

EXPLANATORY MEMORANDUM AND REGULATORY IMPACT ASSESSMENT FRAMEWORK

Explanatory Memorandum to “The Childcare Act (Local Authority Assessment) (Wales) Regulations 2008”

This Explanatory Memorandum has been prepared by Children's Strategy Division of the Department of Children, Education, Lifelong Learning and Skills and is laid before the National Assembly for Wales, in accordance with Standing Order 24.1.

Description

1. Section 22 of the Childcare Act 2006 places a duty on Local Authorities in Wales to secure, as far as is reasonably practicable, sufficient childcare to meet the requirements of parents in their area who require childcare in order to work or to undertake training or education or to prepare for work. Section 26 of the Childcare Act 2006 gives the Assembly power to make regulations requiring Local Authorities in Wales to prepare assessments of the sufficiency of childcare in their area. This assessment is a necessary first step towards securing sufficient provision, enabling Local Authorities to identify gaps and establish plans to meet the needs of parents so that they can fulfil their childcare sufficiency duty under section 22.

Matters of special interest to the Subordinate Legislation Committee

2. Not applicable.

Legislative Background

3. Section 26 of the Childcare Act 2006 confers powers on the National Assembly for Wales to make regulations requiring Local Authorities in Wales to prepare assessments of the sufficiency of childcare in their area. By virtue of paragraph 30 of Schedule 11 of the Government of Wales Act 2006, the powers conferred on the National Assembly for Wales by section 26 of the Childcare Act 2006 are now vested in Welsh Ministers.
4. The instrument has been made using the negative resolution procedure, and is therefore subject to annulment by resolution of the Assembly.

Purpose and intended effect of the legislation

5. Currently, section 118A of the School Standards and Framework Act 1998, (as amended by the Education Act 2002), places a duty on Local

Education Authorities to review annually the sufficiency of childcare provision for their area, having regard to statutory Cymorth guidance issued by the Welsh Assembly Government which sets out the nature of the role of the Local Authority in facilitating and shaping the childcare market and their interactions with childcare providers. However, the current power does not define sufficiency and there is no requirement to ensure that there is sufficient childcare provision.

6. The section 26 duty under the Childcare Act 2006 replaces the duty to review the sufficiency of childcare on an annual basis under Section 118A of the School Standards and Framework Act 1998 (as amended by the Education Act 2002).
7. The review of the sufficiency of childcare duty under section 26 fits with other duties under the Childcare Act, in particular the duty to secure sufficient childcare for working parents (section 22), and the duty to provide a children's information service (provision of information duty under section 27) in the Local Authority area, which is well placed to feed into the assessment process.
8. In order to ensure that these assessment of childcare sufficiency duties are placed on a long term footing, it is proposed that the 22 Local Authorities in Wales will be placed under duties to fulfil provisions of the Childcare Act 2006 under section 26, with parallel regulations being made under section 27 of the Childcare Act 2006 to require Welsh Local Authorities to provide parents and prospective parents with information on childcare and related services.
9. Against this background, it is proposed that a Local Authority, having lead responsibility for the Children and Young People's Partnership (CYP Partnership), and the Early Years Development and Childcare Partnership (EYDCP), which remains a statutory requirement under Section 118A of the School Standards and Framework Act 1988 (as amended by the Education Act 2002), should be responsible for ensuring fulfilment of the duty under section 22 and section 26 of the Childcare Act to secure sufficient childcare provision and to assess, on an annual basis, the sufficiency of childcare in the Local Authority area. The Local Authority, working through its CYP Partnership, or the local EYDCP if it continues to meet as a separate body from the Partnership, will be required to undertake a full assessment within a year of the commencement date of the legislation and then at least every three years after that, keeping their assessment under review in between main assessments. This assessment will contribute to the mapping of provision that is a key stage in preparation of the local Children and Young People's Plan, allowing the relevant local partners to cooperate effectively, including with private and voluntary sectors, to fill gaps in the market.

