

**Final Business and Regulatory
Impact Assessment**

**The Provision of Early
Learning and Childcare
(Specified Children) (Scotland)
Amendment Order 2019**

July 2019



Scottish Government
Riaghaltas na h-Alba
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Final Business and Regulatory Impact Assessment

Title of Proposal

The Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2019

Purpose and intended effect

Background

The overall objective of the Scottish Government's policy on funded Early Learning and Childcare (ELC) is to provide high quality, flexible and affordable ELC that is accessible for families.

All three and four year olds and eligible 2 year olds in Scotland have a statutory entitlement up to 600 hours a year of funded early learning and childcare¹. The Scottish Government and local authorities have committed to nearly double this entitlement to up to 1140 hours a year from August 2020. In August 2020 we will also introduce Funding Follows the Child to increase choice and flexibility for families, underpinned by a National Standard which all providers offering funded ELC will need to meet.

Quality is at the heart of the ELC expansion. International evidence has shown that high quality early years provision can improve lifelong outcomes. Evidence also shows that children growing up in more disadvantaged circumstances benefit particularly from high quality ELC. In addition to our universal offer of funded ELC for three and four year olds, around a quarter of two year olds are also eligible for funded ELC in Scotland – those who are most likely to benefit from earlier access to high quality funded ELC.

The longer term outcomes of this policy and the overall ELC expansion will deliver three main benefits for children and families:

- children's development will improve and the poverty related attainment gap will narrow;
- more parents will have the opportunity to be in work, training or study; and
- family resilience will increase through improved health and wellbeing of parents and children.

¹ <http://www.legislation.gov.uk/asp/2014/8/section/48>

Funded ELC for 2 year olds

Alongside the universal statutory entitlement for all 3 and 4 year olds, local authorities are also required to provide access to statutory funded ELC for eligible 2 year olds². Eligibility criteria for the 2 year old offer are set out in The Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014, as amended³, and local authorities also have a discretionary power to provide ELC beyond statutory eligibility in order to support families to meet local priorities.

Since 2015, eligibility criteria for the entitlement to a 2 year old place has included that a 2 year old is eligible where a parent receives maximum Child Tax Credit and maximum Working Tax Credit with an annual income that does not exceed a threshold set in UK Regulations of £6,420 or less. A combination of UK Government policies means that it is now not possible for a parent aged 25 and over to meet this criterion. These policies are:

- to increase annually the National Living Wage⁴ (the legal minimum wage for those age 25 and over, not to be confused with the 'real' living wage);
- to freeze income thresholds for receipt of maximum Working Tax Credit and maximum Child Tax Credit at £6,420 or less
- from 1 April 2019 the annual income for a person aged 25 and over working 16 hours per week is £6,831.

It is worth noting for the purpose of the BRIA that any child currently registered for the 2 year old offer will remain eligible. If the circumstances of the parent/carer changes, the child is still entitled to the 2 year old funded ELC provision.

Objective

The objective of The Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2019 is to protect eligibility for children whose parents have seen an increase in their earnings due to the increase in the National Living Wage that is sufficient to take their household income marginally over the £6,420 threshold, but does not represent a significant change in household circumstances.

As it is anticipated that the National Living Wage will continue to rise over the next 3 years (up to at least 2022 based on estimates from the Office for Budget Responsibility), we have chosen a threshold that allows a degree of stability to 2021. It also aligns to the threshold used for those children who qualify for the 2 year old entitlement due to their families' receipt of Universal Credit. This should therefore provide consistency across benefit types as more families transition over to Universal Credit.

² <http://www.legislation.gov.uk/asp/2014/8/part/6>

³ <http://www.legislation.gov.uk/ssi/2014/196/article/1/made>

⁴ <https://www.gov.uk/national-minimum-wage-rates>

With the new income threshold of £7,320, it is estimated that the eligible population⁵ could increase by up to an additional 400 2 year olds compared to the 2017 eligible population.

