



Llywodraeth Cymru
Welsh Government

Childcare Funding (WALES) BILL

Statement of Policy Intent for Subordinate
Legislation to be made under this Bill

April 2018

CHILDCARE FUNDING (WALES) BILL

STATEMENT OF POLICY INTENT FOR SUBORDINATE LEGISLATION

1. This document provides an indication of the current policy intention for the subordinate legislation that the Welsh Ministers would be empowered or required to make under the provisions of the Childcare Funding (Wales) Bill (the Bill). It has been prepared in order to assist committees during the scrutiny of the Bill and should be read in conjunction with the Bill and the Explanatory Memorandum and Explanatory Notes which accompany it.
2. The Bill gives the Welsh Ministers the power to provide funding for childcare for qualifying children of working parents and to make regulations about the arrangements for administering and operating such funding.
3. With the exception of the order-making power for commencement in section 12 of the Bill, the delegated powers provided by the Bill take the form of regulations.
4. The Assembly procedure for each subordinate legislative power is set out in detail in Chapter 5 of the Explanatory Memorandum. The guidelines published by the Counsel General in January 2012 have been followed to ensure a consistent approach to Assembly procedure.
5. If enacted, the Bill provides the Welsh Ministers with regulation-making powers to:
 - prescribe the conditions which will have to be met for a child to be considered eligible for funding (i.e. to be considered a “qualifying child”), including any declarations that will have to be made and any conditions which will have to be met by the parent of a child;
 - make provision to require parents to provide information that is relevant to their application for childcare funding and make arrangements for financial penalties to be imposed where false or misleading information is provided;
 - make provision that will permit Her Majesty’s Revenue and Customs and permit or require UK Government departments, Ministers of the Crown and local authorities to provide qualifying information to the Welsh Ministers or to a person providing services to the Welsh Ministers for the purposes of administering the scheme;
 - prescribe the detail of arrangements for onward disclosure of qualifying information and to create criminal offences in connection with the onward disclosure of information that relates to a particular person.

- make provision for applicants to seek a review of decisions made in connection with their applications and for arrangements for appeals to be made to the First-tier Tribunal;
 - confer a power or impose obligations on local authorities in respect of the funding;
 - enable the increase of the maximum financial penalty that may be imposed on a person who provides false or misleading information in connection with a requirement to provide information.
6. The Welsh Government consider that these secondary legislative powers are essential to prescribe matters of detail and to provide flexibility for matters that may require adjustment to facilitate the effective implementation and operation of the funding.
 7. It is envisaged that there will be two sets of regulations arising from the powers in the Bill. One set of regulations (dealing with eligibility criteria and how to apply for the funding) will not be subject to the consent of an “appropriate Minister” on behalf of a UK Government department or Minister of the Crown, whilst the other set of regulations (dealing with information sharing between the Welsh Government and third parties and onward disclosure of information) will be subject to such consent.
 8. Section 12(1) of the Bill provides that sections 12 and 13 will come into force on the day after the day on which the Bill receives Royal Assent. The other provisions in the Bill will be commenced by order at such time or times as the Welsh Ministers consider appropriate or expedient.
 9. In developing subordinate legislation, the Welsh Government will work closely with stakeholders in order to ensure the provisions are relevant, valid and proportionate.

Administrative scheme

10. An administrative scheme will be developed alongside the regulations. The scheme will explain what an eligible child will be able to receive and where / by whom the funded childcare will be delivered. Further details on the policy intention in relation to the scheme are provided towards the end of this document.

