

# **Expansion of Early Learning and Childcare - Reinstatement of 1140 statutory duty**

**Fairer Scotland Duty Assessment (FSDA)**

**January 2021**

<b>Title of Impact Assessment</b>	Fairer Scotland Duty Assessment
<b>Title of Policy</b>	Expansion of early learning and childcare – The Children and Young People (Scotland) Act 2014 (Modification) Order 2021 - Reinstatement of 1140 statutory duty
<b>Summary of aims and desired outcomes of Policy</b>	<p>The Scottish Government and local authorities have committed to almost double the funded entitlement to early learning and childcare (ELC) from 600 to 1140 hours from August 2021 for all 3 and 4 year olds and eligible 2 year olds. This will be high quality, flexible early learning and childcare that is accessible and affordable for families.</p> <p>The expansion will deliver three main benefits for children and families:</p> <ul style="list-style-type: none"> <li>• children’s development improves and the poverty related attainment gap narrows;</li> <li>• more parents will have the opportunity to be in work, training or study; and</li> <li>• increased family resilience through improved health and wellbeing of parents and children.</li> </ul>
<b>Directorate: Division: team</b>	Early Learning and Childcare Programme Directorate: Strategy and Delivery Unit

## Executive Summary

- On 29 April 2020, the duty on education authorities to provide 1140 hours of ELC to eligible children from 1 August 2020 was revoked due to the ongoing pressures of the COVID-19 pandemic. The Scottish Government has now reinstated this duty to come into force from 1 August 2021.
- Throughout the period of the COVID-19 pandemic, the Scottish Government has supported local authorities to continue to deliver, and work towards the delivery of 1140 hours of funded ELC where they are not already doing so. The Scottish Government has worked closely with local authorities to understand the impact that the pandemic has had on delivery plans, and to consider any risks to delivery. Based on this engagement the 1140 Joint Delivery Board, co-chaired by the Minister for Children and Young People and the COSLA spokesperson for children and young people recommended a new delivery date of August 2021.
- A 'provider neutral' Funding Follows the Child approach will still be introduced alongside the national roll-out of the expanded entitlement in 2021. Funding Follows the Child is underpinned by a National Standard<sup>1</sup> that all providers delivering the expanded hours – regardless of whether they are in the public, private or third sector, or childminders – will have to meet. This will provide

<sup>1</sup> <https://www.gov.scot/publications/funding-follows-child-national-standard-early-learning-childcare-providers-principles-practice/>

reassurance to parents and carers that any provider offering the funded hours will be able to offer their child a high quality ELC experience.

- It is recognised that the impact of the COVID-19 pandemic may make it more challenging for providers to meet all aspects of the National Standard. The Care Inspectorate suspended routine inspections as a result of COVID-19 in March 2020 but have since reinstated scrutiny of ELC, including childminders and school aged childcare. Current scrutiny is undertaken on a risk and intelligence based assessment and includes self-evaluation, virtual inspections and on-site inspections. This may mean that some settings who were working towards improving their Care Inspectorate quality evaluations ahead of the introduction of the National Standard in August 2020 will not have an opportunity to complete this work and/or may not have been re-inspected. To support the ELC sector to work towards the implementation of the National Standard during the pandemic Interim Guidance<sup>2</sup> was published in July 2020.
- This Fairer Scotland Duty Assessment (FSDA) was undertaken to update the original assessment<sup>3</sup> undertaken in 2019, to consider the implications of implementing the 1140 expansion policy from August 2021.
- Information with which to examine impacts, by socio-economic grouping, of the delay in implementing the 1140 expansion, is limited. Nevertheless, from the information available, it is possible to conclude that while there have been inevitable impacts on all children and families who access funded ELC and who work in or support the sector, mitigation has taken place during the year of delay and the implementation of the policy from 1 August 2021 will further mitigate these impacts.

## Background

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 committed to almost double the entitlement to 1140 hours per year from August 2020. The Children and Young People (Scotland) Act 2014 (Modification) (No.2) Order 2019 put this on a statutory footing.