10. To fulfil its Childcare Act duty, the CYP Partnership or EYDCP will need to assess the local childcare market to develop a realistic and robust picture of parents' current and future need for childcare. The CYP Partnership or EYDCP will compare this assessment of parents' demand for childcare with information about the current and planned availability of childcare places.
11. The proposals detailed above tie in with the partnership planning requirements set out in section 26 of the Children Act 2004. Section 26 of the Children Act 2004 provides for 3-year Children and Young People's Plans (CYPPs) from 2008-11, setting out how the well-being of all children and young people in the area will be improved. *Shared Planning for Better Outcomes* planning guidance was issued in September 2007, following consultation earlier that year.
12. As the new Children Act planning process is developed, it will take into account the need for childcare sufficiency assessment to be included within Children and Young People's Plans (CYPPs), as part of a local mapping of provision and assessment of need.
13. The aim is to legislate to sustain and enhance provision of childcare and to ensure that continued development reflects local needs and circumstances. The key aim for the under-pinning regime is that it should provide assurance of a long-term commitment to childcare without creating excessive administrative burdens or service costs for Local Authorities.

Implementation

14. The Instrument will come into force on 1 April 2008.
15. We are not aware of any legal and / or other implications for the Assembly should the intended target dates for making not be achieved.

Funding Arrangements

16. Within the final Welsh Assembly Government budget published in January 2008, Cymorth has a budget of £53.184 million in 2008-09, £53.321 million in 2009-10 and £53.321 million in 2010-11. In addition, funds currently used to support childcare within Cymorth have been transferred to RSG at final budget. The totals are shown in the table below and include additional provision of £1.1 million / £1.2 million / £1.3 million in 2008-09, 2009-10 and 2010-11 respectively for the additional burdens arising from the Childcare Act 2006.

2008-09	2009-10	2010-11
£6,838,346	£6,938,343	£7,038,345

17. The formulae used have been agreed with WLGA. In 2008-09, the transfers out of Cymorth are included for each authority on a frozen distribution, together with the additional £1.1 million distributed by formula. From 2009-10 onwards the formula will be fully applied.

18. This corresponds with the commencement date of 1 April 2008 for these childcare sufficiency assessment regulations, allowing sufficient lead in time for Local Authorities to comply with the statutory guidance which is currently being developed for issue in spring 2008.

Consultation

19. The following sectors, and constituent members of them, have been identified:

- Public sector – 22 Local Authorities in Wales
- Private, voluntary and maintained sector childcare providers (affected indirectly) in Wales, ranging from individual carers and sole traders to larger chains
- Families in Wales

20. These regulations have been tested in a full public consultation with key stakeholders. The consultation document “Childcare Act 2006 – Implementation of Sections 22 and 26 of the Childcare Act 2006” issued on 19 February to a wide audience of over 500 stakeholders, including Local Authorities, Local Health Boards and NHS Trusts, Children’s Information Services, the voluntary sector, childcare representative and provider organisations, WLGA, county librarians, and other interested external partners such as JobCentre Plus. The report of the analysis of the consultation responses can be viewed at:
www.new.wales.gov.uk/topics/educationandskills/educationandskillsconsult/468573-wag/?lang=eng

Regulatory Impact Assessment

21. A Regulatory Impact Assessment was prepared as part of the consultation process.

Options (for achieving the policy objective – as set out above)

22. We identified two options in assessing how to best achieve the desired outcomes stated above:

- Option 1 - To make these 2008 regulations and place new duties on Local Authorities to ensure the provision of childcare.
- Option 2 - To maintain the status quo and not make these regulations and rely on existing duty under section 149 of the Education Act 2002 and non statutory levers to incentivise and direct the national provision of childcare.

Option 1 – To make these 2008 regulations in order to broaden the current duty on Local Authorities to assess the sufficiency of childcare

Risk Assessment

23. The Assembly Government makes these regulations in order to ensure sufficiency of childcare provision for working parents. The risks in this approach are that the enhanced duties could put additional pressure on existing staff in some Local Authorities.

Benefits

24. An extended childcare duty would ensure that every Local Authority takes action to ensure there is sufficient childcare provision available for families with children aged from 0-19 within their communities. They would have to strategically plan support for the local childcare market to ensure it is flexible, sustainable and responsive to the needs of parents. It would ensure that childcare is placed on a sustainable and long-term footing, and enable parents who wish to, to work. It would also ensure that the needs of lower income families, parents of disabled children, and those who require provision through the medium of Welsh, are taken into account by Local Authorities.

25. The new childcare duty will ensure that Local Authorities put in place appropriate mechanisms to assess the childcare needs of the local population, and that they act to ensure that the childcare market meets those needs. Local Authorities will have to assess the childcare market, the labour market, deprivation and the local economy to show a realistic picture of the present supply of childcare.