REGULATIONS RELATING TO	Funding of childcare for children of working parents
SECTION	Section 1
PROCEDURE	Affirmative
DESCRIPTION OF THE REGULATIONS	
<p>Section 1 of the Bill provides the Welsh Ministers with the power to deliver targeted funding that will support working parents with the costs of childcare.</p> <p>This section provides regulation-making powers to enable the Welsh Ministers to define the conditions that will have to be met for a child and parent, or partner of a parent, to be considered eligible to receive funding for childcare. For example, the regulations will set out what is meant by:</p> <ul style="list-style-type: none"> • qualifying child, which will include the age of the child and a requirement that the child is in Wales; • working parent; • paid work; • partner of a parent. <p>The regulations will also require a declaration to be made by the parent, or partner of the parent, in respect of the child for whom childcare funding is being sought. The regulations will set out the conditions to be met by a person making a declaration (including a requirement that the person making the declaration is in Wales), the form and content of any declaration and any requirements for a parent, or partner of a parent, to make a fresh declaration of their eligibility.</p> <p>The purpose of these regulations is to specify in more detail the core eligibility criteria for the purposes of the scheme and how and when eligibility is to be declared for the purpose of the funding. Given the plethora of different circumstances that must be covered it would not be appropriate to set out all the detail on the face of the Bill. The use of regulations will also permit a timely and flexible response by Welsh Ministers should there be a need to review the conditions which have to be met to qualify for the funding in light of new evidence.</p>	
POLICY INTENTION OF THE REGULATION MAKING POWERS UNDER SECTION 1	
<p>The core eligibility criteria, as set out in these regulations, will form the basis for assessing whether or not a child and parent is eligible for Government-funded childcare and will explain how and when a parent, or partner of a parent, must make a declaration of their eligibility.</p>	

REGULATIONS RELATING TO	Power to make provision about administration etc. of funding
SECTION	Section 2
PROCEDURE	Affirmative
DESCRIPTION OF THE REGULATIONS	
<p>Section 2 of the Bill contains a power for the Welsh Ministers to make regulations which will prescribe the arrangements for the administration of the childcare funding. These regulations may (amongst other things) include provision which is referred to in sections 3-7 of the Bill and it is anticipated they will make provision about the following matters:</p> <p>Requirement for parents etc. to provide information</p> <p>Section 3 of the Bill refers to the regulation making provision to require a parent, or the partner of the parent, to provide information that will enable a decision to be made about whether or not they, and their child, are eligible for childcare funding. This information will need to be provided and its accuracy confirmed in the form of a declaration provided for under section 1 of the Bill.</p> <p>The regulations will create financial penalties for inaccurate declarations; for providing false or misleading statements and for dishonesty on the part of a person applying for the funding. (Section 10 of the Bill enables the Welsh Ministers to amend, by regulations, the maximum amount of a financial penalty created by virtue of this section).</p> <p>Provision of information by third parties</p> <p>Regulations made by virtue of section 4 will establish appropriate information gateways between the Welsh Ministers (or persons providing services to the Welsh Ministers) and relevant UK Government departments (or persons providing services to them) in respect of “qualifying information”.</p> <p>The regulations will define what is meant by “qualifying information” for the purpose of administering and operating the childcare funding scheme. The regulations will specify information that is pertinent to undertaking eligibility checks for the purpose of the scheme and will identify the “owners” of this information. The principal information owners in respect of this Bill will be Her Majesty’s Revenue and Customs, the Department for Work and Pensions and the Home Office.</p> <p>There will be appropriate engagement with the relevant UK Government departments on any draft regulations relating to the disclosure of information held by that department and the regulations will be subject to the consent of the appropriate UK Government Minister.</p>	

Onward disclosure of information disclosed by virtue of section 3 or 4

The regulations made by virtue of section 5 will clarify the circumstances in which information provided by a parent, a partner of a parent, or by a third party can be passed on for the purpose of administering the application and eligibility checking process. Any regulations relating to the onward disclosure of information provided by UK Government Departments, or persons providing services on their behalf, will be subject to the consent of the appropriate UK Government Minister. The regulations will also create a criminal offence that will apply in situations where confidential information relating to a particular person is passed on unlawfully.

Reviews of determinations and appeals to the First-tier Tribunal

Regulations made by virtue of section 6 will set out the arrangement whereby a parent, or partner of a parent, may apply for a review of a determination in relation to their eligibility for childcare funding or a review of a penalty imposed under regulations made by virtue of section 3 of the Bill.

The regulations will also detail the arrangements to be followed should a parent, or partner of a parent, remain dissatisfied with a determination or a penalty following a review being undertaken. Appeals in relation to determinations and penalties will be considered by the Social Entitlement Chamber of the First Tier Tribunal.