When the COVID-19 pandemic struck in March 2020, the Deputy First Minister announced that all local authority schools and childcare settings in Scotland, including childminders, would close from the end of Friday 20 March 2020. Childcare providers in the private and third sector were advised they should also close. As a result, Scottish Ministers took the decision to delay the full statutory implementation of the expansion of funded ELC to 1140 hours from August 2020. This was necessary to allow local authorities to deal with the urgent necessities of the pandemic, including the delivery of critical childcare for vulnerable children and the children of key workers. It was also apparent that the national lockdown would have

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<sup>2</sup> [ELC++Covid-19++Funding+Follows+the+Child+and+the+National+Standard+-+interim+guidance+-+UPDATE+-+21+August.pdf \(www.gov.scot\)](#)

<sup>3</sup> [Early learning and childcare expansion: Fairer Scotland Duty - gov.scot \(www.gov.scot\)](#)

implications on the ability to deliver on key infrastructure projects and recruit the necessary workforce required to deliver the ELC expansion in full. The duty to provide 1140 hours of ELC to eligible children was therefore revoked via the Children and Young People (Scotland) Act 2014 (Modification) (No. 2) Revocation Order 2020. This meant that the mandatory amount of early learning and childcare remained 600 hours in August 2020.

The Children and Young People (Scotland) Act 2014 (Modification) Order 2021 will reinstate the 1140 expansion by modifying section 48(1)(a) of the 2014 Act to increase the mandatory amount of early learning and childcare from 600 hours to 1140 hours from 1 August 2021.

Between March and December 2020 the Scottish Government has continued to work closely with COSLA, local authorities and key stakeholders to assess when it would be feasible to reinstate the statutory duty to deliver the funded ELC expansion. The joint recommendation of the all members of the Joint Delivery Board was that August 2021 is the earliest feasible date for the implementation of the full 1140 expansion. The board concluded that it would be challenging to deliver the 1140 expansion earlier than August 2021 and there was no evidence to support a later implementation date. This date was announced on 14 December 2020 and the Children and Young People (Scotland) Act 2014 (Modification) Order 2021 was laid in Parliament on 22 January 2021 to reinstate the statutory duty.

### Expansion of Funded ELC to 1140 hours

The Scottish Government and local authorities have now committed to the delivery of 1140 hours of funded ELC from August 2021. This will be high quality, flexible ELC that is accessible and affordable for families.

The expansion will deliver three main benefits for children and families:

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

The Scottish Government has worked in partnership with the COSLA and a variety of stakeholders across the ELC sector throughout the development of the 1140 expansion policy and consulted widely on the expansion of funded ELC prior to the original implementation of the statutory duty.

### **Scope of this update to the FSDA**

Prior to the decision to expand availability of funded ELC from 600 to 1140 hours from August 2020, a FSDA was undertaken to assess the impact of the policy. In

addition, an assessment was carried out on the impact of closing childcare during the initial lockdown (from March 2020) and reopening in summer 2020<sup>4</sup>.

This update is intended to supplement the original FSDA undertaken in 2019. In addition to this update, updates to the Equalities Impact Assessment, Business and Regulatory Impact Assessment and Children's Rights and Wellbeing Impact assessment will be published.

## Methodology

This impact assessment sought to update the FSDA process carried out in 2019, focusing in particular on issues that are related or attributable to the decision to reinstate the legislative duty to deliver 1140 hours of funded ELC from August 2021. Data sources utilised in this process included:

- The original Fairer Scotland Duty Assessment undertaken in 2019<sup>5</sup>.
- Coronavirus (COVID-19): children, young people and families - evidence summary - December 2020<sup>6</sup>
- Early Learning and Childcare Expansion Delivery Progress Report – September 2020<sup>7</sup>
- The latest Scottish Government ELC census<sup>8</sup> which provides information on funded ELC.
- Scottish Social Services Council, Reports on Workforce Data<sup>9</sup> which provides information on all staff working in the social service sector in Scotland.
- The Scottish Study of Early Learning and Childcare baseline data collection (Phases 1-3)<sup>10</sup>
- Other available sources of up to date research and evidence which reflect the picture post March 2020.