The increase rate in the population will vary as a result of a number of factors including when the child's 2nd birthday is and the relevant start date for their entitlement. Due to uptake rates for the 2 year old entitlement and continual migration from tax credits to Universal Credit, we anticipate that an increase of 400 2 year olds is an upper limit and it is likely that fewer individual children will newly access a funded ELC place.

This number will reduce in time as more families switch over to Universal Credit and fewer children are eligible due to receipt of Tax Credits.

The Scottish Government has a longer term intention to review the eligibility criteria for the 2 year old entitlement. This will ensure it remains appropriately targeted to those who will benefit most from early access to high quality early learning and childcare.

Rationale for Government intervention

Evidence⁶ shows that there are benefits to children attending high quality early learning and childcare. All children have the potential to benefit from high quality ELC, however the most significant impact is among children from the most disadvantaged backgrounds.

The eligibility criteria for 2 year olds include looked after children and children whose family are in receipt of a 'qualifying benefit'⁷. The entitlement is based on international evidence and evidence from our own Growing Up in Scotland Study that shows that all children, but especially those experiencing the most economic disadvantage, benefit from access to high quality ELC.

Amending the eligibility criteria as currently drafted will protect eligibility for a similar profile of 2 year old children who currently qualify for access to funded early learning and childcare as a result of their parent or carer's receipt of Working Tax Credits and Child Tax Credits. This will ensure that those children who are among those most likely to experience disadvantage will continue to have the opportunity to benefit from earlier access to high quality ELC.

This policy, as part of the wider programme to expand funded ELC entitlement to 1140 hours, contributes to the following National Outcomes:

- We grow up loved, safe and respected so that we realise our full potential.
- We live in communities that are inclusive, empowered, resilient and safe

⁵ 2017 estimate of eligible population: 14, 216

⁶<http://www.healthscotland.scot/publications/rapid-evidence-review-childcare-quality-childrens-outcomes>

⁷ <https://www.mygov.scot/childcare-costs-help/funded-early-learning-and-childcare/>

- We are well educated, skilled and able to contribute to society.
- We tackle poverty by sharing opportunities, wealth and power more equally

Consultation

This amendment is being brought forward in response to changes in UK Government policies and is intended to largely maintain the status quo to ensure that a similar profile of children remain eligible for the entitlement. It does not introduce a significant change in policy.

The original legislative provisions in the Children and Young People (Scotland) Act 2014 (“the 2014 Act”) were designed to enable the expansion of early learning and childcare to wider cohorts of children. There is a wide consensus around the desire to expand the entitlement to some 2 year olds who would benefit the most from earlier access to funded, high quality ELC, as evidenced through the passage of the 2014 Act. The Scottish Government engaged and consulted with key stakeholders and delivery partners at that time to ensure that implementation of the duties under the 2014 Act was manageable and affordable and that eligible children would receive high quality services.

The Scottish Government has discussed the introduction of the proposed income threshold with a range of stakeholders as outlined below:-

1. Convention of Scottish Local Authorities (COSLA)

2. The ELC Quality Improvement Practicum teams who are currently looking to improve the uptake of the 2 year old offer across their local authority areas. The 9 teams who form part of this collaborative and were contacted for views are:

- Dumfries and Galloway Council
- City of Edinburgh Council
- East Ayrshire Council
- East Renfrewshire Council
- Fife Council
- Moray Council
- North Lanarkshire Council
- North Ayrshire Council
- Stirling Council

3. One Parent Families Scotland (OPFS)

4. Child Poverty Action Group (CPAG)

5. Scottish Government Policy Units

We secured agreement to this approach from COSLA as our partner in the joint aspiration to improve the uptake and quality of the 2 year old entitlement.

COSLA have advised that they understand why these changes are being proposed to the secondary legislation and that they are necessary due to circumstances out with the control of Scottish Government to ensure the policy intent is met.

