



National Assembly for **Wales**
Cynulliad Cenedlaethol **Cymru**

Childcare Bill (Bill 80)

Abstract

This paper provides background briefing on the Childcare Bill (Bill 80), published on 8 November 2005 by the Department for Education and Skills. It will place statutory duties on local authorities in Wales to secure sufficient childcare within their areas and ensure that parents have access to information on childcare and other children's services.

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Childcare Bill (Bill 80)

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Executive Summary

The Childcare Bill aims to improve children's well-being by ensuring that local authorities in England will provide:

- ◆ Sufficient local childcare to meet the needs of working mothers and fathers, or those that want to return to work, with particular regard to low-income families and those with a disabled child, with parents being given advice and help on assessing childcare;
- ◆ Access to a full range of information for parents for children up to the age of 20, with parents' views contributing to the planning of early childhood services and childcare in the area.

The Bill will introduce by 2008 a new reformed legal framework for regulation and inspection of early years settings:

- ◆ For children from birth to the end of reception year, all registered settings will be required to deliver the Early Years Foundation Stage – a framework of requirements to ensure all young children have access to an integrated learning and care experience. This will have the same legal force as the National Curriculum in schools;
- ◆ For out of school childcare, settings will be judged against new Ofsted Childcare Register (OCR) standards ensuring safety and suitability. The OCR standards will be compulsory for all settings caring for children under eight and any setting offered as part of an extended school.

In Wales, the Bill will place requirements on local authorities to:

- ◆ Secure sufficient childcare for those who are working or making the transition to work;
- ◆ Have regard for the provision of childcare involving the use of the Welsh language;
- ◆ Establish and maintain an information service.

Powers for Wales

The Bill provides flexibility for the Assembly Government, where appropriate, through regulation and guidance making powers. The Bill contains a clause which will allow the Assembly to amend by order, certain sections so as to modify the matters to which a local authority must or may have regard in determining whether the provision of childcare is sufficient.

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Childcare Bill (Bill 80)

1 Introduction

The Queen's Speech on 17 May 2005, stated that legislation would be brought forward which would improve the provision of childcare. On 15 July 2005, a Childcare Bill consultation was published by the Department for Education and Skills. Childcare policy in Wales lies within the portfolio of the Welsh Assembly Government Minister for Education and Lifelong Learning. The Bill was subsequently remitted to the Education and Lifelong Learning Committee who will be considering the Bill on 8 February 2006.

2 Background

The ten year strategy for childcare¹ was published by HM Treasury, in December 2004. The strategy identified three central principles that have driven the formulation of the UK Government's ten year strategy:

- ◆ the importance of ensuring every child has the best possible start in life;
- ◆ the need to respond to changing patterns of employment and ensure that parents, particularly mothers, can work and progress their careers; and
- ◆ the legitimate expectations of families that they should be in control of the choices they make in balancing work and family life.

The strategy covers both reserved issues (for example tax credits and maternity leave) and devolved issues (for example the quality of childcare places). Responsibility for the delivery of the strategy in Wales, is therefore shared between the UK Government and the devolved administrations. Proposals on maternity leave and pay are being taken forward in the Work and Families Bill².

3 Policy in Wales

In 2001, the Assembly Government reviewed the operation of the *National Childcare Strategy in Wales*³. Following a task force report, the *Childcare Action Plan*⁴, published in May 2002, set out the perspective that children should be at the heart of childcare policy in Wales. In order to build on the implementation of the principles set out in *the Childcare Action Plan*, the Assembly Government formed a new Childcare Working Group (in 2004), chaired by the then Deputy Minister for Economic Development and Transport, Brian Gibbons. The Group's report made 77 recommendations.

