrounds can benefit from attending high quality funded ELC.

1.27 Recognising the opportunity ELC provides to improve children’s development and narrow the attainment gap, the expansion to 1140 hours intends to maximise the opportunity to ensure that all children in Scotland get the best possible start in life and receive an equal chance to succeed.

1.28 As part of the expansion, it is also envisaged that an increase in the flexibility of how the funded entitlement is delivered will allow more parents to work, train or study, especially those who will benefit from routes into sustainable employment and out of poverty.

1.29 The move to modify the minimum delivery framework is intended to ensure funded ELC is sufficiently flexible to meet parents’ and carers’ needs within a framework of high quality provision. Extending the maximum session length would permit ELC settings to offer full day sessions (up to 10 hours) of funded hours which are more closely tied to the working day (e.g. 08:00-18:00).

1.30 The Scottish Government is also taking the opportunity to remove the

minimum session length. The minimum session length was introduced in the 2014 Act in order to ensure a minimum level of service would be provided. 'Day care of children' services are 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. 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.

1.31 The policy to expand ELC entitlement to 1140 hours via the Order (No.2) will contribute to the following National Outcomes:

- We grow up loved, safe and respected so that we realise our full potential
- We are well educated, skilled and able to contribute to society
- We tackle poverty by sharing opportunities, wealth and power more equally
- We have a globally competitive, entrepreneurial, inclusive and sustainable economy
- We have thriving and innovative businesses, with quality jobs and fair work for everyone

## **2. Consultation**

### **Within Government**

2.1 Throughout the development of the policy to expand ELC entitlement to 1140 hours the Scottish Government's Early Learning and Childcare Directorate has engaged with colleagues across the Scottish Government:

- Directorate for Children and Families
- Directorate for Learning
- Directorate for Economic Policy and Capability
- Directorate for Housing and Social Justice
- Directorate for Local Government and Communities; and
- Directorate for Fair Work, Employability and Skills.

2.2 The ELC Directorate has engaged with officials from the Care Inspectorate on the proposed changes to the minimum framework and the increase in the number of hours a child can have for a funded ELC session in any one day. The Care Inspectorate do not view the minimum session length as a useful additional layer to

limiting the length of a child's session. Session hours would not be a Care Inspectorate registration requirement and the Care Inspectorate has indicated that they are supportive of a move to remove it. The Care Inspectorate through their registration processes can limit the operating hours of a service but for services such as nursery classes, the Care Inspectorate no longer have a requirement for a service to operate within a maximum service length. The focus for Care Inspectorate is on ensuring there is quality provision throughout the day. Therefore changes to maximum session length will not affect the Care Inspectorate registration requirements.

2.3 Officials have also engaged with Education Scotland and the Scottish Social Services Council throughout the policy development process to ensure the expanded entitlement of ELC is of a high quality.

### **Public Consultation**

2.4 Three public consultation exercises have been carried out since January 2016 to gather views on the programme to expand funded ELC entitlement to 1140 hours. These consultation exercises captured responses from providers, local authorities, representative groups, and from parents. Links to the consultations, including the published responses and independent analyses of the responses, are set out in Table 3.

2.5 **Early Learning and Childcare 1140 Hours Expansion – Programme of Trials Consultation.** This consultation exercise ran from 20 January 2016 to 18 March 2016 to seek views on the scope and design of a series of trials carried out by the Scottish Government to test different models of delivery for expanded ELC. Consultation questions covered current and future provision of ELC and asked respondents to give views on what they thought the key features of Scotland's ELC model should be. This consultation also gathered views on the perceived barriers to successfully implementing the 1140 hours commitment.

2.6 There were 73 respondents to this consultation and an [analysis of the responses](#) (including details of all respondents) was undertaken by the Research Shop and was published in June 2016.

2.7 **A Blueprint for 2020: The Expansion of Early Learning and Childcare in Scotland Consultation.** This consultation ran from 15 October 2016 to 9 January 2017, and 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 funding models, phasing, encouraging payment of the real living wage, role of providers in the private and third sectors, ensuring equality of access, supporting learner transitions and the inspection and regulatory regime.



2.8 In addition to the online consultation, a programme of seven supporting consultation events were also held across Scotland to seek the views of providers and parents directly.

2.9 There were 336 respondents to this consultation and [an analysis of the responses](#) (which includes details of all respondents) was undertaken by the Research Shop and published in March 2017.

2.10 **Early Learning and Childcare Service Model for 2020 Consultation**, which ran from 29 March 2018 to 29 June 2018. This consultation was focused on gathering views on a draft version of the National Standard, which would underpin Funding Follows the Child from August 2020.