## Updated key findings

All of the impacts previously assessed in the original FSDA remain relevant. Key issues and findings of the update to the FSDA are set out below.

### Limitations of available data

None of the sources examined includes data that has been collected specifically to assess impacts, by socio-economic grouping, of the decision to reinstate the 1140 expansion duty in August 2021. As noted in the original FSDA, the Scottish Government is taking forward projects to support our understanding of the impact of the expansion and of how different families use and benefit from it. One of these, the

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<sup>4</sup> [Early Learning and Childcare – re-opening childcare – impact assessment – gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/early-learning-and-childcare-re-opening-childcare-impact-assessment/pages/2.aspx)

<sup>5</sup> [Early learning and childcare expansion: Fairer Scotland Duty](https://www.gov.scot/publications/early-learning-and-childcare-expansion-fairer-scotland-duty/pages/2.aspx)

<sup>6</sup> [Coronavirus \(COVID-19\): children, young people and families - evidence summary - December 2020](https://www.gov.scot/publications/coronavirus-covid-19-children-young-people-and-families-evidence-summary-december-2020/pages/2.aspx)

<sup>7</sup> [Early Learning and Childcare Expansion Delivery Progress Report – September 2020](https://www.gov.scot/publications/early-learning-and-childcare-expansion-delivery-progress-report-september-2020/pages/2.aspx)

<sup>8</sup> [Schools in Scotland: summary statistics - 2020 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/schools-in-scotland-summary-statistics-2020/pages/2.aspx)

<sup>9</sup> [Scottish Social Service Sector: Report on 2019 Workforce Data | Scottish Social Services Workforce Data \(sssc.uk.com\)](https://www.sssc.uk.com/reports/2019-workforce-data)

<sup>10</sup> [Scottish Study of Early Learning and Childcare: Reports for phases 1, 2 and 3](https://www.gov.scot/publications/scottish-study-of-early-learning-and-childcare-reports-for-phases-1-2-and-3/pages/2.aspx)

ELC Data Transformation Project<sup>11</sup> has been developed to address perceived shortcomings in the data collected through the Scottish Government ELC census, and aims to improve the information gathered and expand the analysis that will be possible for this sector.

### Inequalities of outcome

**Impacts of the reduction in uptake of funded ELC entitlement:** Data from the Scottish Government's ELC census<sup>12</sup> published in December 2020 shows that there has been a decrease in the percentage of children accessing their funded ELC entitlement. The 2020 results show that 95% of eligible three and four year olds were registered for funded ELC, down from 98% the previous year, and that 9% of two year olds were registered, down from 11% in 2019.

The Scottish Household Survey: childcare topic report<sup>13</sup> presents data on the use of childcare by households with a child aged between two and five years old (not yet at school) using data from the 2019 Scottish Household Survey. The report shows that the main reasons for using childcare vary according to area deprivation. 34% of respondents who use childcare in the most deprived areas (as defined in the Scottish Index of Multiple Deprivation) cited 'For my child's learning and language development' as a main reason using childcare, compared with 24% of all respondents.

There is no data available to assess whether or not the decrease in the percentage of children accessing their funded ELC entitlement is greater among children from disadvantaged backgrounds. Nor is it possible to ascertain whether the decision to revoke the statutory duty for August 2020 influenced this reduction, as there are a number of factors that might have contributed to this reduction. For example, a number of non-representative Scottish parent surveys undertaken over summer 2020<sup>14</sup> showed reasonable levels of concern about children returning to school (approximately 50%) during the COVID-19 pandemic, especially amongst single parents. Just under half of parents of children returning to school or childcare reported concerns about their child becoming ill with coronavirus (41%), their passing coronavirus to someone else (49%) and that that the new childcare or school environment would not be good for their child's wellbeing (45%).