The Strategy document *Childcare is for Children*⁵ is the Assembly Government's response. It sets out in detail how the Assembly Government aims to tackle the challenges in the coming years so that children have a flying start in life. In a Cabinet

¹ HM Treasury *Choice for parents, the best start for children: a ten year strategy for childcare*, December 2004
http://www.hm-treasury.gov.uk/media/8F5/35/pbr04childcare_480.pdf

² The *Work and Families Bill* [HL], Bill 65

³ Welsh Office, *The National Childcare Strategy in Wales*, 1998

⁴ Welsh Assembly Government, *Childcare Action Plan*, May 2002 -

<http://www.wales.gov.uk/subchildren/content/link%20to%20childcare%20action%20plan>

⁵ Welsh Assembly Government, *The Childcare Strategy for Wales, Childcare is for Children*, November 2005 -
<http://www.learning.wales.gov.uk/pdfs/childcare-strategy-e.pdf>

Statement on the day of the Childcare Bill's Second Reading, the Minister for Education and Lifelong Learning stated:

We are using the Bill to complement the Childcare Strategy for Wales Childcare is for Children. It will place statutory duties in Wales to secure sufficient childcare within their areas, and also to ensure that parents have access to adequate information on childcare and other children's services.

The Bill provides flexibility for the Assembly Government, where appropriate, through regulation and guidance making powers. The timing of the duties and supporting guidance will be in the control of the Assembly Government. It is envisaged that the new duties will come into force in April 2008⁶.

4 Childcare Bill Consultation

The *Childcare Bill Consultation*⁷, published on 15 July 2005 focused on how the UK government plans to implement the ten year strategy. The consultation paper suggested that there is a strong foundation of services in England, but identified remaining challenges:

- ◆ Many families have difficulty finding affordable childcare that fits their circumstances and adapts as their children grow;
- ◆ Services for young children can be poorly joined up making them more difficult to access and less effective in helping families break out of the cycle of poverty and worklessness;
- ◆ Complexity and disproportionality in the regulatory and inspection regimes for childcare and early years services mean that parents do not have the assurance that wherever their children are cared for they will be safe and well looked after.

The paper invited views on legislative proposals:

- ◆ To place early years and childcare on a secure long-term footing; and
- ◆ To reform the regulation and inspection regimes for childcare and early years provision.

The consultation period ended on 7 October 2005 and the report was published on the Sure Start website⁸.

5 Timetable

The Bill was published on 8 November 2005 and had its Second Reading in the House of Commons on 28 November 2005⁹. The Bill began the Committee Stage on 8 December 2005 and concluded this stage on 20 December 2005. It is expected that Royal Assent will be in Summer 2006 and that new duties on local authorities in England and Wales will

⁶ Welsh Assembly Government, Jane Davidson, (Minister for Education and Lifelong Learning), *Childcare Bill*, Cabinet Written Statement, 28 November 2005

⁷ Department for Education and Skills, *Childcare Bill Consultation*, 15 July 2005
<http://www.dfes.gov.uk/consultations/downloadableDocs/Childcare%20Bill%20Consultation.pdf>

⁸ Department for Education and Skills *Report on Responses to Consultation on Legislative Proposals for the Future of Childcare and Early Years Provision in England*, 2 November 2005
<http://www.surestart.gov.uk/doc/P0001828.pdf>

⁹ The *Childcare Bill*, Bill 80 2005-06 <http://www.publications.parliament.uk/pa/cm200506/cmbills/080/06080.i-v.html>
Explanatory Notes - <http://www.publications.parliament.uk/pa/cm200506/cmbills/080/en/06080x--.htm>

come into force in April 2008. The reforms on regulation and inspection are also expected to come into force in 2008.

6 The Bill

The Bill is divided into four parts. Part 1 and 3 apply to England only, Part 2 to Wales only and Part 4 to Wales and England. Parts 1 and 2 make provisions relating to new duties on England and Wales respectively, Part 3 makes provision relating to the system of regulation and inspection of childcare in England and Part 4 contains general provisions.

6.1 Part 1 – General Functions of Local Authority: England

Part 1 sets out the duties placed upon local authorities:

- ◆ Improving outcomes for young children;
- ◆ Securing sufficient childcare; and
- ◆ Providing information to parents.

