

EXPLANATORY MEMORANDUM AND REGULATORY IMPACT ASSESSMENT FRAMEWORK

Explanatory Memorandum to “The Childcare Act 2006 (Provision of Information) (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 27 of the Childcare Act 2006 broadens the existing duty on Local Authorities to provide information on childcare and related services. Local Authorities will need to ensure availability of, or sign posting to, comprehensive information for parents of children and young people aged up to 20 on local services provided and sign posting to national sources of help. Information will need to be accessible to fathers as well as mothers; to disadvantaged and excluded groups; and to parents for whom English is not the first language.

Matters of special interest to the Subordinate Legislation Committee

2. Not applicable.

Legislative Background

3. Section 27 of the Childcare Act 2006 confers powers on the National Assembly for Wales to make regulations regarding the types of information regarding childcare which are required to be provided to parents and prospective parents by local authorities. 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 27 of the Childcare Act 2006, are now vested in the Welsh Ministers.
4. The instrument has been made using the negative resolution procedure and is therefore subject to annulment by a 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 Authorities to provide information to the public on childcare and related services, having

regard to statutory guidance issued by the Welsh Assembly Government. This guidance is contained within guidance for the Cymorth grant scheme and sets out the nature of the role of the Local Authority in to setting up and running such a service.

6. Local Authorities fulfil this duty by running a Children's Information Service (CIS), whose core business is the provision of information on childcare and nursery education services. Cymorth guidance has encouraged Local Authorities to provide a broader range of information than that required by the current legislation in order to support parents in their parenting role. Many Local Authorities and CISs have responded positively and are already providing substantially more than the current legislation requires.
7. The section 27 duty under the Childcare Act replaces the duty to provide information to the public on childcare and related services under Section 118A of the School Standards and Framework Act 1998 (as amended by the Education Act 2002).
8. The information duty, in section 27 of the Childcare Act 2006, and the regulations to be made under that section, expands the information which Local Authorities must provide to parents and prospective parents, from predominantly childcare based, to more comprehensive information on help available to them in their parenting role.
9. The provision of information duty under section 27 fits with other duties under the Childcare Act, including the duty to secure sufficient childcare for working parents (section 22) and the duty to assess, on an annual basis, the sufficiency of childcare in the Local Authority area (section 26). The Local Authority information service will be instrumental in helping to deliver on the requirements of section 22 and 26 of the Childcare Act duty to secure sufficient childcare for working parents.

Implementation

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

Funding arrangements

12. 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

13. 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.
14. This corresponds with the commencement date of 1 April 2008 for these provision of information 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

15. 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
16. These regulations have been tested in a full public consultation with key stakeholders. The consultation document “Childcare Act 2006 – Implementation of Section 27 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:
http://new.wales.gov.uk/topics/educationandskills/education_and_skills_consult/468573-wag/?lang=en

Regulatory Impact Assessment

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

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

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

- Option 1 - To make these 2008 regulations and broaden the current duty on Local Authorities to provide information.
- 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.

Option 1 – To make these 2008 regulations in order to broaden the current duty on Local Authorities to provide information

Risk Assessment

19. The Assembly Government makes these regulations in order to ensure families have sufficient information on childcare and children's services. The risks in this approach are that the enhanced duties would put additional pressure on existing staff in some Local Authorities.

Benefits

20. An extended information duty would ensure that every Local Authority takes action to ensure the availability to families with children from 0-19 of sufficient information on childcare, nursery education and services available to support families in their area. For many Local Authorities this would formalise and legally define the role they currently play in this area.

21. Local Authorities would target the information to meet the needs of parents of children aged 0-19 and Local Authorities would have to reach disadvantaged and hard to reach groups as well as ethnic minorities.

22. There may be some indirect benefits of this new duty on childcare providers. Higher levels of information on childcare and children's services may indirectly benefit the childcare market by increasing awareness of childcare and other services as more families will become aware of the services that they provide. There would be no direct impact on schools, although it is possible that Local Authorities would expect them to become a source of information for parents.

Costs

23. 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 information and advice on childcare and

children's services, which meet their families' needs, and to ensure that continued development of this information service reflects local needs and circumstances. The key intention is to provide assurance of a long-term commitment to the provision of an information service to parents on childcare and children's services, without creating new administrative burdens or service costs for Local Authorities.

24. Funding being made available is set out at paragraphs 19 and 20 above. The administrative cost of the regulations is being recognised in the additional £1.1/£1.2/£1.3 million being provided. The duties are cost neutral in the majority of cases, formalising and placing on a more long term and sustainable basis the lead role that Local Authorities are already playing in ensuring the provision of information to parents.

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

Risk Assessment

25. 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 families have sufficient information on childcare and children's services. Risks in this approach have been identified around:

- Some Local Authorities may choose to provide only the most basic of information.
- Insufficient and inconsistent availability across Wales of information for parents.
- Families in these areas would not have access to a broad range of information on childcare and children's services and information may not be targeted on hard to reach or disadvantaged groups.
- This would prevent a significant proportion of the population from making the best use of childcare and children's services that are available to them, limiting the impact of these services on child outcomes.

Benefits

26. The provision of information on childcare and children's services would continue to rest on existing legislation and Local Authorities could continue to use current mechanisms to provide this information. Information would still be provided to families at least on childcare provision and childcare information services would continue to operate, but in some areas this will be the extent of the information on offer.

Costs

27. Costs would remain broadly at the present level and the Assembly Government would continue to fund the Information Services 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

28. 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

29. 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.
30. Higher levels of information on childcare and children's services may indirectly benefit the childcare market by increasing awareness of childcare and other services as more families will become aware of the services that they provide.

Consultation

31. The formal consultation period ran from 19 February to 11 May 2007 and 28 responses were received in respect of the consultation on section 27 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.
32. The regulations have been amended in the light of the consultation and will require every Local Authority to provide at the least an information service providing sufficient information on childcare and nursery education and sign posting to the widest range of children's services, both locally and nationally. The detailed information previously contained in the schedule to the consultation regulations has now been specified within statutory guidance which will issue in spring 2008. The statutory guidance will oblige Local Authorities to sign post parents to the widest range of children's services, both locally and nationally, such as:

- the childcare sufficiency assessment within the Local Authority's Children and Young People's Plan;
- education and family learning services;
- health and wellbeing services;
- play, sports and other recreational facilities;
- social care and family support services;
- youth services;
- financial and legal services;
- child development;
- staying safe;
- services for disabled children and young people; and
- services promoting the use of the Welsh language.

Funding of the Childcare Act Duties

33. 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.
34. 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.
35. 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.
36. Funding for childcare is set out in paragraphs 19 and 20 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

37. WAG officials will evaluate the effectiveness of these regulations in improving the information service for parents within the first 24 months of operation. The information services and the intelligence they gather are integral to the Local Authority's childcare sufficiency assessment which 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 provide information

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

39. 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.

40. The regulations will build on Local Authorities' existing roles and responsibilities and will ensure people have access to the full range of up to date information they need as a parent. Through guidance, we will look to ensure that these "Information Services" are made central to local childcare strategies, with proactive engagement and dissemination to increase the reach and visibility of childcare information.

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

41. There would be no additional costs but this option would not sufficiently broaden the range of information available to families to support them in their parenting role. It might also disadvantage some parents in Wales who live in Local Authority areas adopting the narrowest interpretation of the existing provision of information 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 plans, which are now progressing, to transfer the childcare element of the Cymorth fund to Revenue Support Grant in future years.