Accessing high quality ELC is associated with improved outcomes in language, cognitive and other essential skills and, importantly, *these benefits have been found to be greater for children from disadvantaged backgrounds*<sup>15</sup>. Any drop in attendance among children from disadvantaged backgrounds may, therefore, have a proportionately larger impact in terms of the development of language, cognitive and

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<sup>11</sup> [Early learning and childcare: data transformation project](#)

<sup>12</sup> [Summary statistics for schools in Scotland \(www.gov.scot\)](http://www.gov.scot)

<sup>13</sup> [Scottish Household Survey: childcare topic report](#)

<sup>14</sup> <https://www.gov.scot/publications/report-covid-19-children-young-people-families-september-2020-evidence-summary/>

<sup>15</sup> Scobie G, Scott E: Rapid evidence review: Childcare quality and children's outcomes; 2017: <http://www.healthscotland.scot/publications/rapid-evidence-review-childcare-quality-childrens-outcome>

other essential skills than on children from non-disadvantaged backgrounds. However, there is not data available to demonstrate this.

For some children, the opportunity to benefit from increased hours of funded ELC has been delayed by a year, or indeed may never now be available to that child, if the child reaches primary school age in 2021. The planned re-implementation of the legislative duty will help to mitigate any impacts on children. In addition, the impact for these children will be mitigated through high quality primary education and associated policies such as additional financial support through Pupil Equity Funding.

**Uptake of funded ELC among eligible 2 year olds:** Prior to the COVID-19 pandemic, there was an increase in the number of 2 year olds accessing funded ELC between December 2018 and December 2019. The Scottish Government's projection at December 2019 was to anticipate further increases up to April 2021. However, the latest ELC census publication (December 2020 ) reported that number of two year olds registered for funded ELC had decreased from 5,990 in 2019 to 4,863 in 2020. 9% of all two year olds were registered in 2020, a decrease from 11% in 2019.

The Phase 3 report of the SSELC<sup>16</sup>, which followed up a cohort of 'Eligible 2s' at age three after one year of 600 hours of funded ELC, suggests that the year of ELC the Eligible 2s had already received appears to have helped them improve on measures of development. The parents of the Eligible 2s tend to have engaged well with the ELC settings and they recognised the opportunities afforded to them in having their child in nursery, in terms of taking up employment or having more time to do other things. It is possible, therefore, that the delay to the implementation of the expansion of funded ELC hours to 1140 may have a proportionately larger impact on this group of children and their families. As the study enters its final three phases, when the expansion programme will have been fully rolled out, it will be able to assess whether an increase in hours benefits all children and families, and whether it has contributed to a closing of the gap between the more and less advantaged.

**Impacts on employment opportunities for families:** The original FSDA stated "In Scotland we are aiming to maximise the potential impact of the expansion of ELC on increased opportunities for parents to be in work, training or study through fully making the connection to, and building on the momentum created by, current employability initiatives - in particular Fair Start Scotland and the new Parental Employability Support Fund".

The Phase 3 report of the Scottish Study of Early Learning and Childcare<sup>17</sup> (SSELC) showed that there were some small changes in employment prospects for parents and carers of 'Eligible 2s' after receiving a year of 600 hours of funded ELC (when the child was aged three). Between 2018 and 2019, the proportion of respondents in either part-time or full-time paid employment had increased from 35% to 40%, and there were also increases in the proportion of parents who said that because their child was in nursery they had been able to study or improve work-related skills, they

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<sup>16</sup> [Scottish Study of Early Learning and Childcare - three-year-olds \(phase 3\): report](#)

<sup>17</sup> [Scottish Study of Early Learning and Childcare - three-year-olds \(phase 3\): report](#)



had been able to increase the number of hours they work, they had been able to work or look for work, as well as having more time to themselves and being able to think about the future.

