

POLICY NOTE

THE SCHOOLS (CONSULTATION) (SCOTLAND) ACT 2010 (MODIFICATION) REGULATIONS 2017

SSI 2017/65

The above instrument was made in exercise of the powers conferred by section 20(2) of the Schools (Consultation) (Scotland) Act 2010 (“the 2010 Act”). The instrument is subject to affirmative procedure.

Policy Objectives

The Children and Young People (Scotland) Act 2014 (“the 2014 Act”) introduced a requirement on education authorities to ensure that 600 hours of Early Learning and Childcare (ELC) in each year was made available for all eligible pre-school children. This requirement came into effect on 1st August 2014. In order for education authorities to be able to comply with this requirement, statutory consultation requirements under Section 1(2) of the 2010 Act were suspended from 1 August 2014 until 31 March 2017 in relation to the establishment of new nurseries and new nursery classes. This was achieved by the Children and Young People (Scotland) Act 2014 (Ancillary Provision) Order 2014/132 (“the Ancillary Order”). However, the suspension provided for in this Ancillary Order is due to expire on 31st March 2017.

The Scottish Government has committed to increasing the ELC entitlement available to eligible pre-school children from 600 to 1140 hours in its Programme for Government 2015 by the end of the next Parliament (2020).¹

This further suspension of 2010 Act consultation requirements beyond 31 March 2017 is needed, given that fully-developed and costed procurement strategies at local levels will not be in place until late 2017, with construction not commencing until the first half of 2018. It would only be from that point that education authorities could begin consultation requirements under the 2010 Act on what they propose to build and where, thereby delaying the onset of construction by up to another year.

All education authority infrastructure proposals will of course still be subject to local planning procedures and laws, which will ensure that there are still statutory requirements on education authorities to plan new nursery infrastructure in a sensitive manner that takes account of local circumstances and views. Further, authorities will also be subject to the requirement in section 1(2B) of the Education (Scotland) Act 1980 to consult such persons as appear to be representative of parents of pre-school children within their area every two years, about whether and if so how they should provide school education for such children. After having regard to the views expressed, authorities are then required to prepare and publish their plans in relation to the provision of this education.

This would create a real risk that sufficient new infrastructure will not be completed in time for August 2020, given the numbers of new infrastructure projects required and the long (normally 12-15 months) lead in times for construction projects.

¹ Consideration will be given in due course, and following discussions with key partners and stakeholders, as to whether an order will be needed, under section 48(2) of the 2014 Act, making it a statutory requirement on authorities to provide the increase in hours from 600 to 1140 by 2020.

Regulations

Schedule 1 of the 2010 Act requires to be modified in order to meet the policy objective that education authorities should not be required to comply with the consultation requirements in the 2010 Act if they want to establish new nursery schools or new nursery classes in schools, or relocate existing nursery schools and nursery classes in schools. Education authorities are likely to need to establish new and relocated existing facilities in order to be able to provide an increase in the current number of hours of ELC per year from 600 to 1140 for each eligible pre-school child by 2020.

These regulations therefore modify Schedule 1 of the 2010 Act from 31 March 2017 (the date the Ancillary Order expires), to except proposals to establish new nursery schools or nursery classes and proposals to relocate² such schools and classes from the consultation requirements in that Act. This exception will not apply to establishment or relocation proposals relating to primary or secondary education provision.

Consultation

Consultation has been undertaken through ongoing discussions and seminars with education authorities, principally through the Association of Directors of Education Scotland (ADES) and Early Years and Resources networks, who have made clear on various occasions that a further suspension of consultation requirements will be required if they are to be able to meet the 1140 hours by 2020 Programme for Government 2015 commitment. The Scottish Local Government Partnership (SLGP) have also made representations to officials and Ministers on a number of occasions on the need to continue the suspension beyond 31 March 2017 if the Government's target date of by August 2020 is to be met.

Impact Assessments

A Strategic Environmental Assessment for the expansion to 1140 hours policy has already been undertaken (Case ID PRE\00707), with the other four impact assessments scheduled in the 1140 Hours Programme Plan to be undertaken in spring 2018. As with the previous suspension of consultation requirements for ELC purposes under the 2010 Act, it is not envisaged that there will be specific impact issues with regard to these regulations themselves.

Financial Effects

No specific financial effects of the regulations themselves, apart from reduced administrative costs for education authorities with regard to 2010 Act additional consultation requirements.

Scottish Government
Children & Families Directorate
13 January 2017

² Relocations are to be included this time to allow for maximum local flexibility in developing and configuring their ELC estate to accommodate the expansion to 1140 hours.