2.11 In addition to the online consultation, the Scottish Government ELC Service Models Team held a total of eight consultation events across Scotland. Most attendees at the events were ELC providers, with over 200 attendees at these events.<sup>4</sup>

2.12 There were 219 respondents to this consultation and an [analysis of the responses](#) (which includes details of all respondents) was undertaken by Rocket Science UK Ltd and was published in October 2018.

#### Parent Survey Exploring parents' views and use of Early Learning and Childcare in Scotland (Parent Survey)

2.13 In 2017 the Scottish Government commissioned social researchers Craigforth to explore parents' views and use of ELC in Scotland. 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 information on parents' and carers' current use of, 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 to use their ELC entitlement.

2.14 [The survey](#) showed an appetite among parents to use all or almost all of their child's 1140 hours entitlement and showed that many of the parents surveyed (65%) stated that they would prefer longer funded sessions on fewer days per week.

2.15 Further to this, all local authorities have developed detailed expansion plans to ensure that they will be able to continue to meet their statutory duties. The Scottish Government produced [expansion planning guidance for local authorities](#) to support this process. The expansion plans were reviewed by the Scottish

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<sup>4</sup>More detail on the location and number of attendees to the consultation events is included in the consultation analysis report linked above.



Government Delivery Team in 2017, and the multi-year funding settlement was based on financial plans prepared by authorities.

## **Business**

2.16 Active engagement with private, and third sector providers, including childminders, has been ongoing from an early stage to understand the impact of the expansion on these providers, including childminders, many of whom are small businesses.

2.17 Table 1 sets out the number of providers and provider representative bodies who responded to the 3 consultation exercises highlighted above.

**Table 1:** Responses to public consultation from provider and provider representative bodies

Consultation	Respondents
Early Learning and Childcare 1140 Hours Expansion – Programme of Trials:	<b>Private providers:</b> 13 responses <b>Voluntary providers:</b> 2 responses <b>Registered childminders:</b> 2 responses <b>Private provider representative/ membership bodies:</b> 4 responses
A Blueprint for 2020: The Expansion of Early Learning and Childcare in Scotland	<b>Private providers:</b> 33 responses <b>Voluntary providers:</b> 6 responses <b>Private provider representative/ membership bodies:</b> 5 responses
ELC Service models Consultation:	<b>Private providers:</b> 49 responses <b>Voluntary providers:</b> 11 responses <b>Independent schools:</b> 5 responses <b>Private provider representative/ membership bodies:</b> 10 responses

2.18 The Scottish Government also regularly engages with providers and their representative bodies through formal meetings and forums. The ELC Partnership Forum, which met for the first time in October 2018, facilitates engagement between providers and local authorities. The Partnership Forum works to identify issues raised by providers and/ or authorities and seeks to propose solutions to these. [The ELC Strategic Forum](#) also provides an opportunity for the Scottish Government to engage with provider representative bodies - including the National Day Nurseries Association (NDNA), Scottish Childminding Association (SCMA), Early Years Scotland (EYS) and Care and Learning Alliance (CALA) – to develop and implement the Scottish Government’s vision for high-quality and flexible ELC in Scotland.

## **3. Options**

3.1 Two options are considered:

- **Option 1**: Expand funded ELC entitlement to 1140 hours and modify the minimum framework for the delivery of funded ELC.
- **Option 2**: Do Nothing

### **Sectors and groups affected**

3.2 The following sectors and groups will be affected under Option 1 (Expand funded ELC entitlement to 1140 hours and modify the minimum framework for the delivery of funded ELC):

- Children and their Families – under Option 1 from August 2020 all 3 and 4 year olds, and eligible 2 year olds, will be entitled to 1140 hours of funded ELC. Families will benefit from the increase in the number of hours that are free at the point of delivery from August 2020 which could influence household budgets and decisions regarding work and/or study. Children will also benefit from the increase in funded entitlement. This option will maximise the positive impacts high quality ELC has on children’s wellbeing, educational and developmental outcomes, particularly for those children from disadvantaged backgrounds. Parents will also benefit from the changes to the maximum session length for funded ELC as this provides further flexibility for parents wishing to access their child’s funded entitlement over full day sessions more closely tied to the working day.
- Private and Third Sector childcare providers, including childminders – expectation that, under Option 1, these providers will continue to play an important role in the delivery of the funded hours. Introduction of the expanded funded entitlement will, in general, require providers to consider how to evolve their business models. The sustainable rate will include funding to enable payment of the real Living Wage to childcare workers delivering the funded entitlement. However, funded providers will face a business decision as to whether they provide the additional resource to uplift salaries for all workers in their settings, including those not engaged in delivery of the funded entitlement, to the real Living Wage from August 2020 (the funding provided by the Scottish Government and local authorities is only for the funded hours, as if funding were provided for non-funded hours then this could be interpreted as a subsidy and therefore could be in breach of State Aid Rules)<sup>5</sup>.