Research has found that typically higher paid jobs and career progression opportunities come with less flexibility and may require someone to work full-time<sup>18</sup>. Parents and carers in disadvantaged families may therefore have less chance to enter employment or take on progression opportunities if they are unable to access affordable and flexible ELC. Low-income households are more likely to be in jobs that cannot transfer to home-working, and parents in low-income households with young children can therefore benefit from increased access to childcare in terms of the hours they can work out of the home.

The reduction in uptake of funded ELC entitlement may, therefore, have meant that some parents and carers have not been able to access the same employment or training opportunities. We anticipate there will be significant changes to the number and spread of families in receipt of 'qualifying benefits' as a result of the pandemic, allowing these families to access funded ELC for 2 year olds. This will be mitigated, at least in part, by the reinstatement of the 1140 duty and by encouraging uptake of the places for eligible 2 year olds. Measures to support improved uptake are outlined in the original FSDA.

In the most recent national lockdown (post-Christmas 2020 and into the early part of 2021), eligible 2 year olds have been added to list of those who can still access ELC, alongside children classed as vulnerable and children of key workers, thus helping provide further mitigation of impacts on disadvantaged families brought about the COVID-19 pandemic.

**Impacts of reinstatement of the duty on education authorities to provide 1140 hours from August 2021:** Throughout the period of COVID-19 restrictions and since the decision to revoke the statutory duty for August 2020, the Scottish Government has sought to mitigate the impact by continuing to support local authorities to provide more than the statutory 600 hours. Funding for 1140 expansion was not withdrawn from local authorities, though additional flexibility was introduced around how this funding could be spent. This resulted in local authorities being able to continue to develop and deliver their expansion plans.

As of January 2021, 15 local authorities were delivering 1140 hours of funded ELC to all eligible children in their area, and all local authorities were offering 1140 hours to some or most children. While the picture is not uniform across Scotland, this high level of delivery has helped to mitigate impacts on young children and their parents/carers by allowing access to expanded hours where possible.

The Care Inspectorate also had to suspend the national inspection regime due to the restrictions, which has further quality implications. Reintroducing the statutory duty from August 2021 allows time to support quality improvement work, re-establish a full

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<sup>18</sup>Borg I and Stocks A: A Survey of Childcare and Work Decisions Among Families with Children; 2013: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/221221/WP114.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/221221/WP114.pdf)



inspection and scrutiny regime, and consider the impact of the pandemic on the quality aspects of the national standard.

It is also important to recognise that if the Scottish Government had not delayed the implementation of the statutory duty to deliver the ELC expansion, this would have put significant pressure on local authorities during the initial response to the pandemic, which may have resulted in different negative impacts on young children as authorities would have had to deliver the 1140 policy while also focussing on the COVID-19 response. Delaying the implementation to August 2021 has therefore helped to mitigate these potential wider negative impacts.

### **Updated recommendations and conclusions**

The conclusions and recommendations made in the 2019 FSDA are still valid. As we begin to understand the full impact of the COVID-19 pandemic on children, families and communities across Scotland, our focus on our youngest children in funded ELC and their families becomes even more important.

There have been multiple barriers to accessing any ELC (funded or otherwise) during the ongoing COVID-19 pandemic, and the delay to the implementation of the 1140 policy needs to be considered within that broader context, particularly as there is very little data available on the impacts of the 1140 pause.

Nevertheless, the mitigations that the Scottish Government took in order to support the continued delivery of the 1140 expansion during the pause in its statutory implementation have helped minimise negative impacts on the advancement of equality of opportunity for children and their families by driving forward the policy to deliver expanded ELC provision to all 3 and 4 year old and eligible 2 year old children. The full implementation of the 1140 expansion will further advance this.

It is further recognised that the impacts of delaying the statutory implementation of the 1140 expansion will be ongoing until it is reinstated. Therefore the reintroduction of the duty in August 2021, which is the earliest assessed feasible date for delivery, is critical to full mitigation of the impacts.

The Scottish Government is continuing to work with national and local government to support increasing uptake and awareness of the 2 year old funded entitlement.



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EH1 3DG

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