Local authorities will be required to improve well-being for young children. Well being is defined as relating to:

- ◆ Physical and mental health and well-being;
- ◆ Protection from harm and neglect;
- ◆ Education, training and recreation;
- ◆ The contribution made by them to society;
- ◆ Social and economic well-being;
- ◆ Childhood services (early years provision, health, social services and employment services) will be required to be integrated and it provides for the NHS and JobCentre Plus to work in partnership with the local authority to deliver these services.

Local authorities will be required to secure sufficient childcare for parents to take up or remain in work and for those making the transition to work, that is, those who are undertaking training or education, to assist them in obtaining work. This includes a requirement that the local authority regularly assess the demand for, and availability of, local childcare provision and to support local childcare providers with information, advice and training. This part enables local authorities to charge for childcare it provides and requires them to secure a set amount of early years provision free of charge for children in the area.

A duty will be placed on local authorities to set up an information service for parents and prospective parents, providing information on services, facilities and publications which may benefit them or children or young people and providing advice and assistance on childcare.

6.2 Part 2 – General Functions of Local Authority: Wales

The Bill sets fewer requirements on local authorities in Wales. As for England, local authorities are required to secure sufficient childcare for those who are working or making the transition to work. In determining whether there is sufficient childcare in an area, local authorities in England and Wales are required to have regard to the needs of parents for the provision of childcare in respect of which the childcare element of working tax credit is

payable; provision of childcare for disabled children; and childcare which they may expect to be available outside their area. There is an additional requirement for local authorities in Wales, where they must have regard to the provision of childcare involving the use of Welsh language. Local authorities in Wales may assist those providing childcare, including financial assistance, or provide childcare itself. Local authorities may charge for childcare.

The Bill makes it a requirement for local authorities in England to assess childcare provision. For Wales, the Bill allows for the Assembly to make regulations to place this requirement on local authorities. There are similar duties in Wales as in England in that local authorities must establish and maintain an information service. This reflects current non-statutory practice.

There are a number of duties in Part 1 of the Bill which are not repeated for Wales. These include:

- ◆ The duties of local authorities in relation to the well-being of young children;
- ◆ The integration of early childhood services;
- ◆ The duty for local authorities and partners to work together;
- ◆ The duty to secure prescribed early years provision free of charge;
- ◆ In relation to the powers of local authorities providing childcare, English authorities may not provide childcare for particular children unless they are satisfied that no other person is willing to do so;
- ◆ Duties to provide information, advice and training to childcare providers.

6.3 Part 3 – Regulation and Provision of Childcare in England

Part 3 puts in place provisions to implement the reform of regulation and inspection of childcare in England. Her Majesty's Chief Inspector of Schools (the Chief Inspector) has a general duty to keep the Secretary of State informed about the quality and standards of early years provision and its contribution to the well-being of children. The Chief Inspector is required to inspect early years provision at intervals (to be prescribed in regulations) and on request by the Secretary of State, and at any time when they consider it appropriate. The Chief Inspector must report in writing on early years provision which they inspect and the Bill makes provision for the distribution of copies of reports.

The Chief Inspector is required to maintain two childcare registers – an early years register and a general childcare register. The general childcare register will be split into two parts which lists all childcare providers who are required to be registered (those caring for children over 5 but under 8) and all those who have registered voluntarily.

The Bill sets out those who are required to register on the early years register:

- ◆ Early years childminders¹⁰, (the Secretary of State may make certain persons exempt, such as nannies and babysitters);
- ◆ Other early years providers – in respect of specific premises.

Those required to register on the general childcare register:

- ◆ Those providing childcare for children up to the age of eight;
- ◆ Other later years providers up to the age of eight, in respect of specific premises.

¹⁰ Early years childminding is defined as provision on domestic premises for reward where there are no more than three people providing the care or assisting with its provision



Early years provision at schools is generally exempt from registration. The Chief Inspector may issue an enforcement notice for those who do not comply and they may be prosecuted. Later years childminders and other later years providers will be required to pay a fee to apply for registration. Regulations may be made which cover welfare of children, suitable persons, premises, complaints procedures and provision of information.