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<sup>5</sup> Further information on the real Living Wage commitment can be found in Section 3 of the [Funding Follows the Child and National Standard for Early Learning and Childcare Providers Frequently Asked Questions](#) document.

- Public sector ELC settings – continued development of delivery models to provide flexibility and to offer provision over longer days and the full year in some settings.
- Local authorities – Development of expansion plans to set out how the expanded entitlement will be delivered. Exploring new delivery models to meet local demands, and to offer choice and flexibility to families. Oversight of local workforce expansion and capital investment programmes.
- Construction Sector – Option 1 is supported by £476 million of capital investment which will see capacity across the sector expand through refurbishments and expansions of existing settings and the construction of new builds where there are identified gaps in local sectoral capacity.

## **Benefits**

### Option 1 (Expand funded ELC entitlement to 1140 hours and modify the minimum framework for the delivery of funded ELC)

3.3 There are a number of potential benefits associated with Option 1:

#### *Benefits to Children*

- Evidence from both the UK, including the [Growing Up in Scotland Study](#), and international evaluations and studies of early learning and childcare programmes support the fact that all children, and especially those from disadvantaged backgrounds, can benefit in terms of social, emotional and educational outcomes from attending early learning and childcare.
- Contributing to the closing the poverty-related attainment gap between the most and least advantaged children.
- By helping to close the attainment gap and contributing to our preventative actions to reduce child poverty, the expansion of ELC entitlement has the potential to generate long-term benefits to the public finances and to economic and labour market outcomes.

#### *Benefits to Parents and Carers*

- Expanding the funded ELC entitlement and introducing Funding Follows the Child offers parents and families an increased choice of settings where they can access their child's funded ELC entitlement.
- Parents and carers would benefit from a high quality, flexible system as it helps to support people into work, training or further study which may not have previously been accessible due to prohibitive childcare costs.
- Increasing the maximum session length for funded ELC to 10 hours would

mean parents and carers would benefit from added flexibility when using their child's funded ELC, allowing them to access full day sessions which are more closely tied to the working day.

- The benefits of increasing the funded entitlement of ELC to 1140 hours will also be felt in household budgets. Providing 1140 hours of early learning and childcare entitlement is estimated to save a family, on average, around £4,500 per child per annum (when compared to the current funded entitlement of 600 hours the additional saving would be around £2,000 per child per annum).

#### Benefits to Providers

- Enables a system that is provider neutral with the focus on the settings best placed to deliver quality outcomes for children. Funding Follows the Child will ensure the expanded entitlement is delivered on a 'provider neutral' basis allowing providers in the private and third sectors to become a funded provider, so long as they meet the National Standard and are willing to enter into a contract with their local authority.
- There is a commitment to simplifying the process for, and reducing the burden on, providers who wish to deliver the funded entitlement. This is expected to make it easier for ELC providers in the private and third sectors (including childminders) to become a supplier of funded ELC (as long as they meet the criteria in the National Standard).
- The multi-year funding agreement between the Scottish Government and COSLA provides the funding to enable the payment of a sustainable rate to providers from August 2020. The sustainable rate will reflect the cost of delivery (and addresses previously unsustainable rates discussed in section 1.21).
- Provide the opportunity for an enhanced role for childminders in delivering the funded entitlement through the introduction of Funding Follows the Child.

#### Economic Benefits

- Funding will be provided to local authorities to ensure that hourly funding rates paid to providers are sufficient to enable payment of the real Living Wage and the promotion of Fair Work practices.
- Local authorities estimate that up to 11,000 additional workers (up to 9,000 full time equivalents) are required to deliver the expanded entitlement across Scotland. These employment opportunities will be spread across all local authority areas, and within many of our most disadvantaged communities, with a range of roles across different qualification levels - presenting a considerable opportunity to support inclusive growth.
- The expansion could increase the supply of labour, either by allowing more

parents and carers to increase their hours of work or by more parents and carers entering the labour market. Increases in the supply of labour can contribute to long-term economic growth performance.

- The expansion will also be underpinned by a substantial programme of infrastructure development, which will help to support employment across the construction sector.

### Option 2: Do Nothing

3.4 Under option 2 no additional benefits have been identified.

### **Costs**

### Option 1 (Expand funded ELC entitlement to 1140 hours and modify the minimum framework for the delivery of funded ELC)

3.5 The Scottish Government has worked with COSLA and local authorities to identify the costs of delivering the expansion to 1140 hours (and all the associated policy elements that part of the wider supporting policy framework). A funding agreement has been reached to meet the full revenue and capital costs of the expansion.

