

CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 – Early Learning and Childcare

Section 46 – Early learning and childcare

109. Section 1(1) of the 1980 Act imposes a duty on every education authority to secure that there is adequate and efficient provision of school education made for their area. Section 46 defines “early learning and childcare” as a service, consisting of education and care, of a kind which is suitable in the ordinary case for children who are under school age, with regard being had to the importance of interactions and other experiences which support learning and development in a caring and nurturing setting. The phrase “of a kind which is suitable in the ordinary case for children who are under school age” is consistent with its use in the 1980 Act. Guidance issued by the Scottish Ministers under section 34 of the Standards in Scotland’s Schools Act 2000 (“the 2000 Act”) (which is amended by paragraph 7 of schedule 5) together with national guidance will be used to provide more detail as to what those types of interactions and experiences will encapsulate.

Section 47 – Duty to secure provision of early learning and childcare

110. Subsection (1) provides that an education authority must, in pursuance of its duty under section 1(1) of the 1980 Act, secure that the mandatory amount of early learning and childcare (as defined in section 46) is made available for each eligible pre-school child belonging to its area. Section 23(3) of the 1980 Act provides that a pupil receiving school education is deemed to belong to the area where the pupil’s parent is ordinarily residing. This is subject to any regulations made by the Scottish Ministers.
111. Subsection (2) defines “eligible pre-school child”. It means a child who is under school age, has not started primary school and either falls within subsection (3) or is within such age range, or is of such other description, as the Scottish Ministers may by order specify.
112. Section 97(3) of this Act provides that “school age” has the same meaning as it has in the 1980 Act. Section 31 of the 1980 Act defines a person as being of “school age” if they have attained the age of 5 but not 16 years. Section 31 is however qualified by section 32(3) of the 1980 Act which provides that a child who does not attain the age of 5 on a school commencement date (defined in section 32(1)) shall for the purposes of section 31 be deemed not to have attained that age until the school commencement date following his or her 5th birthday.
113. Subsection (3) provides that, subject to subsection (4), a child is also an eligible pre-school child if the child is aged 2 or over, and is, or has been at any time since their 2nd birthday, looked after by a local authority (“looked after” is defined in section 97(2)),

the subject of a kinship care order or a child falling within section 71(3)(f) (those with a parent appointed guardian).

114. “Kinship care order” is defined in subsection (6) as having the meaning given by section 72(1) and includes court appointed guardians. Subsection (4) introduces an order making power enabling the Scottish Ministers to prescribe the circumstances when those children who derive entitlement to early learning and childcare by virtue of section 47(3) are to no longer fall within that section and thus no longer be entitled to early learning and childcare. An order under section 47(2)(c)(ii) and (4) is subject to affirmative resolution procedure in accordance with section 99(2).
115. It is anticipated that an order made under section 47(2)(c)(ii) will include provision akin to that made in the Provision of [School Education for Children under School Age \(Prescribed Children\) \(Scotland\) Order 2002 \(SSI 2002/90\)](#) made under section 1(1A) of the 1980 Act (which order making power is to be removed from the 1980 Act by paragraph 2(2)(a) and (b) of schedule 5), so for example to set out that eligibility for early learning and childcare starts from the first term following the child’s 3rd birthday; or the 15% of 2 year olds from workless or job seeking households, or the 27% of 2 year olds whose parents are on certain welfare benefits. That Order also sets out when children cease to be eligible for early learning and childcare.
116. [Section 47\(4\)](#) ensures that equivalent provision can be made about when those who derive entitlement to early learning and childcare by virtue of section 47(3) cease to be eligible for early learning and childcare. Subsection (5) provides that an order under section 47(2)(c)(ii) may sub-delegate the function of determining the eligibility criteria to an education authority so for example the order might provide that a child is an eligible pre-school child only if the education authority is satisfied as to any matter relating to the child which is specified in the order.

Section 48 – Mandatory amount of early learning and childcare

117. Subsection (1) defines the mandatory amount of early learning and childcare for the purposes of section 47(1) as 600 hours in each year for which a child is an eligible pre-school child and a *pro rata* amount for each part of a year for which a child is so eligible.
118. Subsection (2) provides that the Scottish Ministers may, by order, modify the mandatory amount of early learning and childcare in subsection (1) for eligible pre-school children so as to vary the amount of early learning and childcare which is to be made available. Under subsection (3) the order is capable of making different provision for different types of eligible pre-school children (for example different amounts for children of different ages). Such an order is subject to affirmative procedure by virtue of section 99(2).