26. Local Authorities will identify where there are gaps in the market and plan and work with their partners, private and voluntary childcare providers and schools, to provide advice, support and targeted incentives to help providers fill them. They will shape and support the overall provision of childcare to make it flexible, sustainable and responsive to the needs of parents and the community.

27. There will always be areas where targeted action is required to address particular issues. For example, there will be places where changes in

- population or in employment patterns change people's needs for childcare and the market needs support to adjust quickly. Equally, there are parts of the population that are not as effectively served by the childcare market, such as families on low incomes and families with disabled children. In these cases, childcare providers and the childcare market will need additional support to reach sustainability in meeting the needs of these groups.
28. The new childcare duty will draw together on a more formal basis actions that Local Authorities already undertake as part of Cymorth activities and community focused schools programmes, as well as actions taken as part of existing statutory duties (for example, the nursery education duty). The duty would be to shape and support the overall childcare market, working with the private and voluntary sectors as well as schools. Most of the funding for childcare itself comes from parents, either directly or through the Childcare Element of the Working Tax Credit. This role would be carried out as part of children and young people's local planning requirements under the Children Act 2004.
 29. The new childcare duty would not have a direct effect on private and voluntary childcare providers. There may be some indirect benefits for the sectors as a more formalised and strategic role for Local Authorities across the whole 0-14 (18 for disabled children) age-range will allow Local Authorities to develop a better overview of provision in their area, and where to provide support. Providers will also be able to benefit from short-term subsidies from their Local Authorities to assist with sustainability concerns.
 30. The new childcare duty would have a positive impact on schools seeking to extend their services, giving Local Authorities a clear role in facilitating links between providers and schools.
 31. Cymorth funding for childcare and Children's Information Services (currently 8.5% of the Local Authorities' total Cymorth allocation) will be included within the Revenue Support Grant to Local Authorities in 2008-09. In addition, Local Authorities already have the expertise and local knowledge that is necessary to shape the market to ensure sufficient childcare, and they are best placed to assess local need for and stimulate local provision of childcare. Given this, placing a statutory duty to secure sufficient childcare on Local Authorities will focus this expertise so that appropriate systems are put in place to ensure that sufficient childcare is available in each locality and that this childcare is suitable and reflects local needs and circumstances.
 32. The duties would complement Local Authorities' existing duties in relation to nursery education. It would enable the Assembly Government to fulfil

its goal of making sufficient childcare available to all families with childcare aged 0-14 (18 for disabled children).

Costs

33. The Assembly Government is committed to ensuring that the new Childcare Act duties do not place new unfunded burdens on Local Authorities or their partners. The key aim is to enable Local Authorities and their partners to respond to parents' need for affordable childcare and for easy access to children's information services, which meet their families' needs, and to ensure that its continued development reflects local needs and circumstances. The key intention is that it should provide assurance of a long-term commitment to childcare, without creating new administrative burdens or service costs for Local Authorities.
34. Funding being made available is set out at paragraphs 16 and 17 above. The administrative cost of the regulations is being recognised in the additional £1.1/£1.2/£1.3 million being provided. The duties would be cost neutral and would merely in the majority of cases be formalising and placing on a more long term and sustainable basis the lead role that Local Authorities are already playing in ensuring the sufficiency of childcare provision for parents.

Option 2 - Maintain the status quo and rely on existing duty and non statutory levers to incentivise and direct the national provision of childcare

Risk Assessment

35. The Assembly Government could choose not to make these regulations, but instead continue to use existing statutory levers under section 149 of the Education Act 2002, supported by guidance, in order to ensure the sufficient provision of childcare for working parents. Risks in this approach have been identified as follows:
- This approach would fail to provide certainty around the future provision of childcare services as they would continue to have no basis in law.
 - The absence of certainty that these childcare services will continue to be supported may deter providers from investing in services and facilities in the long term.

Benefits

36. This approach would have the advantage of using existing procedures to ensure the aim of providing sufficient childcare to meet the needs of working parents.

37. The only strong lever that the Assembly Government could use would be to continue to use ring fenced funding from Cymorth to drive the childcare market. This approach has worked, but there has been something of a conflict between the emphasis within Cymorth on funding for deprived areas across Wales and childcare as a universal service.

Costs

38. Costs would remain broadly at the present level and the Assembly Government would continue to fund the childcare through ring-fenced funding currently available from Cymorth. This approach to funding would run counter to the Assembly Government's intention to give greater flexibility to Local Authorities in how they spend the funding that they receive from the Assembly Government.