3.6 Table 2 sets out the additional revenue funding requirements for local authorities from 2019-20 to 2021-22, which formed the basis of the multi-year funding agreement between the Scottish Government and COSLA to fully fund the expansion of ELC. The funding agreement will see the Scottish Government provide local authorities with total recurring revenue funding of £567 million per year by 2021-22, relative to funding provided for ELC in 2016-17.

**Table 2** – Revenue allocations to local authorities for early learning and childcare 2019-20 to 2021-22

	2019-20	2020-21	2021-22
<b>Scotland</b>	<b>£307,000,000</b>	<b>£508,000,000</b>	<b>£566,656,000</b>

3.7 This revenue funding will cover both the increase in workforce capacity required for the expansion and also the policy commitments that are part of Funding Follows the Child and will underpin the expansion. This includes:

- provision for local authorities to set sustainable funding rates for private and third sector providers, including childminders, which reflect the cost of delivery;
- funding to enable delivery of the real living wage commitment, which will be

reflected in the sustainable rate and will enable funded providers to pay the real living wage to their staff delivering the funded entitlement; and

- funding for the delivery of the commitment that every child receiving a funded ELC session will receive a free meal.

3.8 Local authorities will also be provided with £476 million of capital funding to support the expansion, over four financial years from 2017-18 to 2020-21 inclusive. This is to cover the costs of any refurbishments, expansions or new builds where gaps in local capacity have been identified by local authorities.

3.9 To identify the costs of delivering the expansion local authorities produced expansion plans and supporting finance templates. The funding agreement was informed by finance templates submitted by local authorities in March 2018.

3.10 All the additional funding provided since 2017-18 for the expansion to 1140 hours has been allocated as a specific grant to local authorities. This is to ensure that it is protected for investment in ELC.

3.11 There are also some additional costs which are, mainly, associated with funding the additional training places in universities that are required to support the workforce expansion. Since 2017-18 the Scottish Government has provided additional funding via the Scottish Funding Council to meet these costs.

3.12 There are no additional headline costs to the Scottish Government or other agencies as a result of the changes to the minimum framework (i.e. changes to session lengths) as the total number of funded ELC hours is not impacted by this change.

#### Costs - Option 2 (Do Nothing)

3.13 There are no direct financial costs to the Scottish Government associated with this option as funding has already been provided to local authorities for implementation of the ELC provisions in the Children and Young People (Scotland) Act 2014.

3.14 However, some local authorities have developed their expansion plans on the assumption that the maximum length of a funded ELC session would be increased to 10 hours as part of the national roll-out of 1140 hours from August 2020. If local authorities were to revise their plans in the event that the session length were not extended, then this may have some financial implications.

#### 4. Scottish Firms Impact Test

4.1 The consultation section above describes the range of engagement activity undertaken with business through the policy development for the ELC expansion. This includes formal written responses and views gathered from supporting consultation events. Feedback from these consultations has shaped the development of the policy and the support put in place for providers in the private and third sectors, including childminders.

4.2 For each consultation an analysis report of the responses to the questions has been produced, and the individual responses (including from providers, where permission was given) have also been published. Table 3 provides links to the Analysis Reports and full consultation responses for each of the consultation exercises. The reports also reflect the key messages emerging from supporting programmes of consultation engagement events.

**Table 3** – Public Consultation; links to published responses

<b>Consultation</b>	<b>Analysis Report and Responses</b>
Early Learning and Childcare 1140 Hours Expansion - Programme of Trials Consultation	Consultation Hub: <a href="https://consult.gov.scot/digital-communications/childcare-expansion/">https://consult.gov.scot/digital-communications/childcare-expansion/</a>  <a href="#">Analysis Report link</a>
A Blueprint for 2020: The Expansion of Early Learning and Childcare in Scotland Consultation	Consultation Hub: <a href="https://consult.gov.scot/creating-positive-futures/expansion-of-early-learning-and-childcare/">https://consult.gov.scot/creating-positive-futures/expansion-of-early-learning-and-childcare/</a>  <a href="#">Analysis Report link</a>
Early Learning and Childcare Service Model for 2020 Consultation	Consultation Hub: <a href="https://consult.gov.scot/children-and-families/service-model-for-2020/">https://consult.gov.scot/children-and-families/service-model-for-2020/</a>  <a href="#">Analysis Report link</a>

#### **How has the feedback from Providers informed the development of the policy?**

4.3 The feedback gained from providers through written responses to the consultations, and through consultation engagement events, informed the development of the policy framework (in particular the Funding Follows the Child model) that will support delivery of the expanded entitlement.

4.4 In the sections below details are set out as to how potential impacts on providers from the expansion to 1140 hours are being addressed. The key potential impacts raised by providers focused on: (1) the need for payment of a sustainable



rate for delivering the funded entitlement (and the real Living Wage Commitment); (2) workforce retention challenges; and (3) strengthening meaningful and genuine partnership working.

