

Prescribing the minimum annual number of learning hours: consultation

March 2023

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Foreword

This consultation seeks views on the Scottish Government's plans to set a legal minimum number of hours of school education school pupils should receive each year.

Traditionally, Scottish primary schools provide around 25 learning hours per week, and Scottish secondary schools around 27.5 hours per week. However, while local authorities are required to have their schools open for 190 days each year, the number of learning hours is not prescribed. Our schools have never been more important to children and young people. They provide not only the vital learning our children and young people need to succeed and to tackle the poverty related attainment gap that we are determined to close, but also a safe and secure place that nurtures them.

The school week is the backbone of our education provision and benefits all our children and young people. The Scottish Government is clear that any changes to the school week must be based on educational benefit to pupils. Any measures that materially reduced the number of hours children spend learning in school would be expected to reduce pupil attainment and wellbeing and undermine efforts to close the poverty related attainment gap.

To protect this vital provision for children and young people, I am bringing into force the existing provisions in the Education (Scotland) Act 2016 which will enable Scottish Ministers to set the minimum number of learning hours in a school year and propose to use this power to make regulations later this year.

This consultation is an opportunity for local authorities, parents, children and young people and other stakeholders to provide views and evidence about the potential impact of the implementation of this policy. We will use the responses to inform the regulations and non-statutory guidance I intend to bring forward.

I hope stakeholders can use this consultation to express their views on this important issue.

Ms Shirley-Anne Somerville MSP
Cabinet Secretary for Education and Skills

1. Introduction

1.1 This consultation sets out Ministers' proposal to set in law the minimum number of learning hours provided in public and grant aided schools, and invites views on this proposal and its implementation.

1.2 Section 21 of the Education (Scotland) Act 2016 ("the 2016 Act") inserts section 2ZA into the Education (Scotland) Act 1980 ("the 1980 Act") which makes provision about learning hours and gives powers to Scottish Ministers to make regulations to prescribe the minimum number of learning hours per academic year. This consultation paper sets out what we mean by the term learning hours, in which types of educational setting the provisions would apply and gives an overview of the current position in Scotland and internationally. It proposes, and invites your views, at what level the minimum number of learning hours should be set for different types of school and explores what this could mean in practice for schools and local authorities in different types of educational provision.

1.3 The regulations and guidance will specify the minimum number of learning hours per annum, how these should apply, including any variation where appropriate, and effectively provide a statutory basis for the pupil year.

1.4 There is currently some variation in the school hours offered across Scotland that has arisen for a range of reasons. For example, the variation may relate to rural transport requirements, to meet the needs of the youngest pupils or to ensure older pupils can access flexible options as part of their senior phase. We wish to understand, and give careful consideration to, this variation, both to avoid unintended consequences where this variation is appropriate but also to ensure that similar and equitable provision is available to pupils wherever they go to school in Scotland.

1.5 There are also differences in local delivery, for example, with some areas operating an asymmetric week with some longer and some shorter days. There is no intention to constrain this local variation.

1.6 We welcome views on all aspects of this proposal.

2. Discussion

What do we mean by learning hours?

2.1 Learning hours are the period of teaching that learners receive within the school day. In most cases, they do not include lunch and other break times or extra-curricular activities or provision such as breakfast clubs that may take place around the core school day. It has been accepted practice for at least the last 40 years that around 25 hours per week (or 950 hours per academic year) of teaching time is made available in most local authority run primary schools; and 27.5 hours per week (or 1045 hours per academic year) in most local authority run secondary schools.

What type of schools would learning hours apply to?

2.2 The learning hours provisions would apply to local authority schools and to grant aided schools. There are seven grant-aided special schools and one mainstream grant-aided school in Scotland, and we expect the same prescribed minimum learning hours requirements and exemption provisions as apply to local authority schools would apply to these schools.

2.3 We propose that the learning hours regulations would apply to primary schools, secondary schools and to special schools.

Learning Hours in Scotland – current position¹

2.4 We are currently gathering detailed evidence on the number of learning hours currently taught in local authority schools and seeking to understand the reasons for variation. Analysis so far suggests the great majority of local authorities offer a consistent number of learning hours across all of their schools with only limited variation within local authority areas. Generally, primary schools offer 25 hours in a typical school week, though in a small number of authorities shorter learning hours, usually 22.5 hours, are offered to their youngest pupils, either those in P1 and P2 or in P1 to P3. And generally secondary schools in most local authority areas offer 27.5 hours in a typical school week.