Childminders and childcare providers (such as those caring for children over the age of eight) are not required to register, but may apply to be registered on Part B of the register. It would not be an offence for those voluntarily registered not to comply with any condition placed upon them by the Chief Inspector. Regulations may be made governing activities of voluntarily registered providers. The breach of such regulations would not be an offence, but registration may be cancelled.

- ◆ The Chief Inspector can cancel the registration of the provider if a person becomes disqualified, where requirements are not met, conditions not complied with or fees not paid. A childminder's registration may be cancelled if it appears that they have not provided any relevant childminding for more than three years of their registration. Providers may also voluntarily be removed from the register.

The Chief Inspector may apply to a Justice of the Peace for an order cancelling, varying or removing a condition on registration or imposing a condition if it appears that a child for whom care is being provided is suffering or is likely to suffer harm. There is a right of appeal to the Care Standards Tribunal. The Secretary of State may make regulations setting out when a person may be disqualified from registration. Once disqualified, a person can no longer provide any provision that is required to be registered, nor may they be employed in connection with such provision. The Chief Inspector has powers of entry to unregistered provision, if they suspect that the provision should be registered and powers of entry to registered premises.

The Bill places a duty on the Secretary of State to specify certain requirements for the purpose of promoting well-being of young children who are receiving early years provision. These requirements relate to learning by, and development of young children, which the Secretary of State must specify by order (the learning and development requirements). There are also requirements relating to the welfare of young children and the organisation of staffing of early years settings which the Secretary of State must prescribe by regulations (the welfare requirements). These requirements together will be known as the Early Years Foundation Stage (EYFS). All providers who are required to be registered and those making provision in schools for those aged 3 and over will be required to implement the EYFS. The Bill sets out what may be covered by a learning and development order. The content of the Early Years Foundation Stage will be consulted upon during 2006, but it is intended that it will bring together elements of the existing National Standards for Childcare, the Foundation Stage and Birth to Three Matters.

6.4 Part 4 – General

Part 4 of the Bill contains general provisions, including minor and consequential amendments.

7 Second Reading

During the Second Reading of the Bill¹¹, the following points were raised in the House of Commons:

- ◆ Concern over local authority funding to meet their childcare duties;
- ◆ Concern over the Early Years Foundation Stage;
- ◆ The importance of qualifications for childcare workers;
- ◆ The particular problems of childcare for disabled children;
- ◆ The importance of involving parents in developing provision.

For Wales in particular, the following points were raised, whilst recognising that operational matters relating to childcare are a matter for the Assembly:

- ◆ Problems with accessing formal childcare in rural areas;
- ◆ The lack of childcare provision offered through the medium of Welsh.

8 Reactions to the Bill

There have been a number of responses to the publication of the Bill from childcare associations and others. The Bill has been broadly welcomed, however some have expressed caution or concern about the proposals for the Early Years Foundation Stage. Generally these comments relate to the proposals for England.

8.1 National Confederation of Parent Teacher Associations

The National Confederation of Parent Teacher Associations (NCPTA) expressed concern about the government's proposals to make it compulsory for all children to be taught basic education from an early age. NCPTA spokeswoman Margaret Morrissey said:

We are in danger of taking away children's childhood when they leave the maternity ward. From the minute you are born and your parents go back to work, as the government has encouraged them to do, you are going to be ruled by the Department for Education.¹²

8.2 Confederation of British Industry (CBI)

Neil Bentley, the CBI's Director of Public Services, said:

This Bill is a sensible and timely step forward for public service reform. It begins to clearly differentiate between the role of local authorities as commissioners of services representing the interests of all local taxpayers - and as deliverers where councils should be seen as one provider amongst many.