4.5 With regards to changes to the minimum framework for delivering funded ELC, the Service Model consultation analysis found a clear preference for the introduction of a maximum 10 hour session. However, respondents drew attention to the fact that this could affect a private or third sector provider business model which can rely on charging parents for wraparound hours, and that a sustainable funding rate was therefore vital.

#### Payment of a Sustainable Rate

4.6 As highlighted in section 1.21 in 2016 around 40% of funded providers in the private and third sectors were paid an hourly rate for provision of statutory ELC entitlement which was below the cost of delivery. This has meant some providers in the private and third sectors have looked to cross subsidise through selling unfunded provision to ineligible age groups and through wraparound care for eligible children to maintain their business sustainability. A sustainable rate would be required to address this funding gap for providers and to enable them to deliver the funded hours.

4.7 Analysis of local authority finance templates, submitted in March 2018, indicates that the estimated share of funded entitlement hours delivered by private and third sector providers, including childminders, will remain broadly unchanged in 2021-22 (where private and third sector providers, including childminders, are estimated to deliver 24% of the funded hours) relative to the baseline position in 2016-17 (where they were estimated to have delivered 23% of funded hours based on the finance templates). Whilst the share of funded hours delivered by these providers is expected to remain broadly the same this does mean that they will be delivering a considerably higher number of funded hours than at present, and this could increase above local authority assumptions depending on local parental demand.

4.8 The responses from providers indicate the following potential impacts on business models:

- An increase in the proportion of a provider's income that is accounted for by the funded entitlement (as highlighted earlier, the funded entitlement accounted for, on average, around 23% of income for private and third sector funded providers in 2016).
- A corresponding reduction in the number of hours that providers can offer as

“paid for” or wraparound hours. In particular, it is expected that for families whose children currently use more hours than their funded entitlement (currently 600 hours) with a provider – e.g. a combination of funded and unfunded hours – many of their wraparound hours will become funded hours (and funded through the sustainable rate) once the entitlement increases to 1140 hours.

- As highlighted in the benefits section the expansion will also provide a saving to families. How families utilise this saving could have implications for demand for hours with providers – for example, families may choose to increase the total amount of childcare they use in addition to the funded hours (for example holding their total childcare ‘budget’ constant) or they may hold their demand for childcare constant and bank the savings, or take some point in between.
- The Parent Survey highlighted that the majority of parents (around 75% responding to the survey) indicated that they intended to use all or almost all of the 1140 hours. Of these parents over 42% indicated that they would seek additional hours (paid for hours that are additional to the funded hours) after the expansion to 1140 hours, compared to 31% who would not. This suggests that there will still be significant demand for additional wraparound hours.
- The increase in the maximum session length for funded ELC may also impact on a provider’s opportunity to charge for additional wraparound hours (as any 10 hour session could be covered by the funded hours – whereas currently the funded entitlement can only be used for 8 of these hours).

4.9 Whilst these effects may have implications for the business models of providers, it is the rate that they receive from local authorities for delivering the funded hours that will determine the overall impact on income and sustainability. This is why the multi-year funding package, agreed with COSLA, includes a shared commitment to pay sustainable rates to providers in the private and third sectors that reflect the cost of delivery from 2020. The sustainable rate set by local authorities will:

- support delivery of a high quality ELC experience for all children;
- reflect the cost of delivery, including the delivery of national policy objectives;
- allow for investment in the setting – staff, resources and physical environment; and
- enable payment of the real Living Wage for those childcare workers delivering the funded entitlement.

4.10 Supporting [technical guidance on setting sustainable rates](#) from August 2020 was published on 29 April 2019.

4.11 The commitment to provide a sustainable rate to funded providers will mean that providers will receive a substantially higher hourly rate from August 2020 across all local authorities compared to the rates identified in the Financial Review in 2016. This will provide an opportunity to address some of the long term financial challenges faced by providers in the private and third sectors. There are already examples of many local authorities using the additional funding for the expansion to substantially increase hourly rates for providers in 2018-19 and 2019-20.

#### Supporting the Expansion of the ELC Workforce

4.12 The consultation responses, and engagement with providers, highlighted that some providers in the private and third sectors are facing workforce retention challenges as a result of the movement of staff to local authority settings.

4.13 The Scottish Government is working with local authorities and funded providers to take steps to mitigate the impact of these workforce retention challenges. For example, some local authority areas are opting to “grow their own” ELC workforce by retraining staff deployed in other departments of the local authority or by running their own training or apprenticeship programmes for those new to the sector, which means they are not running open recruitments for qualified practitioners which would lead to staff migration from funded providers in the private and third sectors.