¹ Education authorities, managers of grant aided schools and Jordanhill School were asked to provide information about the number of learning hours provided in a typical term time week.

2.5 A significant proportion of local authorities operate an asymmetric week, where instead of each school day being the same length, there is a different pattern, such as four days of the week are a little longer and the remaining day (usually a Friday) is shorter or a half day; or there are three longer days and two slightly shorter days. In most cases, the overall number of learning hours will be the same as those provided in local authorities operating the same hours each day of the week. Our proposals would not affect this type of local flexibility.

Learning Hours in Special Schools

2.6 In line with the principle of inclusion, it is expected that all pupils should have the opportunity to receive at least the minimum number of learning hours. To ensure that education for all pupils is provided on an equitable basis, section 2 of the Standards in Scotland's Schools etc. Act 2000 places a duty on education authorities to ensure that the education they provide is "directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential".

2.7 Scottish Ministers accept that there is a need for flexibility in these arrangements and that, where appropriate, special account may need to be taken of the circumstances of individual pupils. The starting point should always be the needs of the pupil, and these should determine what organisational structures are required to be in place to ensure that these needs are met.

2.8 Evidence on the number of learning hours currently taught in local authority schools suggests that the majority of local authorities offer a consistent number of learning hours across their special schools. Whereas most follow the mainstream 25 hours for primary schools and 27.5 hours for secondary schools, there are a small number of authorities where there is no significant differentiation between the hours offered to primary aged or secondary aged pupils with a 25 hours offered to all.

2.9 Grant-aided special schools provide education for pupils with complex additional support needs. The learning hours offered generally align with the practice outlined in 2.1. However, it should be noted that within these settings learning often occurs through activities that are carried out throughout the day, sometimes

including break times or lunchtimes. Placing the needs of each pupil at the centre, learning outcomes and hours are therefore tailored to the learners' individual circumstances.

Teaching Hours

2.10 Since 2006, teachers' terms and conditions have specified a maximum of 22.5 hours class contact time per week. This is used in setting timetables for secondary school teachers, and in primary schools will mean that any hours above 22.5 hours are delivered to a class by another teacher.

3. Evidence

International

3.1 The Organisation for Economic Co-operation and Development (OECD) collected data on compulsory instruction time for the *Education at a Glance 2021* publication and international comparisons are set out here. Please note that the average instruction time per year is influenced by the number of weeks of holiday for schools in that country, which means that weekly learning hours in practice may be higher than suggested for countries with more holidays.

3.2 Only three countries in the OECD – England, Scotland, and New Zealand - do not prescribe compulsory instruction time in schools. However, schools are required to be open for instruction for a minimum number of hours per day (New Zealand) or to allow sufficient instruction time to deliver a broad and balanced curriculum that includes all statutory requirements (England and Scotland).

3.3 The OECD average for annual learning hours at primary level (for countries with compulsory instruction time) is 807 hours. This ranges from 660 hours in Finland to 1147 hours in Costa Rica. Six OECD countries have longer annual learning hours than the accepted practice in Scotland (950 hours), including the United States (973 hours), Australia (1,000), Colombia (1,000), Denmark (1,000), Chile (1,026) and Costa Rica (1,147). A number of European countries have similar instruction time to Scotland, including Ireland (915 hours), Netherlands (940), and Portugal (905), as well as Canada (922).

3.4 At the secondary level, the OECD average for annual learning hours (for countries with compulsory instruction time) is 923 hours. This ranges from 766 hours in Slovenia to 1,200 hours in Denmark and Columbia. Six OECD countries have longer annual learning hours than the accepted practice in Scotland (1,045 hours), including Spain (1,056 hours), Costa Rica (1,120), Mexico (1,167), Denmark (1,200), Colombia (1,200) and Chile (1,065). Countries with similar instruction time to Scotland include the United States (1,022 hours), Netherlands (1,000), and Australia (1,000).

3.5 The UK Department for Education published a review of international evidence² in November 2021 of the impact of the relationship between instructional time and outcomes. The Review found that a number of studies have indicated a positive relationship between the quantity of instructional time and outcomes across educational phases, and across a range of education systems, although the evidence varies in scale, quality and applicability. Studies show that the quantity of time is only one relevant factor (alongside, for example, teacher quality), and that whether additional time in learning has a positive impact on attainment, and the extent of this impact, depends on the additional time being used well.

England

3.6 In England, the Department for Education, has issued guidance³ which sets the expectation that all state-funded mainstream schools deliver a school week of at least 32.5 hours by September 2023 at the latest. The 32.5 hour minimum includes breaks and lunch times as well as teaching time and any extra-curricular activities that all pupils are expected to attend.