Scottish Government appreciate that there is a potential financial impact as a result of the new income threshold as a small additional number of families will become eligible for the entitlement. However due to the current uptake rates of the targeted 2 year old offer and the assumptions underpinning the multi-year financial settlement with local government, which exceed current levels of uptake, there is not expected to be any immediate financial impact and the Scottish Government and COSLA have agreed to monitor ongoing financial impacts on local authorities closely as part of the review arrangements for the multi-year funding settlement for the expansion to 1140 hours, detailed further below.

All other stakeholders who we have engaged with understand the importance of protecting the eligibility for children who are eligible based on their parents receipt of Working Tax Credits and Child Tax Credits and agree there are benefits to the approach we have taken in setting the threshold at £7,320.

The Scottish Government has a longer term intention to work in partnership with local authorities and the sector to review the eligibility criteria for the 2 year old entitlement. This will ensure it remains appropriately targeted to those who will benefit most from early access to high quality early learning and childcare.

Options

Option 1 – Amend current eligibility criteria to protect eligibility for 2 year old children who qualify for access to funded early learning and childcare (ELC)

Benefits

This option responds to changes in UK Government policy which restrict access to funded ELC for 2 year olds whose parents or carers may qualify due to their receipt of Working Tax Credits and Child Tax Credits. This option protects the eligibility for a similar profile of 2 year old children that are currently eligible, ensuring that the 2 year old offer remains appropriately targeted.

We anticipate a limited increase in the number of children eligible - by around 400 compared to the 2017 eligible population estimate - as a result of amending the Tax Credits criteria. This is an upper estimate and the number of additional children who newly access a funded ELC place at age 2 will likely be fewer.

Costs

As there will be potentially additional children accessing a funded place at age 2, there may be a financial impact for local authorities if total uptake exceeds current projections. However, we have agreed with COSLA that this will likely be manageable with no significant impact on local authorities' ability to fund this provision within the current financial settlement. As such there is no evidence that additional funding is required to support implementation of the amendment. The

impact on uptake will be closely monitored by both Scottish Government and COSLA through the ELC Finance Working Group and appropriate arrangements will be made if uptake is significantly above the level expected and local authority costs increase as a result.

Sectors and Groups affected

Impact on Private & Voluntary providers

We anticipate no material impact on private, voluntary or independent providers as a result of this option. There may be a slight increase in the number of individual children accessing a provider but this will be manageable within current capacity. The types of service that are affected may be more likely to be childminders as they are more used by this age group than other providers.

Impact on the public (parents/children)

We anticipate a limited, short term increase in the number of children eligible (around 400) as a result of amending the eligibility criteria. This will occur before those receiving Working Tax Credits are transferred to Universal Credit.

No current recipient, or future recipient eligible on other current criteria, will be impacted. It is worth noting for the purpose of the BRIA that any child currently registered for the 2 year old offer will remain eligible. If the circumstances of the parent/carer changes, the child is still entitled to the 2 year old funded ELC provision.

Impact on Local Authorities

Due to the current uptake rates for 2 year olds and the model of funding for the expansion, we anticipate minimal impact on local authorities' ability to fund any additional provision.

Option 2 – Do Nothing

Benefits

If we were to do nothing, we estimate that as a result of these changes to UK Government policy, the eligible 2 year old population will decrease by around 4,100 children. This would have a detrimental impact upon those eligible children who would benefit the most from early access to high quality ELC, and undermine the Scottish Government's commitment to closing the poverty-related attainment gap.

In this scenario, local authorities would be able to choose whether to use their discretionary power to continue offering funded ELC to children who are no longer eligible due to household income slightly exceeding the threshold, without the statutory underpinning. If they chose not to continue to support this group, this could create a saving for local authorities in the short term – estimated to be up to £9 million in 2019-20. Funding for the ELC expansion is ring-fenced so any saving

would be re-invested elsewhere in ELC services. Future years' settlements for funded ELC would be adjusted to reflect the latest eligibility data.

There are no benefits to eligible 2 year olds associated with this option.