4.14 A key element of the Scottish Government’s [Delivery Support Plan for Providers](#) is to support workforce recruitment and training. The Delivery Support Plan is intended to be a live document which will be updated as more support becomes available, and to reflect any challenges or opportunities that emerge in the transition to August 2020.

4.15 In April 2018, Scottish Government increased the financial contribution rates across all age ranges for ELC related apprenticeships which helps employers with the costs of training new staff. Since March 2019, private and third sector ELC providers registered with the Care Inspectorate have been able to advertise vacancies for free on the myjobscotland recruitment website on which all local authority vacancies are advertised, to ensure they have access to a wider pool of potential recruits and to provide parity with public sector settings.

4.16 The Scottish Government has, since October 2017, been running regular bursts of a national recruitment campaign to attract people from two distinct audiences to careers in early learning and childcare: school-leavers and career-changers / parental-returners.

4.17 The Scottish Government has also invested in additional HNC Childhood

Practice places since financial year 2017-18, and is committed, jointly with Skills Development Scotland, to increasing the number of Social Services (Children and Young People) Modern Apprenticeships by 10%, year-on-year, for the period of the expansion.

### Meaningful and Genuine Partnership Working

4.18 A key aspect of Funding Follows the Child is that local authorities and providers should work together meaningfully and in genuine partnership in delivering flexible ELC provision, while continuing to ensure that a high quality experience for children is maintained and accessible to all. The Operating Guidance (on pages 10-11) sets out the expectations on local authorities and providers to support partnership working.

4.19 The Scottish Government and COSLA established the ELC Partnership Forum in October 2018 to identify problems, solve them together, and build meaningful and lasting partnerships.

4.20 The Scottish Government has also created mechanisms for sharing good practice partnership working, including through electronic means such as dedicated ELC spaces within Knowledge Hub.

### Changes to ELC session length

4.21 With regards to the proposed changes to session length, Care Inspectorate reports show that the majority (97.4%) of private nurseries already provide 'whole day' sessions<sup>6</sup>. This is one of the core offers of many providers in the private and third sectors. As such, it is expected that in the majority of funded settings there is existing capacity to provide 10 hour sessions.

4.22 It is also important to note that changes to the minimum framework will not place a requirement on ELC settings to provide the maximum 10 hour sessions where these are not already offered.

4.23 Moreover, any fees or charges not associated with the funded hours will continue to be at the discretion of individual settings, for example the purchasing of additional hours outside of the funded entitlement.

## **5. Competition Assessment**

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<sup>6</sup> [Care Inspectorate \(2017\) 'Early learning and childcare statistics 2017'](#)

5.1 As highlighted in section 1, the ELC sector operates as a mixed economy model with a mixture of public, private and third sector providers. For many private and third sector providers their business model is built around offering a mixture of funded hours and paid for hours (or non-funded hours) – with the latter accounting for the majority of their income (on average, around 77%)

5.2 The key potential impact on competition in the sector – with regards to where the funded hours are delivered – will be determined by how local authority plans for expanding capacity in their own settings takes account of the local market for ELC and in particular, overall capacity across all sectors.

5.3 As highlighted in section 2.15 each local authority developed an expansion plan setting out how they will deliver 1140 hours in their respective areas. These plans included an assessment of local market capacity and were accompanied by detailed Finance Templates. These templates included estimates of the contribution that funded providers in the private and third sectors, including childminders, would make to the delivery of the funded hours. This provides an estimated profile as to how market share for the delivery of funded ELC will evolve over the period to 2021-22 (the first full year of 1140 hours being available).

5.4 The share of the funded hours accounted for by providers in the private and third sectors, including childminders, is estimated to remain broadly unchanged in 2021-22 relative to the 2016-17 baseline. However, within the transition period to August 2020 it is estimated that there will be a temporary increase in the share of funded hours delivered in local authority settings. This reflects the [expansion planning guidance](#) which issued to local authorities in March 2017 and made clear that plans for phasing should reflect the Scottish Index of Multiple Deprivation to ensure that families and communities who stand to benefit most from the expansion also benefit first. Local authority settings are more likely, compared to private and third sector providers, to operate in deprived areas so it is expected that early phasing of 1140 hours would be more concentrated in these settings.

5.5 Whilst it will be important to track changes in market share local authority plans indicate that they have been built on the premise that from the full roll out of 1140 hours in August 2020 the market structure remains broadly unchanged from 2016-17 following the creation of additional capacity in the period to 2020.

5.6 Funding Follows the Child should also support competition in the sector. For example, the approach is ‘provider neutral’ and is underpinned by a National Standard that all funded providers will have to meet. As well as ensuring that the funded hours are delivered in high quality settings it will also place choice in parents’ and carers’ hands by allowing them to access their child’s entitlement from any setting that meets the National Standard, has a place available and is willing to enter

a contract with the local authority.