Councils must not be allowed to use expansion in provision for children as an excuse to construct a new state monopoly, however. Charities, the voluntary sector and commercial providers are already working well and new money should be used to improve provision, not to cut them out of the marketplace.¹³

¹¹ HC Deb 28 November 2006 c24

¹² BBC News *Mixed Response to Toddler Plans* 9 November 2005 - http://news.bbc.co.uk/1/hi/newsid_4420000/4420138.stm

¹³ CBI press release *Childcare Bill is Timely and Sensible* 8 November 2005 - <http://www.cbi.org.uk/ndbs/press.nsf/0/f04d1ce9cbd15e63802570b300569f4d?OpenDocument>

8.3 Professional Association of Nursery Nurses (Pann)

In a statement on 8 November 2005, the Professional Association of Nursery Nurses (Pann) cautiously welcomed the childcare bill. PANN committee chairwoman Deborah Lawson said:

Prescriptive formal education can be too much for children under five. It is important to find the right balance and not have unrealistic expectations of what young children can achieve. We would welcome measures to improve childcare and early years education as long as they were appropriate for young children.¹⁴

8.4 NCH: the Children's Charity

On 8 November 2005, NCH the Children's Charity issued its response to the Childcare Bill:

Good childcare needs to be safe, affordable and accessible, supporting the children, parents and carers that need it the most. Therefore, as the leading children's charity, NCH is pleased with the government's proposals to ensure childcare community provision for 5 - 8 year olds will be regulated in the forthcoming Childcare Bill. These children are a vulnerable group and still require support and this decision will help drive up childcare standards for these children.

NCH also hopes that the Childcare Bill will address the difficulties that parents with disabled children and black and minority ethnic families face in accessing suitable childcare. It is absolutely vital that these families can access childcare that meets their specific needs if this legislation is to make a difference to those who need it the most.¹⁵

8.5 Daycare Trust

The Daycare Trust welcomed the Bill. Their Chief Executive Chris Walton said:

This crucial legislation will establish a stronger foundation for our childcare system by setting out clear duties for local authorities and a quality framework for early education and care.

We must make sure that the legislation is framed so that all children can access the benefits of high quality early education and care and that commitment to quality is combined with simplicity in the regulation and inspection regimes.

We look forward to further details about the content of the Early Years Foundation Stage, which must ensure the highest quality provision for very young children. It is important that the new framework looks to augment children's development in the broadest sense, rather than taking a formal school approach to services for very young children.

We also look forward to details on the new Ofsted childcare register. We must make sure that core requirements for all services guarantee safety and quality for all children and attracts the confidence of parents.¹⁶

¹⁴ Pann Statement on the Childcare Bill 8 November 2005 - http://www.pat.org.uk/index.cfm?param=news/news_detail.cfm&ID=881

¹⁵ NCH Press release, *NCH, the children's charity response to the publication of the Childcare Bill* 8 November 2005 <http://www.nch.org.uk/information/index.php?i=77&t=372>

¹⁶ Daycare Trust press release, *Daycare Trust Welcomes First Ever Childcare Bill*, 8 November 2005

8.6 *Child Poverty Action Group*

The Child Poverty Action Group (CPAG) welcomed the Childcare Bill, but expressed concern about resources. Kate Green, Chief Executive said:

Work can be an effective route out of poverty, but the lack of affordable childcare places remains a huge barrier to employment for too many parents, particularly lone parents. CPAG therefore supports the Government's commitment to providing affordable childcare for all as it goes hand in hand with its pledge to eradicate child poverty.

As part of a policy programme that has included free part-time nursery places for 3 and 4 year olds, Sure Start and other measures to help families with children, CPAG welcomes the Childcare Bill published today. It will place a legal duty on local authorities to ensure there is sufficient childcare in their area to meet the needs of working parents and families with disabled children.

Cost remains a critical factor. At the same time as increasing the number of childcare places, we ask the Government to do more to encourage take-up of the childcare element of Working Tax Credit. CPAG are also concerned that many of the poorest children remain excluded because their parents work fewer than 16 hours a week and so do not qualify for this support.

In supporting the Childcare Bill, CPAG hopes that Ministers will provide local authorities, particularly those in the poorest areas, with adequate resources to ensure that there are sufficient and sustainable childcare places available.¹⁷

<http://www.daycaretrust.org.uk/article.php?sid=268>

¹⁷CPAG press release *CPAG welcomes Childcare Bill*, 8 November 2005
<http://www.cpag.org.uk/campaigns/press081105.htm>