Power to confer functions on local authorities

Regulations by virtue of section 7 may set out clearly what power, if any, is being placed on local authorities in respect of the childcare funding scheme and detail the obligations of local authorities in the effective administration of the scheme. For example, local authorities may be required to make arrangements for supporting parents, and partners of parents, in applying for the funding and supporting providers in their local area. The Welsh Ministers will issue guidance to local authorities explaining how any power conferred or obligation imposed should be discharged.

Regulation making powers will provide the Welsh Ministers with the flexibility to review the processes and procedures for making applications for the childcare funding and determining eligibility should they deem this necessary and will enable them to respond quickly should any changes be required as a result of the way pertinent information is managed or processed by third parties. It is also considered more appropriate to include such procedural detail in regulations as opposed to provision being set out in full on the face of the Bill.

POLICY INTENTION OF THE REGULATION MAKING POWERS UNDER SECTION 2

The regulation-making powers under section 2 will enable the Welsh Ministers to specify, amongst other things, what information needs to be provided by whom for the purpose of eligibility checking and describe how a parent, or partner of a parent,

may apply for the funding, including how they may challenge any decisions made in respect of their application.

It is intended that the regulations which are subject to the consent of the appropriate UK Government Minister will be dealt with separately from the regulations which can be made without the consent of a UK Government Minister.

REGULATION RELATING TO	Power to change amount of financial penalty for provision of false or misleading information
SECTION	Section 10
PROCEDURE	Affirmative
DESCRIPTION OF ORDER	
Section 10 of the Bill enables the Welsh Ministers to amend, by regulations, the maximum amount of a financial penalty created in regulations made under section 2 in respect of the provision of false or misleading information provided in connection with the a requirement imposed by virtue of section 3 of the Bill.	
POLICY INTENTION OF THE REGULATIONS	
The Welsh Ministers will be able to keep the level of any financial penalty imposed under review and will be able to amend section 3(6) of the Bill without the need for primary legislation.	

ORDER RELATING TO	Commencement
SECTION	Section 12
PROCEDURE	No procedure
DESCRIPTION OF ORDER	
This order enables the Welsh Ministers to provide for commencement of the Bill.	
POLICY INTENTION OF THE REGULATIONS	
The Welsh Ministers will wish to consider when to bring different provisions in the Act into effect. There are important interdependencies to be taken into account in determining when to bring certain provisions into force, not least links with the administrative and technical work required to develop the digital platform for the application and eligibility checking system. Lessons learned from early implementation of the Offer may also have a bearing on decisions of Welsh	

Ministers in respect of giving effect to various provisions.

DESCRIPTION OF THE ADMINISTRATIVE SCHEME AND ITS POLICY INTENTION

In addition to the Childcare Funding (Wales) Bill and the regulations, the Welsh Government will be publishing an administrative scheme which will describe how and where the hours of childcare can be taken up and who will be able to deliver the childcare for the purposes of the scheme.

Issues that will be covered by the scheme include:

- how the hours of childcare will be calculated. It is intended that the Childcare Offer for Wales will provide the working parents of eligible 3-4 year olds in Wales with 30 hours of combined early education and childcare per week, for up to 48 weeks per year;
- how parents can access the childcare, for example the number of hours that can be taken in one day; how many settings can be used; what happens during school holidays;
- who can deliver the childcare for the purposes of the scheme;
- the conditions which providers must meet in order to deliver the scheme.

The scheme will also set out in detail the arrangements for making payments to providers for childcare provided under the scheme, including the hourly rate at which funding will be paid and any additional funding that may be available to support children with special educational needs/additional learning needs, for example.

As part of early implementation of the Childcare Offer, there is non-statutory guidance in place for local authorities¹ and it is envisaged that this will provide some of the basis for the administrative scheme going forward. This guidance may change as findings from early implementation emerge.

The administrative scheme will be informed by ongoing engagement with stakeholders and the lessons being learned from early implementation of the Offer.

¹ <http://gov.wales/topics/people-and-communities/people/children-and-young-people/childcare/talk-childcare/pilot-areas/?lang=en>