5.7 The move towards Funding Follows the Child will be supported by clear and accessible information for families to ensure that parents and carers know what their child is entitled to and how the new approach will operate. The National Standard, for example, provides reassurance to families that any provider delivering the funded entitlement is a high quality setting.

5.8 Moreover, the [Funding Follows the Child and the National Standard for Early Learning and Childcare: Operating Guidance](#) highlights that the sustainability of funded providers is about more than just the funding rate that they receive. The competitiveness and business sustainability of funded providers may be impacted by policy and investment decisions taken by local authorities. The recruitment activity of local authorities can also impact on the sustainability of funded providers. The Operating Guidance highlights that it is important that local authorities give appropriate consideration to these potential impacts in exercising their statutory duties, undertaking recruitment activity, and in applying ELC expansion planning principles.

5.9 Access for providers to delivering the funded entitlement is also impacted by the process for becoming a funded provider. There is a commitment, as part of Funding Follows the Child, to simplifying the process for, and reducing the burden on, providers who wish to deliver the funded entitlement. This is expected to make it easier for ELC providers in the private and third sectors, including childminders, to become a supplier of funded ELC, thus potentially increasing the number of providers offering the funded entitlement (as long as they meet the criteria in the National Standard).

5.10 The approach also enables new providers to enter the market. For example, new settings will be able to deliver the funded hours on a probationary basis, pending the outcome of their first Care Inspectorate inspection, provided the local authority is assured that they have the potential to meet all other criteria in the National Standard. All new settings have to be approved through the Care Inspectorate registration process as being fit to deliver a daycare of children service.

5.11 This probationary condition has been included to improve the accessibility of funded provision. It also acknowledges that in some areas, especially in remote and rural areas, newly registered settings may not be financially viable without being able to offer the funded entitlement from the outset. This condition will also be important in encouraging new innovative provision, including outdoor nurseries and provision developed by community enterprises.

## **6. Consumer Assessment**

6.1 Option 1 outlines the potential impact on parents and carers as consumers of ELC.

6.2 The impact on consumers is expected to be largely positive. From the parent survey, we understand that most parents (73% of those surveyed) currently combine the current entitlement of 600 hours with paid and/or informal provision. Through the expansion programme families will be able to access an increased amount of ELC which is free at the point of access, reducing the need to purchase unfunded provision.

6.3 The removal of the minimum session length and the increase in maximum session length to 10 hours or less also increases the flexibility of access to ELC and provides parents with more choice as to where to access their child's funded entitlement.

6.4 As highlighted in paragraph 5.7 it is important that the roll-out of the expanded entitlement, and the introduction of Funding Follows the Child, is supported by clear and accessible information for families to ensure that parents' and carers' know what their child is entitled to and how the new approach will operate. This will form a key part of the work in the remainder of 2019 to develop additional supporting materials to aid implementation of the expanded hours and Funding Follows the Child.

## **7. Test run of business forms**

7.1 There may be some changes to the forms that providers are required to complete in order to become, or remain, a funded provider.

7.2 Any changes to forms will be within the context of the commitment to simplifying the process for, and reducing the burden on, providers to deliver the funded entitlement.

7.3 As set out in [Transition Options Guidance on Contracting](#), Scotland Excel will work with providers and local authorities to develop template documentation and guidance, which will be available later in 2019. The Transition Options guidance also highlights that in the first instance, the following points may be considered within any documentation:

- Simplified documentation and forms should be used wherever possible;
- Private and third sector providers should not need to duplicate their work if existing evidence will show they are meeting the National Standard. For



example, information requested by the Care Inspectorate should not need to be changed if it can be submitted in its current format and still show how the setting is meeting the National Standard

- Applications should be easy to submit, for example, electronically
- The method for receiving questions during the process should be clearly stated within the documentation and at any training events prior to opening the application process.

## **8. Digital Impact Test**

8.1 To support the delivery of the expanded entitlement, and the implementation of new models of delivery, a new digital management information system for funded ELC provision is being developed. This system will accommodate the increased flexibility of provision being introduced, and ease the monitoring and management of the use of blended models and cross boundary provision. The system can be made available to all funded providers including childminders, and aims to allow all funded provision for a child to be recorded in one place.

8.2 Local authorities and providers are involved in the design of the system to ensure it meets the needs of users.

8.3 The Scottish Government recognises that ELC settings face a number of digital impacts, including those arising from reserved policies such as Tax Free Childcare.

## **9. Legal Aid Impact Test**

9.1 Neither the programme to expand the entitlement to funded ELC nor the proposed changes to the minimum framework will create any new offences.