Costs

We estimate that if local authorities were to adhere strictly to the eligibility criteria as drafted in secondary legislation, this would mean around 4,100 fewer 2 year olds being eligible for funded ELC annually from 1 April 2019. This would represent over 25% of the estimated eligible population. This would mean that the benefits associated with extending funded ELC to eligible 2 year olds would not be realised for a significant proportion of the eligible population.

Local authorities would however continue to have a statutory discretionary power to offer funded ELC to 2 year olds out-with the defined eligibility criteria. We expect they would continue to want to support children in the lowest income households, meaning this option would be cost neutral.

If the eligibility criteria for 2 year olds accessing ELC is not amended, there will be no additional costs to the Scottish Government.

Sectors and Groups affected

Impact on Private & Voluntary providers

We anticipate a potential small impact on private and voluntary providers as the number of children eligible for funded childcare would decrease, unless local authorities use their discretionary power to continue supporting this group. The types of service that would be affected are more likely to be childminders as they are more used by this age group than other providers.

Impact on the public (parents/children)

We anticipate a significant decrease of around 4,100 in the number of children eligible for the 2 year old offer. This impact may be mitigated if those receiving Working Tax Credits are transferred to Universal Credit during this period, and if local authorities use their discretionary power to continue supporting 2 year olds in lower income households.

Impact on Local Authorities

The costs associated with providing childcare to eligible 2s may reduce as fewer children become eligible. However, Local Authorities may find they receive more referrals or requests for 2 year old ELC placements as a result, and may choose to use their discretionary power to continue supporting children in lower income households.

Scottish Firms Impact Test

As noted above, the Scottish Government has not undertaken extensive consultation with businesses in the ELC sector on this issue as the order is intended to largely maintain the effect of current eligibility criteria rather than significantly modifying them.

We anticipate no material impact on private and voluntary providers as a result of the order.

Competition Assessment

The Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2019 will not have a direct impact on competition with the ELC sector.

Consumer Assessment

The Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2019 will not have a direct impact on consumers in terms of their access to goods and services, namely the purchase of early learning and childcare which is not currently funded.

Test run of business forms

The Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2019 will not create any new forms for businesses.

Digital Impact Test

The Scottish Government recognises that ELC settings and local authorities face a number of digital impacts with the administration of funded ELC.

The Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2019 may have marginal impacts on internal systems within local authorities which need to be updated to reflect the new income threshold. There may also be marginal impacts on ensuring web content information regarding the 2 year old eligibility criteria are updated to reflect the modified income threshold.

Legal Aid Impact Test

The Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2019 will not create any new offences. It does 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.

Enforcement, sanctions and monitoring

Local authorities will remain under a statutory duty to provide the 'mandatory amount' of early learning and childcare for eligible children under the Children and Young People (Scotland) Act 2014.

Local authorities will be responsible for ensuring the amended eligibility criteria is applied to children within their local area.

Implementation and delivery plan

It is intended that the Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2019 will come in to force from Autumn 2019, subject to Parliamentary approval. However Scottish Government intend to write out to Local Authorities to ask them to continue using their discretionary power to bring in the anticipated revised income threshold in advance of the regulations being laid. This is a similar approach to the letter issued to Local Authorities in August 2018 where we asked them to use their discretionary powers to mitigate any effects of the UK Government polices on funded ELC and Free School Meals.

The Scottish Government will review the income threshold set out in the order in the future if it is considered necessary, for example if local authorities report a significant financial impact as a result of this change.

Summary and recommendation

Based on analysis of the associated costs and benefits, implementing the Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2019, option 1 is the preferred option.

The Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2019 will protect eligibility for a similar profile of 2 year old children who qualify for access to funded early learning and childcare (ELC) due to their parents' receipt of Working Tax Credits and Child Tax Credits. This will ensure that those children who are among those most likely to experience disadvantage will continue to have the opportunity to benefit from high quality ELC.

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:A handwritten signature in black ink, appearing to read 'Maree Todd', written in a cursive style.**Date: 25 June 2019****Minister's name: Maree Todd****Minister's title: Minister for Children and Young People****Scottish Government Contact point:**

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