Section 49 – Looked after 2 year olds: alternative arrangements to meet wellbeing needs

119. [Section 49](#) enables an authority to make alternative provision of education and care in order to meet the wellbeing needs of children. Subsection (1) provides that where an authority’s duty under section 47(1) applies in relation to a child only by virtue of the child falling within section 47(3)(a) and the authority, after assessing the child’s needs considers that making alternative arrangements in relation to the child’s education and care would better safeguard or promote the child’s wellbeing, then subsection (2) applies. It is important to note the “only” in subsection (1): it means that if section 47(1) applies to the child for an additional reason, such as the child falling within an age range or other description prescribed under section 47(2)(c)(ii), then the child ceases to be one in respect of whom section 49(2) applies.
120. Subsection (2) provides that in relation to these children the authority need not comply with its duty under section 47(1) in relation to the child but must make alternative arrangements in relation to the child’s education and care as it considers appropriate

for the purposes of safeguarding or promoting the child's wellbeing. The power for the authority to make alternative arrangements by virtue of section 47(1) and (2) continues to apply notwithstanding that the 2 year old child ceases to be looked after so as to ensure continuity in the education and care of the child. However, under subsection (3), alternative arrangements cannot continue to be made if a parent of the child objects to those alternative arrangements being made.

121. Subsection (4) provides that the authority may, at any time, review any alternative arrangements it makes in relation to a child in pursuance of subsection (2)(b) and must do so on becoming aware of any significant change in the child's circumstances. It may, following such a review, alter those arrangements.
122. Subsection (5) provides that the authority must seek to ensure that a record of the outcome of any assessment of a child's needs that it undertakes in pursuance of subsection (1)(b) and any alternative arrangements that it makes in relation to the child's education and care in pursuance of subsection (2)(b) is included in any child's plan which is prepared under Part 5.

Section 50 – Duty to consult and plan on delivery of early learning and childcare

123. Subsection (1)(a) provides that an education authority must consult such persons as appear to it to be representative of parents of children under school age in its area about how it should make early learning and childcare available. Subsection (1)(b) provides that the education authority must have regard to the views expressed in that consultation and having done so prepare and publish a plan for how it intends to make early learning and childcare available. Such consultation must be carried out every 2 years although subsection (2) enables the Scottish Ministers to vary the regularity of that consultation by order subject to negative resolution procedure. Guidance issued by the Scottish Ministers under section 34 of the 2000 Act (as amended by paragraph 7 of schedule 5) will be used to set out more detail about how it is expected the consultation will be carried out and in relation to the preparation of the requisite plans for how early learning and childcare will be delivered.

Section 51– Method of delivery of early learning and childcare

124. Subsection (1) provides that an education authority must ensure that it makes early learning and childcare available by way of sessions which are provided during at least 38 weeks of every calendar year, and which are at least 2.5 hours but no more than 8 hours in duration. This is the minimum framework for delivering early learning and childcare.
125. Subsection (2) provides that the Scottish Ministers may by order modify subsection (1) so as to vary the minimum framework for delivering early learning and childcare. Such an order is subject to affirmative procedure by virtue of section 99(2).

Section 52 – Flexibility in way in which early learning and childcare is made available

126. This section provides that in exercising functions under sections 50 (duty to consult and plan on delivery of early learning and childcare) and 51 (method of delivery of early learning and childcare), an education authority must have regard to the desirability of ensuring that the method by which it makes early learning and childcare available is flexible enough to allow parents an appropriate degree of choice when deciding how to access the services.

Section 53 – Interpretation of Part 6

127. This section is an interpretation section for this Part which explains that the expression "early learning and childcare" has the meaning given by section 46, "eligible pre-school child" has the meaning given by section 47(2) and "parent" has the meaning given

*These notes relate to the Children and Young People (Scotland)
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by the 1980 Act. Other interpretation provisions relevant to this Part are contained in section 97.