9.2 The provisions in the two orders do not create any new decision-making powers to either be exercised by Scottish Ministers or on their behalf that could lead to appeals. There are therefore no impacts on the legal aid fund.

## **10. Enforcement, sanctions and monitoring**

10.1 Education authorities (i.e. local authorities) have a statutory duty to provide the 'mandatory amount' of ELC to eligible children within their local area. From 1 August 2020 they will be required to provide 1140 hours of funded ELC to eligible children in their local area. Local authorities will be under a statutory duty to ensure funded ELC is delivered within the bounds of the minimum framework for the delivery of funded ELC (i.e. funded sessions must be of the duration of 10 hours or less)

10.2 To monitor the impacts of the expansion of ELC, the Scottish Government is developing an ELC Data Transformation Project, a long-term data development project, which will improve the robustness of the census data and expand the analysis that will be possible for this sector, allowing us to monitor access to funded ELC and the workforce delivering the funded entitlement.

10.3 The Scottish Study of Early Learning and Childcare is designed to test and measure the outcomes and the effectiveness of the ELC expansion to 1140 hours. Baseline data is currently being collected from a sample of children and parents accessing 600 hours of funded ELC. The same data will be collected from a sample of those accessing 1140 hours, allowing for an assessment of the extent to which the expansion's long-term benefits have been achieved.

10.4 Annual statistics compiled by the Care Inspectorate and Education Scotland will also provide information on quality evaluations of ELC settings across Scotland.

## **11. Implementation and delivery plan**

11.1 It is intended that the Order (No.1) will take force from 1 August 2019. This is before the full roll out of 1140 hours across Scotland is complete. This will support local authorities to provide with more flexibility on session lengths, and to test new delivery models, during the phasing period and in preparation for full implementation of 1140 hours.

11.2 The Scottish Government is confident that providers can offer quality ELC over longer sessions. However, the National Standard will provide an opportunity to monitor the impact of modifying the minimum framework through Care Inspectorate evaluations and through the Scottish Study of ELC which will include exploration of the number of hours a child attends a setting per day and the number of days per week.

11.3 This will allow us to ascertain whether there is any correlation between session length/ frequency and developmental outcomes. The Scottish Government will modify Section 51 of the 2014 Act if there is evidence of a detrimental impact on children's wellbeing and outcomes.

11.4 It is intended that the Order (No.2) will take force from 1 August 2020.

11.5 All local authorities have developed detailed expansion plans to ensure that they will be able to continue to meet their statutory duties. These plans were reviewed by the Scottish Government Delivery Team in 2017, and the multi-year funding settlement was based on the supporting finance templates prepared by authorities (and submitted in March 2018).

11.6 The Improvement Service is collecting regular delivery progress data including capacity data, workforce expansion, capital projects, and involvement of funded providers to measure our progress to 2020.

11.7 We have in place rigorous joint governance and programme management arrangements culminating in the Joint Delivery Board co-chaired by the Minister for Children and Young People and Councillor McCabe, COSLA Spokesperson for Children and Young People.

## 12. Summary and recommendation

12.1 Based on analysis of the associated costs and benefits, expanding funded ELC entitlement to 1140 hours and modifying the maximum session length to 10 hours or less through secondary legislation is the preferred option.

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
<p><b>Option 1:</b> Expand funded ELC entitlement to 1140 hours and modify the minimum framework for the delivery of funded ELC.</p>	<p>Summary of benefits:</p> <ul style="list-style-type: none"> <li>• <u>Children</u> - benefit in terms of social, emotional and educational outcomes, in particular those from disadvantaged backgrounds.</li> <li>• <u>Families</u> – choice of high quality settings; potential for parents or carers to increase hours of work, enter labour market, or undertake training/study; total estimated annual saving from 1140 hours of around £4,500 per child.</li> <li>• <u>Providers</u> – payment of a sustainable rate; provider neutral approach; and simplified (and less burdensome) process for becoming a funded provider.</li> <li>• <u>Economic</u> – new employment opportunities</li> </ul>	<ul style="list-style-type: none"> <li>• Recurring additional revenue cost of £567 million per annum from 2021-22.</li> <li>• £476 million capital cost for the four financial years from 2017-18 to 2020-21 inclusive.</li> <li>• No recurring annual capital cost.</li> </ul>

	across all of Scotland; funding to support payment of the real Living Wage to childcare workers delivering the funded entitlement; substantial programme of infrastructure development; and potential increases in labour supply.	
<b>Option 2:</b> Do Nothing	<ul style="list-style-type: none"> <li>No additional benefits identified.</li> </ul>	<ul style="list-style-type: none"> <li>No additional costs.</li> </ul>

**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:** 01/05/2019

**Minister's name:** Maree Todd

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

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