² [Review of time in school and 16 to 19 settings \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/100222/review-of-time-in-school-and-16-to-19-settings.pdf)

³ [Minimum expectation on length of the school week: information note \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/100222/minimum-expectation-on-length-of-the-school-week-information-note.pdf)

4. Legislative provision on Learning Hours

4.1 Section 21 of the 2016 Act, once fully commenced, inserts section 2ZA into the 1980 Act which will make the following provision for learning hours:

- to require education authorities and the managers of grant-aided schools to secure the provision of no fewer than the prescribed learning hours for each pupil for whom the authority/managers are responsible;
- to confer a power on the Scottish Ministers to prescribe by regulations (subject to the affirmative procedure) the number of learning hours in each school year. These regulations may make different provision for different purposes and make different provision for different types of pupil. Before making any such regulations, the Scottish Ministers must consult such persons as they consider appropriate;
- to provide that education authorities/grant-aided schools may provide fewer than the prescribed learning hours to a pupil in certain circumstances (including where the pupil's wellbeing would be adversely affected; matters outwith the authority's control; other circumstances Ministers may prescribe by regulations); and
- to amend the mechanism in section 133(4) of the 1980 Act so that the Scottish Ministers may by direction disapply or modify the application of the duty to provide the prescribed learning hours where it would be unreasonable that it should apply or apply unmodified.

5. Number of school days each year

5.1 While learning hours are not currently prescribed, the number of school days is set in law in Scotland (and England). Regulation 5 of the Schools General (Scotland) Regulations 1975, as amended, requires schools to be open for a minimum of 190 days in a school year. This requirement is unaffected by the proposals being consulted upon here.

5.2 There is legislative provision which allows for schools not to deliver the 190 day requirements in limited circumstances. Section 133(4) of the 1980 Act allows Scottish Ministers, on application by an education authority, to modify the application of the 190 day requirement by way of a direction, provided Ministers are satisfied that it would be unreasonable for the requirement to apply, or to apply without modification. For example, this process can be used to permit unavoidable ad hoc closures of schools, such as to move from one school building to another, or to mark additional public holidays such as that observed for the Queen's State Funeral in September 2022.

6. Delivering fewer learning hours

6.1 Section 2ZA(4) of the 1980 Act makes provision for circumstances where education authorities may make available fewer than the minimum number of prescribed hours, without the need to apply for an exemption. Those circumstances are:

- where the pupil's wellbeing would be adversely affected;
- where matters outwith the authority's control make it impracticable to make the prescribed hours available; and
- where other circumstances that Ministers may prescribe by regulations apply.

Pupils' wellbeing

6.2 In order to be satisfied that a pupil's wellbeing would be adversely affected if the minimum number of prescribed hours were to be made available, section 2ZA(7) requires the education authority to consider the extent to which the pupil is or would be: safe, healthy, achieving, nurtured, active, respected, responsible, and included. These are the eight wellbeing indicators⁴ which form part of the Getting it right for every child (GIRFEC) approach. This would give the education authority flexibility to deliver an individualised number of learning hours to a pupil if it is agreed that this is appropriate to meet the needs of that pupil and respects their right to an education.

6.3 In line with the duties in the Standards in Scotland's Schools etc Act 2000, the focus must be on meeting pupils' needs and giving every pupil the opportunity to

⁴ [Wellbeing \(SHANARRI\) - Getting it right for every child \(GIRFEC\) - gov.scot \(www.gov.scot\)](https://www.gov.scot/Wellbeing%20(SHANARRI)%20-%20Getting%20it%20right%20for%20every%20child%20(GIRFEC)%20-%20gov.scot)

benefit from mainstream school hours unless, exceptionally, this would not be in the pupil's best interest. For example, some pupils may find it hard to cope with the length of the mainstream week and a shorter school day may best meet their needs. There will also be limited circumstances in which school breaks or lunchtimes can count as learning hours. Most commonly this would occur in schools that provide education for children and young people with complex additional support needs. In these circumstances teachers' planning would make clear references to the learning outcomes through teaching being carried out during these times.

Matters outwith the authority's control

6.4 An authority may secure that fewer than the prescribed hours are made available to pupils where there are matters outwith the control of the authority that makes it impracticable to provide those hours. We would expect such unforeseen circumstances to include closures due to bad weather, industrial action, or as a result of damage to school buildings due to, for example, flood or fire.

6.5 It would not include circumstances such as short term planned closures due to learners moving out or back into a school building following refurbishment which would require a Ministerial direction providing an exemption from or modification of the learning hours requirements.