Competition Assessment

39. Consideration has been given to the potential impact of these provisions on competition. It is not envisaged that the number or size of childcare firms / providers would increase at a significantly faster rate as a result of the new duty.

Small Firms Impact Test

40. The majority of childcare is provided by voluntary and small private sector providers, with a few large firms having a relatively small share of the market.

41. Childcare providers are likely to find that, as a result of the new childcare duty, Local Authorities will have increased flexibility to provide targeted help to childcare providers to stay open and remain sustainable in the long term.

Consultation

42. The formal consultation period ran from 19 February to 11 May 2007 and 29 responses were received in respect of the consultation on section 22 and section 26 of the Childcare Act. Children's Strategy Division also hosted three 1-day stakeholder consultation events in April / May in Wrexham, Swansea and Newport to share good practice, consult and further discuss the implications of the Childcare Act duties for Local Authorities, the content of the proposed guidance and the draft regulations.

43. Where appropriate, the content of the statutory guidance will be reviewed, amended or clarified to address the majority of the issues raised. Consequently revised guidance will issue in spring 2008.

Funding of the Childcare Act Duties

44. The Childcare Act consultation included the proposal to transfer funding for childcare and children's information services from Cymorth to Revenue Support Grant (RSG) from April 2008. The consultation raised funding concerns:
- a. At the loss of hypothecation for childcare funding if Cymorth funds are transferred; and
 - b. That the new responsibilities/duties to conduct sufficiency assessments and to extend / broaden the information services remit should be properly funded.
45. Children's Strategy Division also issued a separate discussion paper to Local Authority partnerships and to the childcare voluntary sector regarding options for the approach to transferring funding for childcare and children's information services from Cymorth to RSG. Responses have been mixed, but generally reflect the same concerns highlighted by the Childcare Act consultation documents and events feedback.
46. The WLGA Distribution Subgroup was also consulted and they expressed their concern that the Childcare Act duties should be adequately funded, but as a general principle believed that the proposed transfer of the Cymorth grant to RSG should proceed to timetable.
47. Funding for childcare is set out in paragraphs 16 and 17 above. These will be unhypothecated amounts within RSG and it must be emphasised therefore that it will be for each Local Authority to determine the amount spent in this or any other particular service area. Local Authorities will be expected to continue to work closely with service providers from all sectors – voluntary, community, private and maintained – to develop further the variety and extent of services so that they improve child outcomes and meet local needs.

Post implementation review

48. Welsh Assembly Government officials will evaluate the effectiveness of these regulations in improving the sufficiency of childcare provision for parents within the first 24 months of operation. The childcare sufficiency assessment will be included within Children and Young People's Plans (CYPPs), as part of a local mapping of provision and assessment of need.

Following this evaluation we will consider further revision of the regulations if the need for change is identified.

Summary

Option 1 – To make regulations in order to broaden the current duty on Local Authorities to assess the sufficiency of childcare provision within their area

49. The decision was taken by Welsh Ministers to make these regulations.

50. The Childcare Act underpins the Assembly Government's childcare strategy "Childcare is for Children" published in November 2005, and enshrines in law:

- Parents' legitimate expectation of accessible high quality childcare for children and their families; and
- Local Authorities' responsibilities for providing information to parents and prospective parents to support them in their parenting role.

51. The regulations will build on Local Authorities' existing roles and responsibilities and will ensure people have access to the childcare services they need as a parent. Through guidance, we will look to ensure that the "sufficient childcare provision" and the "childcare sufficiency assessment" are made central to local childcare strategies, with proactive engagement and dissemination to increase the availability and affordability of childcare services across communities.

Option 2 - Maintain the status quo and rely on existing duty

52. There would be no additional costs, but this option would not broaden the range of childcare provision available to families to support them in their parenting role. However, it might disadvantage some parents in Wales who live in Local Authority areas adopting the narrowest interpretation of the existing provision of childcare duty under section 149 of the Education Act 2002. It would also be out of step with the Assembly Government's commitments outlined in the childcare strategy for Wales "Childcare is for Children" and the guidance on local co-operation under the Children Act 2004 "Stronger Partnerships for Better Outcomes", and our plans, which are now progressing, to transfer the childcare element of the Cymorth fund to Revenue Support Grant in future years.