

# Children and Young People (Scotland) Act 2014

2014 asp 8

## PART 6

### EARLY LEARNING AND CHILDCARE

#### 46 Early learning and childcare

In this Part, “early learning and childcare” means a service, consisting of education and care, of a kind which is suitable in the ordinary case for children who are under school age, regard being had to the importance of interactions and other experiences which support learning and development in a caring and nurturing setting.

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#### Commencement Information

**II** S. 46 in force at 28.6.2014 by [S.S.I. 2014/131](#), art. 2(1)

#### 47 Duty to secure provision of early learning and childcare

- (1) 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 is made available for each eligible pre-school child belonging to its area.
- (2) An “eligible pre-school child” is a child who—
  - (a) is under school age,
  - (b) has not commenced attendance at a primary school (other than at a nursery class in such a school), and
  - (c) either—
    - (i) falls within subsection (3), or
    - (ii) is within such age range, or is of such other description, as the Scottish Ministers may by order specify.
- (3) Subject to subsection (4), a child falls within this subsection if the child is aged 2 or over and

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- [<sup>F1</sup>(a) is or has been at any time since the child's second birthday—]  
 [<sup>F2</sup>(i) looked after by the authority concerned or by any other local authority,  
 or  
 (ii) the subject of a kinship care order][<sup>F3</sup>, or  
 (b) has, or had, a guardian by virtue of an appointment under section 7 of the 1995 Act.]
- (4) The Scottish Ministers may by order provide that a child aged 4 or over does not (or is no longer to) fall within subsection (3) in such circumstances as may be specified in the order.
- (5) An order made under subsection (2)(c)(ii) may provide that a child is to be an eligible pre-school child only if the education authority concerned is satisfied as to any matter relating to the child which is specified in the order.
- (6) In subsection (3)(b), “ kinship care order ” has the meaning given by section 72(1).

#### Textual Amendments

- F1** Words from s. 47(3) renumbered as s. 47(3)(a) (1.8.2016) by [Education \(Scotland\) Act 2016 \(asp 8\)](#), **ss. 29(2)(a)**, 33(2); S.S.I. 2016/192, [reg. 2](#), [sch.](#)
- F2** S. 47(3)(a)(b) renumbered as s. 47(3)(a)(i)(ii) (1.8.2016) by [Education \(Scotland\) Act 2016 \(asp 8\)](#), **ss. 29(2)(a)**, 33(2); S.S.I. 2016/192, [reg. 2](#), [sch.](#)
- F3** S. 47(3)(b) and preceding word substituted (1.8.2016) by [Education \(Scotland\) Act 2016 \(asp 8\)](#), **ss. 29(2)(b)**, 33(2); S.S.I. 2016/192, [reg. 2](#), [sch.](#)

#### Modifications etc. (not altering text)

- C1** S. 47(1) restricted (temp.) (25.3.2020) by [Coronavirus Act 2020 \(c. 7\)](#), s. 87(1), **Sch. 16 para. 9(3)** (with [ss. 89](#), [90](#))

#### Commencement Information

- I2** S. 47 partly in force; s. 47 not in force at Royal Assent; s. 47(2)-(5) in force at 28.3.2014, see s. 102(2)
- I3** S. 47(1)(6) in force at 1.8.2014 by [S.S.I. 2014/131](#), [art. 2\(2\)\(3\)](#), **Sch.**

## 48 Mandatory amount of early learning and childcare

- (1) The “mandatory amount”, for the purposes of section 47(1), means—
- (a) [<sup>F4</sup>1140 hours] in each year for which a child is an eligible pre-school child, and
  - (b) a pro rata amount for each part of a year for which a child is an eligible pre-school child.
- (2) The Scottish Ministers may by order modify subsection (1) so as to vary the amount of early learning and childcare which is to be made available in pursuance of section 47(1).
- (3) Such an order may, without prejudice to section 99(1)(a), make different provision in relation to different types of eligible pre-school children.

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#### Textual Amendments

**F4** Words in s. 48(1)(a) substituted (1.8.2020) by [The Children and Young People \(Scotland\) Act 2014 \(Modification\) \(No. 2\) Order 2019 \(S.S.I. 2019/207\)](#), arts. 1, **2(2)**

#### Commencement Information

**I4** S. 48 in force at 1.8.2014 by [S.S.I. 2014/131](#), art. 2(2)(3), [Sch.](#)

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

- (1) Subsection (2) applies where—
- (a) an authority's duty under section 47(1) applies in relation to a child only by virtue of the child falling within section <sup>5</sup>47(3)(a)(i),
  - (b) 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.
- (2) Where this subsection applies, the authority—
- (a) need not comply with its duty under section 47(1) in relation to the child, but
  - (b) must make such 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.
- (3) Subsection (2) does not apply in relation to a child who is not being looked after by the authority if a parent of the child objects to the authority making alternative arrangements.
- (4) 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) and may, following such a review, alter those arrangements.
- (5) The authority must seek to ensure that a record of—
- (a) the outcome of any assessment of a child's needs that it undertakes in pursuance of subsection (1)(b), and
  - (b) 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 for the child under Part 5.

#### Textual Amendments

**F5** Words in s. 49(1)(a) substituted (1.8.2016) by [Education \(Scotland\) Act 2016 \(asp 8\)](#), **ss. 29(3), 33(2)**; [S.S.I. 2016/192](#), reg. 2, sch.

#### Commencement Information

**I5** S. 49 in force at 1.8.2014 by [S.S.I. 2014/131](#), art. 2(2)(3), [Sch.](#) (with art. 3)

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

- (1) An education authority must, at least once every 2 years—

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- (a) 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 in pursuance of this Part, and
  - (b) after having had regard to views expressed, prepare and publish a plan for how it intends to make early learning and childcare available in pursuance of this Part.
- (2) The Scottish Ministers may, by order, modify subsection (1) so as to vary the regularity within which an education authority must consult and plan in pursuance of that subsection.

#### Commencement Information

**I6** S. 50 in force at 1.8.2014 by S.S.I. 2014/131, art. 2(2)(3), Sch.

### 51 Method of delivery of early learning and childcare

- (1) An education authority must ensure that it makes early learning and childcare available in pursuance of this Part by way of sessions—
- (a) which are provided during at least 38 weeks of every calendar year, and
  - (b) which are each of [<sup>F6</sup>10 hours or less] in duration.
- (2) The Scottish Ministers may, by order, modify subsection (1) so as to vary the method of delivering early learning and childcare which it describes.

#### Textual Amendments

**F6** Words in s. 51(1)(b) substituted (1.8.2019) by The Children and Young People (Scotland) Act 2014 (Modification) (No. 1) Order 2019 (S.S.I. 2019/206), arts. 1, 2

#### Commencement Information

**I7** S. 51 in force at 1.8.2014 by S.S.I. 2014/131, art. 2(2)(3), Sch.

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

In exercising functions under sections 50 and 51, an education authority must have regard to the desirability of ensuring that the method by which it makes early learning and childcare available in pursuance of this Part is flexible enough to allow parents an appropriate degree of choice when deciding how to access the service.

#### Commencement Information

**I8** S. 52 in force at 1.8.2014 by S.S.I. 2014/131, art. 2(2)(3), Sch.

### 53 Interpretation of Part 6

In this Part—

- “early learning and childcare” has the meaning given by section 46,
- “eligible pre-school child” has the meaning given by section 47(2),

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“parent” has the same meaning as in the 1980 Act.

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**Commencement Information**

**19** S. 53 in force at 1.8.2014 by S.S.I. 2014/131, art. 2(2)(3), Sch.

**Changes to legislation:**

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