Other circumstances Ministers may prescribe by regulations

6.6 Ministers have a power under section 2ZA(4)(c) of the 1980 Act to prescribe the other circumstances that would allow provision of fewer than the prescribed number of learning hours. For example, children or young people who have been temporarily excluded from school are expected to continue to receive an education while excluded, and it is expected that alternative education provision should be in place after three days. However, an exemption might provide for these learners not to be provided with the minimum number of learning hours.

6.7 We would welcome views on whether there are other such circumstances where fewer than the prescribed number of learning hours are provided that should be specified in learning hours regulations.

Exemptions

6.8 Other than the specific exceptions set out above, section 21 of the 2016 Act amends section 133(4) of the 1980 Act to provide a similar exemption process to the process that applies to the 190 days requirement, to allow authorities to apply for a direction from Ministers for an exemption from, or modification of, the requirements of any regulations on learning hours. This might address unavoidable ad hoc reductions in learning hours in a similar way to the current process for seeking an exemption from the requirement on schools to be open for 190 days. As it is likely that an exemption from the learning hours requirement would also require an exemption from the 190 days requirement, we will work with local authorities to devise an efficient process for both types of applications to be made. We propose that the learning hours regulations would be accompanied by guidance to local authorities on the process for seeking an exemption.

7. Other forms of education

7.1 These regulations will not apply to independent schools, or to families who are choosing to home educate.

8. Implementation

8.1 In preparing the regulations, we shall consider what the impact of the regulations would be on any local authorities or schools not currently providing the minimum learning hours, and whether transitional arrangements or other measures may be necessary to assist them to adjust to the new requirements.

9. Proposal

9.1 Scottish Ministers propose to:

- Prepare regulations that prescribe the minimum number of learning hours that must be provided in local authority and grant aided schools in an academic year;
- Prescribe the number of learning hours at 950 hours for primary schools and 1045 for secondary schools; and
- Prescribe the circumstances where fewer than the prescribed number of learning hours may be delivered.

10. Consultation Questions

1. Should the Scottish Government set in law the minimum learning hours pupils in Scotland should receive?

Yes, no, not sure

2. Do you agree that the minimum annual learning hours should be 950 hours for primary schools?

Yes, no, not sure

3. Do you agree that the minimum annual learning hours should be 1045 hours for secondary schools?

Yes, no, not sure

4. Do you agree with the suggested definition of learning hours set out at paragraph 2.1 above?

Yes, no, not sure

5. Apart from the exemptions outlined in this paper are there any other circumstances where a variation to the number of learning hours provided may be needed?

6. Are there any further views you wish to share regarding this proposal?

Responding to this Consultation

We are inviting responses to this consultation by 13 June 2023.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/learning-directorate/learning-hours-consultation>.

You can save and return to your responses while the consultation is still open.

Please ensure that consultation responses are submitted before the closing date of 13 June 2023.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

School Organisation
Scottish Government
Area 2B North
Victoria Quay
Edinburgh, EH6 6QQ

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at learninghoursconsultation@gov.scot.

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

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Respondent Information Form

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy: [Privacy - gov.scot \(www.gov.scot\)](http://www.gov.scot/privacy)

Are you responding as an individual or an organisation?

- Individual
- Organisation

For individuals, are you responding as a:

- Learner
- Parent
- Teacher
- School Support Staff
- Education Practitioner
- Other, please state:

Full name or organisation's name

Phone number

Address

Postcode

Email Address

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

- Publish response only (without name)
- Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

Questionnaire

Question 1

Should the Scottish Government set in law the minimum learning hours pupils in Scotland should receive?

- Yes
- No
- Not Sure

Please explain your answer in the text box.

Question 2

Do you agree that the minimum annual learning hours should be 950 hours for primary schools?

- Yes
- No
- Not Sure

Please explain your answer in the text box.

Question 3

Do you agree that the minimum annual learning hours should be 1045 hours for secondary schools?

- Yes, no changes should be made
- No, changes should be made
- Not Sure

Please explain your answer in the text box.

Question 4

Do you agree with the suggested definition of learning hours set out at paragraph 2.1 above?

- Yes, no changes should be made
- No, changes should be made
- Not Sure

Please explain your answer in the text box.

Question 5

Apart from the exemptions outlined in this paper are there any other circumstances where a variation to the number of learning hours provided may be needed?

Please set out your response in the box below

Question 6

Are there any further views you wish to share regarding this proposal?

Please set out your response in the box below



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